

BETWEEN: Tomker Netvunei

Petitioner

AND: Edward Nalyal

First Respondent

AND: Principal Electoral Officer

Second Respondent

AND: Electoral Commission

Third Respondent

Date of Hearing : 18th May 2020

Date of Decision: 22nd May 2020

Before: Justice Oliver.A.Saksak

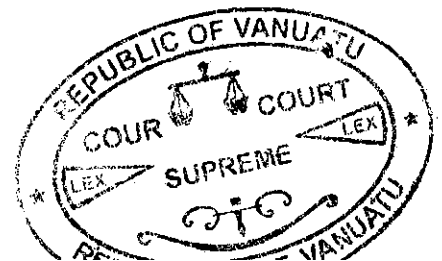
In Attendance: Mr Daniel Yawha for the Petitioner

Mr Nigel Morrison for First Respondent

Mr Hardison Tabi for Second and Third Respondents

DECISION

1. The application by the First Respondent to have the petition filed by the petitioner on 24th April 2020 be struck out is allowed.
2. The petition filed on 24th April 2020 alleges two things: (a) that Mr Nalyal has an outstanding debt of VT 11,500,000 with the VAT Office and as such he was disqualified to stand as a candidate for the 19th March General Elections.
3. That allegation has absolutely no basis in light of the evidence contained in the sworn statement of Mr Johnson lati filed on 18th May 2020 in support of the application for strike out. This statement annexes as "JJ1 2" a copy of the email by Mr Harrold Tarosa, Director of Customs and Inland Revenue in which he attaches the final list of outstanding taxes for proposal candidates for the 2020 General Elections.
4. Mr Nalyal is listed as No 76 with outstanding debt of VT 11, 583,618 for the periods 2016-2019. But the Director confirms the debt has been "cleared".
5. Therefore that first ground fails.



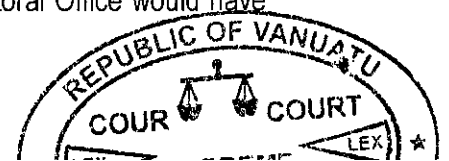
6. Secondly the Petitioner alleges breaches of section 61A of the Act the particulars of which are contained in paragraph 8 of the petition.
7. On the date of filing of the petition on 24th April, 3 sworn statements were filed in support of the petition from the petitioner himself, from Louis Kalnpel and from John Nalwang.
8. On argument in support of the application Mr Morrison submitted (a) the statement of the petitioner lacked evidence, (b) a large portion of John Nalwang's statement contained hearsay and opinion evidence which are inadmissible and (c) Louis Kalnpel's statement is irrelevant.

I accept those arguments and submissions.

9. The petitioner's allegations of bribery would have been reinforced by actual recipients of those gifts or rewards on Aniwa and not from John Nalwang. Unfortunately there was no such evidence.
10. But even if there was, the petitioner faces another major hurdle set up by section 57 (2) of the Act which states that " allegations of a specific payment of money or other reward by or on behalf of a person whose election is disputed may be presented within 21 days of the alleged payment" (emphasis added).
11. The petitioner alleges that presentation of gifts were made on 22 and 23 January 2020. The statement of John Nalwang states the dates to be 15th, 21st and 23rd January 2020.
12. Those dates are well outside the 21 days set by section 57 (2) of the Act. Therefore the second ground of the petitioner fails for these reasons.

And these are sufficient to hold that this petition has no foundation and therefore the application to strike it out at this stage is warranted.

13. Mr Yawha objected to the application and relied on his written submissions filed on 18th May and the Court is grateful to him and Mr Morrison also for those written submissions.
14. The Court does not have to consider all that were raised, suffice it to say that indeed by Article 54 of the Constitution this Court has jurisdiction to hear this election petition and to consider admissible and relevant evidence only in support of it. Anything outside of these will be inadmissible. There are of course exceptions. Louis Kalnpel's statement is irrelevant and is inadmissible. Section 67 of the Tax Administration Act and the Right to Information Act 2016 were raised by Mr Yawha and responded to by Mr Morrison.
15. Whatever the arguments, the Director of Customs did disclose to the Electoral Office the final list for the purposes of determining who the final candidates for election should be. It was upon that confirmation that Mr Nalyal's name was confirmed and included. Without that disclosure and confirmation of "cleared" debts, I have the greatest doubt the Electoral Office would have



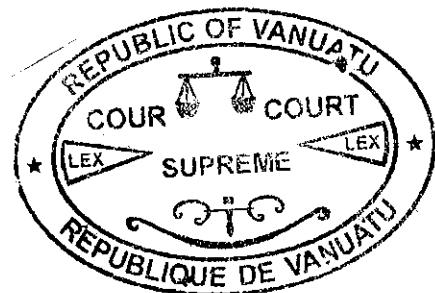
jeopardised their integrity to include Mr Nalyal's name on the confirmed list of candidates for 2020 general elections. The principal Electoral Officer has the right to request that information for the purposes of screening of Candidates under section 24 of the Act. And the Court has power under section 68 (3) and (4) of the Act to order disclosure of that document for the purpose of the hearing of this petition.

16. Leaders who fall under Article 67 of the Constitution must conduct themselves in a manner provided for in Article 66. These include a duty not to demean their office or position (Art 66 (b)), and not to allow their integrity to be called into question (Art.66 (c)). Transparency, truth and honesty work hand in hand. They are the hallmark qualities of all leaders.
17. In relation to this petition the First Respondent has not responded sufficiently or at all to the second ground or allegation of his alleged outstanding debt. As a leader he should but having failed to do so, the Second and Third Respondent have confirmed in evidence that his debts have been "cleared". On the balance of probabilities that is sufficient evidence to disprove or rebut the allegation.
18. As for the allegation of bribery and corrupt practices the Petitioner has a higher standard of proof¹ of these allegations which are criminal in nature. That is the very reason the petitioner should have sufficient relevant and admissible evidence filed together with the petition within 21 days from the date of the alleged payment of money or other reward. In this case there is no such evidence.
19. For these reasons the petition of the petitioner is dismissed and the proceeding struck out in its entirety.
20. The respondents are entitled to costs.

DATED at Port Vila this 22nd day of May 2020

BY THE COURT


OLIVER.A.SAKSAK
Judge



¹ See Taranban v Boedoro (2004) VUSC 15 and EPC 5/2008 Lop v Isaac