

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

Civil Case No.74 of 1997

IN THE MATTER OF: THE CONSTITUTION OF THE  
REPUBLIC OF VANUATU (The  
Constitution)

AND IN THE MATTER OF: THE NATIONAL COUNCIL OF  
CHIEFS ORGANISATION ACT  
[CAP.183] ("Act")

AND IN THE MATTER OF: THE NATIONAL COUNCIL OF  
CHIEFS (ELECTIONS  
PROCEDURE) (RULES) ORDER  
No.08 OF 1989 ("the Order")

BETWEEN: CHIEF TITONGOAROTO  
Petitioner

AND: THE ELECTORAL COMMISSION  
First Respondent

AND: THE PRINCIPAL ELECTORAL  
OFFICER  
Second Respondent

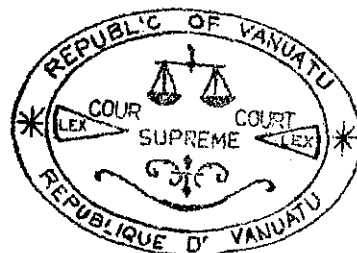
*Noted 29/12/97*

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Coram: Mr Justice Oliver A. SAKSAK

Mr Silas C. Hakwa for the Petitioner.

Mr Ishmael A. Kalsakau for the Respondents.



## JAJMEN

### Komplen

Petitioner, Jif Titongoaroto i putum kes long Kot olsem wan elekta. Hemi komplem se eleksen blong Jif Philip Taripoamata mo Jif Nisu Titongoamata ino bin folem loa blong eleksen. Mo hemi askem blong Kot ia blong talemaot se eleksen blong tufala Jifs ia hemi no stret mo hemi no gud folem loa. Mo hemi askem tu blong Kot hemi givim Oda blong niu eleksen i tekem ples.

### Storian

Elektoral Komisen i putumaot wan list blong ol elekta long Gazette No.15 blong 12 May 1997. Blong Sheperds Region igat 21 kandidat blong vote from 2 jea insaed long Malvatumauri Council of Chiefs.

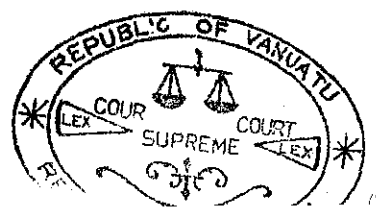
Eleksen i tekem ples long Morua Tongoa long No.15 May 1997. Long taem ia 14 man istap long miting. Two nominesen i kam mo oli vote long hand. Result i soemaot se Jif Philip Taripoamata mo Jif Nisu Titongoamata i winim eleksen. Nem blong tufala i pablis long Gazette No.16 blong 26 May 1997 wetem nem blong ol narafala regions.

Petitioner ino agri long result ia so folem Section 17 blong National Council of Chiefs (Election Procedure) (Rules) Order No.8 of 1989 (Oda 8/89) hemi putum kes i kam long Kot ia.

Petitioner i givim toktok long Kot olsem witness mo hemi gat tufala witness bageken. Long saed blong Elektoral Komisen mo Elektoral Ofis oli putum 5 witness blong toktok long Kot.

Folem olgeta toktok blong olgeta witness Kot i faenemaot olsem:-

- (1) Petitioner, Jif Titongoaroto hemi wan elekta be hemi no bin stap long taem blong eleksen long Morua long No.15 May 1997 from wrong mesej we ibin kamaot long Elektoral Ofis.
- (2) Petitioner hemi ko long Elektoral Ofis blong putum nem blong Jif Tom Tipoloamata mo Jif Ben Mataritapa be hemi no actually givim tufala nem ia long Tom Alick or eniwan long Elektoral Ofis. Sapos hemi bin mekem bambae nem blong tufala istap long list we i pablis long Gazette No.15 blong 12th May 1997.



Hemi no putum nem blong tufala bigfala Jifs ia from we igat nems blong ol narafala Jifs istap finis. Kot ino biliv se list blong Petitioner wetem 16 nems nao hemi faswan we Ofis i resivim.

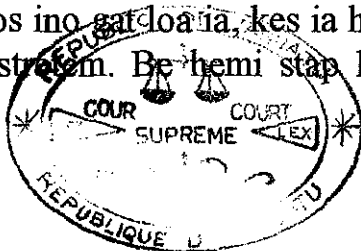
- (3) List we Petitioner i putum se igat 16 nems blong olgeta Jifs long hem, Petitioner ino bin tekem agrimen blong olgeta jifs ia fastaem mo hemia i rong.
- (4) Namba blong Jifs i bin go antap from 16 iko long 21 from we Buninga i putum 3 nems blong Jifs mo Tongoariki i putum 3 nems blong Jifs.
- (5) Long Eleksen dei long No.15 May 1997 long Tongoa aot long 21 Jifs we nem blong olgeta i stap long list, 14 man istap olsem ia:-  
8 Jifs we nem blong olgeta istap long list ino stap be igat representative nomo istap.  
6 paramount Jifs nomo istap long person mo long taetol blong olgeta. Olgeta Jifs ibin vote nomo long hand blong olgeta.
- (6) Long 1993 long eleksen blong olgeta Jifs iko long Malvatumauri Council of Chiefs ibin gat 16 candidate oli stanap from 2 jea long Shepherds.
- (7) Long Sheperds Region igat 8 Area councils evriwan.  
Folem olgeta toktok ia Kot imas disaed weta folem loa Elektoral Komisen mo Elektoral Ofis ibin folem procedure blong wok taem oli organisem eleksen blong olgeta Jifs long Morua, Tongoa long No.14 May 1997.

Olgeta main loa we i concernem Ofis blong Nasonal Kaonsel blong jifs hemi stap long:-

- (a) Japta 5 - Konstitusen
- (b) Japta 183 - Nasonal Kaonsel Blong Jifs (Organisesen)
- (c) Oda 8/89 - Nasonal Kaonsel Blong Jifs (Eleksen Procedure) Rules.

Kot ino save long eni amendment long Japta 183 mo long Oda 8/89. Hemia i soemaot se fasin blong wok bifo 1993 mo afta 1993 i semak yet long 1997.

Kot ia i lukluk long kes blong Jifs tedei folem seksen 17 blong Oda 8/89. Sapos ino gat loa ia kes ia hemi sut ko bak long olgeta Jifs nomo i lukluk mo stratem. Be hemi stap long loa mo bambae Kot i disaed long hem



folem loa we istap. Pawa blong Supreme Kot blong harem kes ia istap tu long Article 54 blong Konstitution.

Seksen 17(1) blong Oda 8 blong 1989 i talem se man we hemi wan "elector" i save tekem kes ikam long Supreme Kot sapos hemi no hapi long wei we eleksen itek ples.

Kot ia i satisfae folem loa mo evidence se Jif Titongoaroto hemi wan "elektor" mo hemi gat raet blong putum kes ia.

Seksen 2(1) blong Oda 8/89 i talem se memba blong Malvatumauri Council of Jifs i mas be elektet long wan elektoral kolej blong Jifs.

Seksen 2(2) blong Oda 8/89 i talem se i mas gat 11 seksen blong Local Gavman Kaonsel regions. Sheperds hemi wan long olgeta 11 regions ia.

Section 2(3) blong Oda 8/89 i talem se membasblong Shepherds region bambae area council nao i jusum wanwan Jif long wanwan area council.

Long Tongoa/Shepherds toktok blong witness i soemaot se igat 8 Area Council nomo. Loa we i putum 8 area Council hemi Oda 94/81 mo Oda 100/81. Ol Oda oli laef yet mo oli no jenis. Toktok tu i soemaot se folem hemia, list we i pablis hemi soem se each Area Council igat 2 memba each.

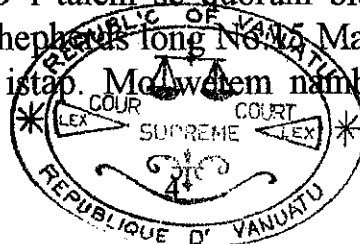
Folem seksen 2(3) Kot i disaed se hemia i rong. Stret namba blong Elektoral kolej hemi 8 membas. Aot long 8 ia 2 bambae i holem jea. Hemi min se long 8 ia bambae oli nominetem 2 blong vote from.

Hemia imin se list we Petitioner i putum wetem 16 nems i rong mo Elektoral Ofis mo Elektoral Komisen i sut chekem gud wetem loa fastaem bifo oli pablisim. Be oli fail blong mekem.

Seksen 4 blong Oda 8/89 i talem se wan man blong stanap blong eleksen blong Jifs imas be wan man we oli luksave hem folem kastom se hemi wan Jif long region blong hem.

Witness toktok i soemaot se Elektoral Ofis i akseptem 3 nems blong Jifs ikam long Tongoariki mo 3 nems ikam long Buninga. Folem Seksen 2(3) blong Oda 8/89 we i talem se wan (1) memba nomo long wan Area Council hemi rong folem Jajmen blong Kot ia. Mo long saed blong ol sixfala nems ia we ol wanwan Jif nomo iputum, folem Seksen 2(3) Area Council nao i sut putum nems, ino wanwan Jif. Area Council nao i gat raet folem Seksen 4 blong Oda 8/89 blong disaed huia Jif folem kastom be ino wanwan Jif.

Seksen 7 blong Oda 8/89 i talem se quorum blong wan electoral kolej hemi 2/3. Long Tongoa/Shepherds long No. 15 May 1997 report i soemaot se 14 man aot long 21 istap. Mo wetem namba ia eleksen itek ples.



Kwesten blong quorum hemi no really impoten from we long fas ples Elektoral Kolej blong Tongoa/Shepherds i bitim mak olgeta we loa i putum so eleksen i rong long fas ples.

Folem Seksen 2(3) Elektoral Kolej blong Tongoa/Sheperds isut gat 8 memba nomo, ino 16, ino 21. So folem loa, 2/3 hemi blong 8 memba blong Elektoral Kolej.

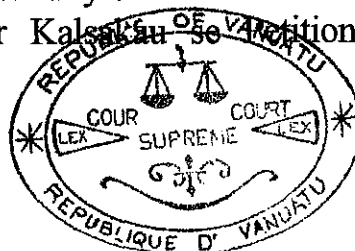
Seksen 3 blong Oda 8/89 i talem se eleksen blong olgeta memba blong kaonsel blong Jifs imas folem Konstitution mo Rules blong Oda 8/89. Artikel 29(1) blong Konstitution i talem se Nasonal Kaonsel blong Jifs imas gat insaed long hem olgeta Jifs we "peers" blong olgeta we oli sidaon long District Kaonsel blong Jifs i elektem olgeta. Loa ino givim mining blong word ia "District Council of Chiefs" so hemi wan problem. Mo loa tu ino putum up yet hamas Area Councils of Chiefs be igat Seksen 2 blong Oda 8/89 nomo istap blong folem. Be folem reading blong Seksen 2(1) blong Oda 8/89, Kot ia i holem se District Council of Chiefs hemi semak olsem wan Elektoral Kolej blong olgeta Jifs.

Narafala word we i mekem problem hemi word ia "peer". Word ia dictionary i givim mining blong hem olsem:- "A companion equal in standing or rank."

Long saed blong Jif, hemi min se narafala Jif we igat semak taetol wetem narafala. So Artikel 29(1) blong Konstitusen i talem se Nasonal Kaonsel blong Jifs igat insaed ol memba we oli olgeta kastom Jif mo olgeta kastom Jif yet imas sidaon long Elektoral Kolej mo elektem olgeta. Man we ino tekem taetol blong wan kastom Jif ino save sidaon blong mekem eleksen blong kastom Jif blong sidaon olsem memba blong Malvatumauri.

Long tongoa/Shepherds eleksen long Morua, witness toktok mo report i soemaot se sam Jif oli no stap mo representative blong olgeta oli vote long behaf blong olgeta. Folem reading blong Artikel 29(1) voting by representative hemi no posibol. Inogat rule abaot voting by proxy long eleksen blong olgeta Jifs be folem Artikel 47(1) mo Artikel 95(2)(3) blong Konstitusen bambae hemi stret blong usum kastom be even wetem hemia, eleksen blong Tongoa/Shepherds hemi rong long fastaem from we hemi no properly constituted.

Kot hemi tingting long ol sabmisen blong Mr Hakwa mo Mr Kalsakau mo akseptem fulwan olgeta sabmisen blong Mr Hakwa mo folem olgeta toktok antap, Kot ia hemi satisfae se Elektoral Kolej blong Tongoa/Shepherds hemi no properly mo lawfully consituted. Mo Kot hemi akseptem tu folem sabmisen blong Mr Kalsakau mo Mr Hakwa mo Jifpetitioner hemi contribute long rong aksen ia.




Therefore Kot i mekem olgeta Declarations mo Orders ia:-

- 1) Kot i declare se eleksen we istap long Morua Tongoa long No.15 May 1997 blong elektoral kolej blong Jifs blong mekem eleksen hemi no stret folem loa, mo ino gat effect blong hem.
- 2) Kot i declare se eleksen blong Jif Philip Taripoamata mo Jif Nisi Titongoamata ino stret folem loa, mo ino gat effect blong hem.
- 3) Kot i givim Oda blong fresh mo new eleksen i mas tek ples folem loa.
- 4) Kot ino mekem Oda blong costs. Wanwan party imas pem costs blong hem nomo.

**Dated at Port Vila, this 21st day of November 1997**

**BY ORDER OF THE COURT**

  
.....  
**Oliver A. SAKSAK**  
Judge

