

**IN THE SUPREME COURT OF  
THE REPUBLIC OF VANUATU**  
*(Civil Jurisdiction)*

**Constitutional**  
**Case No. 20/1517 SC/CIVL**

**BETWEEN:** Hon. Charlot Salwai Tabimasmal, Hon.  
Marcelino Telukluk, Hon. Rick Mahe  
Tchamako, Hon. Ulrich Sumptoh, Hon.  
Francois Batick, Hon. Jotham Napat, Hon.  
Matai Seremaiah, Hon. Job Andy, Hon. Bakoa  
Kaltonga, Hon. Ian Wilson, Hon. Ralph  
Regenvanu, Hon. John Sala, Hon. Alfred  
Maoh, Hon. Andrew Napuat, Hon. Kilion  
William, Hon. John Salong, Hon. Danny Silas,  
Hon. Boe Reve Ephraim, Hon. Julun Edmond,  
Hon. Gaetan Pikioune, Hon. Stevens Fabiano  
Nano, Hon. Lulu Sakaes  
Applicants

**AND:** **Parliament of the Republic of Vanuatu**  
First Respondent

**AND:** **Gracia Shadrack, Speaker of Parliament**  
Second Respondent

**AND:** **Republic of Vanuatu**  
Third Respondent

*Date of Hearing:* 30 October 2020  
*Before:* Justice V.M. Trief  
*In Attendance:* Applicants – Mr N. Morrison  
First and Third Respondents – Mr A.K. Loughman, Attorney General  
Second Respondent – Mr J. Tari  
*Date of Decision:* 11 December 2020

---

**JUDGMENT**

---

A. Introduction

1. Citing concerns about the health risk from a Minister entering a Covid-19 quarantine area, the Applicant Members of Parliament and the Opposition (the 'Applicants') did not



attend a Parliament sitting. Subsequently the First Respondent the Parliament of the Republic of Vanuatu ('Parliament') passed a motion for their suspension from Parliament.

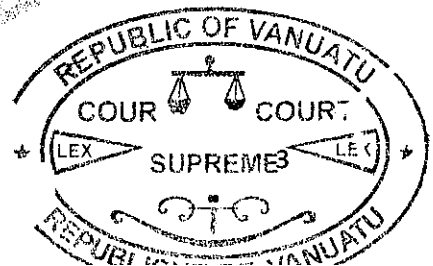
2. The Applicants alleges that Parliament has acted in breach of their individual fundamental rights under the Constitution and that by allowing the Motion, the Second Respondent the Speaker of Parliament (the 'Speaker') has ruled contrary to the Standing Orders of Parliament. A declaration and orders are sought.

B. Background

3. The following facts in this matter are undisputed.
4. Vanuatu has been in a State of Emergency since March 2020 due to the serious health risk posed by Covid-19, declared variously by the President of the Republic of Vanuatu and by the Minister of Climate Change.
5. In the morning of 10 June 2020, the Applicants received advice of a possible entry into a Covid-19 quarantine area by Hon. Bruno Leingkone, Minister of Climate Change. They agreed to seek further information.
6. The Applicant Hon. Jotham Napat phoned Dr Len Tarivonda, Director of Public Health in the Ministry of Health who confirmed that Minister Leingkone indeed gone inside Coco Beach resort where some repatriates were being kept in quarantine. Dr Tarivonda confirmed that the Minister had gone there without authorisation from the Department of Health as the institution responsible for health-related matters under the rules of the Covid-19 State of Emergency.
7. In the morning of 11 June 2020:
  - a. The Daily Post published a story that the Minister had entered the quarantined area.
  - b. Minister Leingkone appeared at Parliament to take up his place in the House.
  - c. The Applicants refused to go into the Chamber of Parliament for the sitting of Parliament on the basis of unknown or existing health risk as the Minister was present.
8. On 11 June 2020 afternoon, the Applicant and Leader of the Opposition Hon. Ralph Regenvanu wrote to the Speaker requesting certification from the Ministry of Health that MPs' attendance in the Chamber the following week, in the presence of the Minister, would not pose a health risk to Members.
9. On 11 June 2020, the Speaker sought and received responses from the Minister of Health.
10. On 12 June 2020, the Speaker provided his written response to Mr Regenvanu.

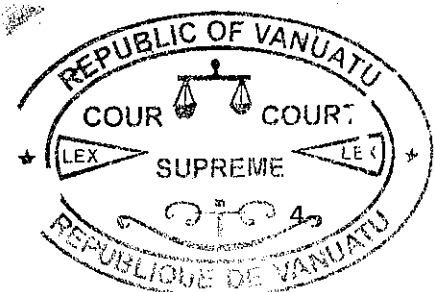


11. On 13 June 2020, Motion No. 6 of 2020 ('Motion 6') was registered.
12. At 9am on Monday 15 June 2020, the Applicants received the motion.
13. On 16 June 2020 morning, the delayed first sitting of the 1<sup>st</sup> Ordinary Session of Parliament resumed with the Applicants at that sitting. The President of the Republic made his address to Parliament, after which the Speaker announced that Parliament was adjourned until 4pm.
14. At 2pm, Mr Regenvanu met with the Speaker and the Clerk of Parliament. The Speaker and Clerk confirmed that Motion 6 was not yet "mature" to be discussed that day as the required number of days' notice for the motion had not yet elapsed.
15. When Parliament resumed at 4pm, the Prime Minister delivered his response to the President's address. Mr Regenvanu as Leader of the Applicants commenced to deliver his response to the President.
16. At 4.55pm, Hon. Alatoi Ishmael Kalsakau, the Deputy Prime Minister moved a motion under Standing Order 16(2) for Parliament to continue after 5pm.
17. After 5pm:
  - a. After much debate and changed decision by the Speaker, he allowed the motion under Standing Order 16(2) to be put and voted on. It passed with 29 votes.
  - b. The Speaker further rules that Motion 6 was "mature" and able to be tabled for debate.
  - c. An oral motion was moved and passed that Motion 6 become Motion No. 1 so it could be debated first.
  - d. Following this, there was about 2 hours of debate on the motion.
18. During the debate, Mr Napat apologised to the Minister of Climate Change and called for the motion to be withdrawn. Hon. Bob Loughman, the Prime Minister requested that Mr Regenvanu apologise to Minister Leingkone before the Government side would consider withdrawal of the motion. Mr Regenvanu then apologised to Minister Leingkone for anything that he may have said which caused him or his family to be hurt.
19. An adjournment was granted so that the Government Caucus could consider withdrawal of the motion.
20. When Parliament resumed, a motion was put and passed to reduce the period of suspension from 4 days to 2 days.
21. Then Motion No. 1 itself was voted on. It passed by 29 votes.



C. The Constitutional Application and Responses

22. The Applicants allege that Parliament has infringed their fundamental rights and freedoms in subarts 5(1)(d), (g) and (k) of the Constitution as follows:
- a. Motion 6 (renamed by Parliament as Motion No. 1 before it was put to the vote) does or will infringe the Applicants' subart. 5(1) (d), (g) and (k) rights;
  - b. In intending to restrict and/or limit the extent to which Members of Parliament may lawfully and legitimately exercise their lawful duties and responsibilities as duly elected representatives of the Republic of Vanuatu in accordance with the law and Constitution of the Republic of Vanuatu; and
  - c. The passing of a Motion pursuant to Standing Orders of Parliament Order 40(4) is discretionary and in all the circumstances of these proceedings would be unreasonable and disproportionate in response to the facts as detailed in Motion 6 and would consequently infringe the Applicants' Constitutional rights.
23. Further, that the Speaker has ruled inconsistent with and contrary to the Standing Orders of Parliament by allowing Motion 6 to be argued and dealt with after 5pm on Tuesday 16 June 2020 in that he wrongly applied Standing Order 16(2) without first requiring compliance with Standing Order 46.
24. The Speaker denies breach of the Applicants' Constitutional rights, saying that Parliament's decision does not determine their future as Elected MPs but was a temporary measure to punish them for boycotting Parliament without lawful reason.
25. The Speaker had also alleged in his Response to the Constitutional Application that the Applicants knew before they boycotted Parliament that there was clearance from the Health Authorities that Minister Leingkone was not a threat. There was no evidence in support of this contention. I accept and find that this allegation has not been proved. The factual background is as set out above.
26. The First and Third Respondents Parliament and the State abide the decision of the Court.
27. The issues arising are:
- a. Was Motion No. 6 of 2020 and its determination giving rise to the suspension of the Applicants from Parliament for 2 days a breach of their Constitutional rights? **[Issue 1]**; and
  - b. Was the sitting of Parliament beyond 5pm on 16 June 2020 in accord with the Standing Orders of Parliament? **[Issue 2]**



D. Issue 1: Was Motion No. 6 of 2020 and its determination giving rise to the suspension of the Applicants from Parliament for 2 days a breach of their Constitutional rights?

28. It is trite law that other than in respect of an alleged breach of the Constitution, the Courts will not enquire into or adjudicate upon issues arising in Parliament.

29. I repeat the words of Lunabek CJ in *Natapei v Tari* [2001] VUSC 113, upheld in *Tari v Natapei* [2001] VUCA 18:

*When the Speaker rules on procedural matters, the Court has no jurisdiction to enquire further but if that ruling interferes with constitutional right of the person involved, the Supreme Court does have the power/right to enforce that right [Article 6(1) and 53(1) of the Constitution]. Further, in order to investigate and enforce effectively the contravention/breach of a constitutional right, the Supreme Court has the right to examine the proceedings in Parliament and this extends to the actual decision made by the Speaker whether or not the ruling is correct. If it is, there will be no contravention of the members' rights. If the ruling is wrong, the Supreme Court has the power/right to make orders, issue writs and give directions, including the payment of compensation, as it considers appropriate to enforce that right which is guaranteed and protected under the Constitution [Article 6(2) of the Constitution]. Furthermore, the Supreme Court has jurisdiction to determine the matter and to make order as it considers appropriate to enforce the contravention/breach of the provisions of the Constitution [Article 53(2)].*

30. The Applicants allege infringement of their rights under 5(1)(d), (g) and (k) of the Constitution. These rights are prescribed as follows:

5. (1) *The Republic of Vanuatu recognises, that, subject to any restrictions imposed by law on non-citizens, all persons are entitled to the following fundamental rights and freedoms of the individual without discrimination on the grounds of race, place of origin, religious or traditional beliefs, political opinions, language or sex but subject to respect for the rights and freedoms of others and to the legitimate public interest in defence, safety, public order, welfare and health –*

...

(d) *protection of the law;*

...

(g) *freedom of expression;*

...

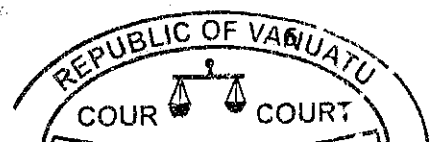
(k) *equal treatment under the law or administrative action, except that no law shall be inconsistent with this sub-paragraph insofar as it makes provision for the special benefit, welfare, protection or advancement of females, children and young persons, members of under-privileged groups or inhabitants of less developed areas.*

31. Mr Regenvanu deposed at para. 37 of his sworn statement that a boycott of Parliament is not uncommon. He listed 5 boycotts previously effected by the Deputy Prime Minister, then Leader of the Applicants. Mr Regenvanu evidenced that none of them gave rise to a suspension of the boycotting Members of Parliament.

32. Mr Regenvanu also deposed that the Applicants being suspended from the service of Parliament for 2 days, Wednesday and Thursday, meant that their written motion and 6 written questions already submitted to the office of the Clerk were not able to be tabled

and discussed, and the written questions were not able to be asked and answered. Further, that there are only two sessions of Parliament in a year – the ordinary sessions – at which Members have the opportunity to introduce Private Members' Bills, ask oral questions, submit written questions, move written motions, or make statements. This cannot be done in an Extraordinary Session as the business of that session is limited to the matter or matters referred to in the request made to the Speaker by either the majority of the Members or the Prime Minister.

33. The Speaker had alleged that the suspension was a temporary measure to punish the Applicants for boycotting Parliament without lawful reason. I do not have information before me as to a provision of the law under which the Applicants' refusal to attend Parliament due to unknown or existing health risk would constitute a lawful reason to do so. Accordingly, I am unable to conclude that the Applicants boycotting Parliament was "without lawful reason". This allegation is not made out.
34. A summary of the facts is:
- c. Covid-19 presents a serious threat to the health and welfare of the Republic;
  - d. As on 11 June 2020, the Applicants were entitled to have serious concerns about a health risk;
  - e. The Applicants refused to go into the Parliamentary Chamber on the basis of unknown or existing health risk;
  - f. The Applicants' concerns were not formally allayed until 12 June 2020;
  - g. The Applicants attended Parliament and tendered apology at the first available opportunity; and
  - h. By Motion 6, Parliament suspended the Applicants for 2 days.
35. It is undisputed that Parliament may suspend any Member from the service of Parliament as part of keeping order in Parliament (Standing Order 40).
36. Mr Morrison submitted that:
- i. The Applicants' right to equal treatment under the law or administrative action was infringed in the circumstances that Parliament's response of suspending the Applicants was a seriously disproportionate response on the facts;
  - j. The Applicants' right to have Parliament use discretion disproportionately and reasonably (which was submitted to have not occurred on this occasion) must inevitably breach their Constitutional right of entitlement to equal treatment under the law or administrative action (subart. 5 (1)(k)); and
  - k. The administrative action by Parliament (the suspension) has been neither proportionate nor reasonable and that is evident from the evidence.
37. With respect, I disagree. The evidence discloses 5 previous occasions where Members' boycott of Parliament did not result in a suspension. However, there is no evidence



before me or submissions as to the circumstances of other occasions of boycott resulting in suspension of Members. Therefore I am unable to compare the circumstances of the Applicants' suspension with those of previous occasions in which boycott resulted in suspension of Members and to assess the proportionality (or disproportionality, as the case may be) of Parliament's response. The Applicants have not established that their rights to equal treatment under the law or administrative action (subart. 5(1)(k)) have been infringed.

38. Nor am I persuaded on the facts that the Applicants' rights to protection of the law (subart. 5(1)(d)) and freedom of expression (subart. 5(1)(g)) have been infringed.
39. My answer to Issue 1, "Was Motion No. 6 of 2020 and its determination giving rise to the suspension of the Applicants from Parliament for 2 days a breach of their Constitutional rights?" is "**No**".

E. Issue 2: Was the sitting of Parliament beyond 5pm on 16 June 2020 in accord with the Standing Orders of Parliament?

40. Standing Order 17(2) provides:

17. ....

(2) Except during an extraordinary session or at the first sitting of an ordinary session, the business of each sitting day shall be transacted in the following order:

- (a) *The Prayer;*
- (b) *Reading of the Agenda by the Speaker;*
- (c) *Confirmation of minutes;*
- (d) *Announcement by the Speaker;*
- (e) *Statements by Ministers;*
- (f) *Tabling of documents;*
- (g) *Urgent debates;*
- (h) *Business to be transacted on that sitting day pursuant to Standing Order 23.*

*(my emphasis)*

41. Standing Order 23, relevantly, provides:

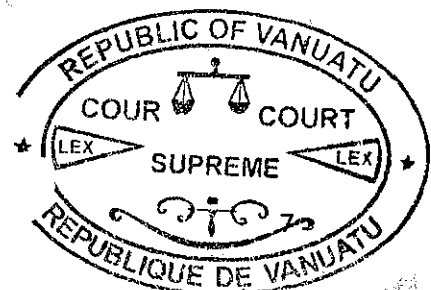
23. *When the sitting day business has been transacted in accordance with Standing Order 17(2), Parliament shall proceed with its business, day by day, in the following order: -*

...

**Tuesday**

*Morning: - Government Bills*

*Afternoon: - 14.00 to 16.00 – Government Bills*



- 16.00 to 17.00 – Written motions

42. By its terms, Standing Order 17(2) provides that the business of each sitting day shall be in the order prescribed in that standing order "except... at the first sitting of an ordinary session".
43. Tuesday 16 June 2020 was the first sitting day of the 1st Ordinary Session of Parliament. Therefore the order of business at a sitting prescribed by Standing Orders 17(2) and 23 did not apply, including that written motions could only be dealt with between 16.00 and 17.00 hours on a Tuesday.
44. In the circumstances, the Speaker ruled in accordance with the Standing Orders of Parliament in applying Standing Order 16(2) – for Parliament to continue after 5pm – without first requiring compliance with Standing Order 46 – motion to suspend standing orders.
45. My answer to Issue 2, "Was the sitting of Parliament beyond 5pm on 16 June 2020 in accord with the Standing Orders of Parliament?" is "Yes".

F. Result and Decision

46. I answer the issues as follows:
  - i. Issue 1: "Was Motion No. 6 of 2020 and its determination giving rise to the suspension of the Applicants from Parliament for 2 days a breach of their Constitutional rights?" is "No".
  - m. Issue 2, "Was the sitting of Parliament beyond 5pm on 16 June 2020 in accord with the Standing Orders of Parliament?" is "Yes".
47. The Constitutional Application is declined and dismissed.
48. Costs should follow the event. The Applicants are to pay the Second Respondent's costs which are summarily assessed at VT75,000, to be paid within 21 days.
49. There is no order as to costs of the First and Third Respondents.

**DATED at Port Vila this 11<sup>th</sup> day of December 2020  
BY THE COURT**

.....  
Viran Molisa Trief  
Judge

