

IN THE SUPREME COURT OF  
THE REPUBLIC OF VANUATU

ELECTION PETITION No. 31 OF 1998

**IN THE MATTER:** OF THE REPRESENTATION  
OF THE PEOPLE ACT  
[CAP.146]

**Between:** **SHEM NAUKAUT**

Petitioner

**And:** **HARRIS IARIS NAUNUN**

First Respondent

**And:** **MORKING IATIKA STEVEN**

Second Respondent

**And:** **WILLIE POSEN**

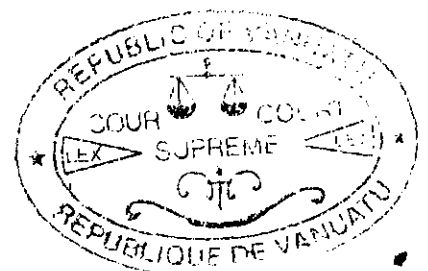
Third Respondent

**And:** **THE ELECTORAL  
COMMISSION OF  
VANUATU**

Fourth Respondent

**Coram:** Acting Chief Justice Lunabek J

- Mr John Malcolm for the Petitioner
- Mr Edward Nalial for the Second Respondent
- Mr Bill Bani for the Fourth Respondent
- The First and Third Respondents are not represented and are not present.



**Place:** Isangel, Tanna, in the Republic of Vanuatu.

**Date of Hearing:** 25th & 26th January 1999.

**Date of Judgment:** 27th January 1999.

### **REASONS FOR JUDGMENT**

Before me is an Election Petition. The Petitioner asks the Supreme Court to declare the National General Elections held on 6th March 1998 in the Constituency of Tanna void upon the several grounds initially herein after mentioned.

#### **I. THE PARTIES**

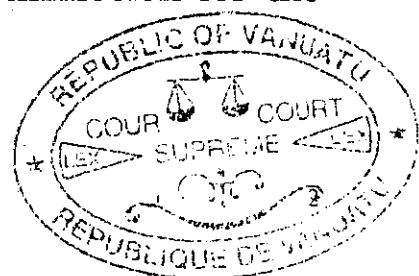
The Petitioner, Shem Naukaut, was a candidate in the National General Election held on the 6th March 1998 for the Constituency of Tanna. He is affiliated with the Vanuaaku Pati (V.P.) for the purposes of these elections to Parliament.

The First Respondent Harris I. Naunun is one of the successful candidates in the National General Elections of 6th March 1998 for the Constituency of Tanna and he is affiliated with John Frum Party (J.F.P.) for the purposes of these elections to Parliament.

The Second Respondent, Morking Iatika Steven, is a successful independant candidate in the National General Elections of 6th March 1998 for the Constituency of Tanna and he is affiliated with National United Party (N.U.P.).

The Third Respondent, Willie Posen, is another successful candidate in the National General Elections of 6th March 1998 for the Constituency of Tanna and he is affiliated with the Union of Moderate Party (U.M.P.) for the purposes of these elections to Parliament.

The Fourth Respondent is the Electoral Commission for the Republic of Vanuatu.



There were 22 candidates including the Petitioner who contested the National General Elections of 6th March 1998 for seven (7) seats in the Constituency of Tanna.

On 16th March 1998, the Electoral Commission made a declaration to the effect that the following candidates were duly elected as members of Parliament for the Constituency of Tanna:

I.	Joe Natuman	(V.P.)	846
II.	Keasipae Song	(J.F.)	800
III.	Willie Posen	(U.M.P.)	720
IV.	Jimmy Noclum	(V.P.)	709
V.	Iauko Henry	(M.P.P.)	706
VI.	Harris Naunun	(J.F.)	640
VII.	Morking I. Steven	(Ind)	636

(See Annexure "B" to the Petition)

In accordance with Annexure "B", the Petitioner finished eight in the Constituency of Tanna and there is a difference of 45 votes between the Petitioner's 591 votes and the Second Respondent's 636 votes.

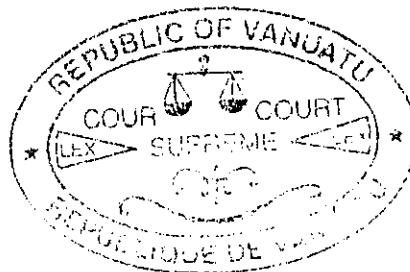
## II. CHARGES OR ALLEGATIONS WITHDRAWN

The Petitioner by counsel on 26th January 1999 in Court withdrew charges against the First and Second Respondents so that both are no longer parties and/or Respondents to the Petition. Equally charges were also withdrawn and/or struck out against the Electoral Commission as Fourth Respondent so that the Electoral Commission is no longer a party to the Petition.

The Petition stands now between the Petitioner, Shem Naukaut and the Second Respondent Morking Iatika Steven.

## III. THE PETITION

In his Petition, the Petitioner with leave amended the prays for the following relief:



1. Pursuant to Section 60(1) (a) of the Representation of the People Act [CAP. 146] the National General Election to Parliament of the Republic of Vanuatu held on 6th March 1998 for the Constituency of Tanna is hereby declared void.
2. Pursuant to Section 61(1) of the Representation of the People Act [CAP. 146], it is hereby declared that the National General Election of the Second Respondent to the Constituency of Tanna on 6th March 1998 is void due to the breaches by the Second Respondent of the provisions of Section 45 and 46 of the Representation of the People Act [CAP. 146].
3. Such further order or relief as this Honourable Court deems just;
4. That the Respondents be jointly and severally ordered to pay the costs of this Election Petition.

#### IV. THE GROUNDS OF THE PETITION

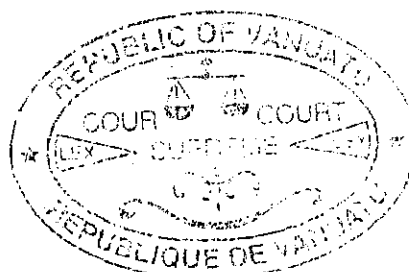
The Petitioner relied initially on five (5) grounds as contained in the Petition. Grounds 1, 3, 4 and 5 were withdrawn and/or struck out as mentioned earlier on.

The Petition then proceeds upon one remaining ground which is Ground 2 contained at paragraph 9 in particulars A in the Petition (at page 4).

#### V. LOCUS STANDI OF THE PETITIONER

The Petitioner was a candidate for the Constituency of Tanna at the National General Election held on 6th March 1998. Section 55 (b) of the Representation of the People Act [CAP. 146] gives the Petitioner the right to question the validity of these elections.

#### VI. THE DISPUTE



The dispute arises out in this way:

On or about 27th January 1998 Morking I. Steven, the Second Respondent, opened 13 bank accounts at National Bank of Vanuatu, Tanna Branch, in the names of the communities. The names of the said communities with their respective Account Number (AC. No.) and balance are recorded as per Annexure "A" attached to the statement of agreed facts signed by both counsels on 26th January 1999. The bank books in respect to the said accounts were delivered to the bearers at a ceremonial meeting at White Sands on or about 31st January 1998. It was a community fundraising meeting for interested communities in Tanna.

The dispute, then is:

- The Petitioner alleges that the handing over of the bank books to the interested communities amounted to unlawful practice. (Emphasis added).
- The Second Respondent alleges that:
  - (a) the hand over had been planned for in excess of 2 years.
  - (b) the hand over does not constitute unlawful payments or practice.

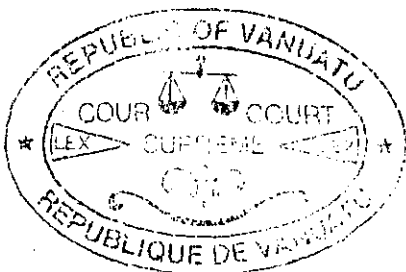
## VII. ELECTION OFFENCES

Part XV of the Representation of the People Act [CAP. 146] deals with Election Offences. The relevant provisions in relation to the present case are as follows:

*Section 45 provides:*

*(1) A person commits the offences of bribery -*

- (a) if he directly or indirectly by himself or by other person -*
  - (i) gives any money or procures any office to or for any voter or to or for any other person on behalf of any voter or to or for*



any other person in order to induce any voter to vote or refrain from voting;

(ii) .....

(iii) makes any such gift or procurement to or for any person in order to induce that person to procure, or endeavour to procure, the election of any candidate or the vote of any voter;

or if upon or in consequence of any such gift or procurement he procures or engages, promises or endeavours to procure the election of any candidate or the vote of any voter;

(2) For the purposes of Subsection (1) of this Section -

(a) references to giving money include references to giving, lending, agreeing to give or lend, offering, promising and promising to procure or to endeavour to procure any money or valuable consideration;

Section 46: A person commits the offence of treating -

(a) if he corruptly by himself or by any other person either before, during or after an election directly or indirectly gives or provides or pays wholly or in part the expenses of giving or providing any food, drink or entertainment to or for any person -

(i) for the purpose of corruptly influencing that person or any other person to vote or refrain from voting; or

(ii) on account of that person or any other person having votes or refrained from

*voting or being about to vote or refrain from voting;*

*(b) if he corruptly accepts or takes food, drink or entertainment offered in the circumstances and for the purpose mentioned in paragraph (a) of this section.*

By virtue of Section 48, a person who is guilty of bribery is guilty of a corrupt practice.

Section 48 says:

*(1) The offences of personation, bribery, treating and undue influence are corrupt practices for the purposes of this Act.*

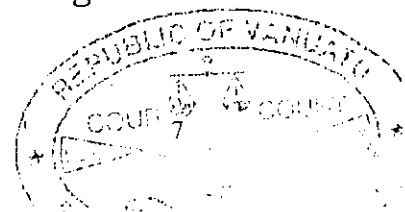
*(2) A person convicted of corrupt practice shall be liable on conviction to a fine not exceeding VT100,000 or to imprisonment for a term not exceeding 5 years or to both such fine and imprisonment.*

#### VIII. MEANS REA

Under Section 45 (1) (a), (I) & (iii) of the Act the word "*corruptly*" has not been used for any of the specified acts done thereunder to constitute bribery, whereas any such act done under sub-paragraph (ii) of the paragraph (a) of the subsection (1) of Section 45 of the same Act is required to have been done "*corruptly*" to constitute bribery. Equally any such act done under Section 46 of the Act is required to have been done "*corruptly*" to constitute treating.

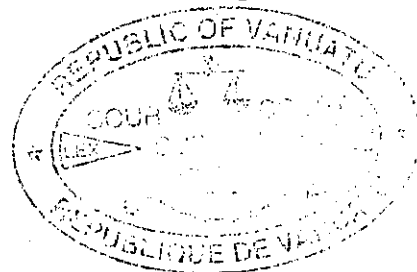
The reason being that, in the former case, that is, the situation raised under Section 45 (1) (a) (i) & (iii), the very proof of the act itself allows the Court to draw a prima facie inference that it was done with a corrupt intention.

In the case of Peter Salemalu -v- Paul Ren Tari and the Electoral Commission, Election Petition No. 30 of 1998, the Court refers to the case of the Borough Limerick (1869) O'Malley & Hard Castle 260, where Mr Baron Fitzgerald



dealt with a similar statutory provision. I will adapt it in the present case (with necessary amendments) in the following way:

*"I am satisfied that where in the formal part of (Section 45 of the Representation of the People Act [CAP. 146] reference is made to (payment of money), (making gifts) offers and promises made before the vote is given, the Parliament clearly intended the Court to draw a prima facie reasonable inference from the act done as to the purpose for which it was done, leaving to the other side to rebut that inference if they could. Every forbidden act done for the purpose mentioned in this Act [CAP. 146] is to be regarded as done for a corrupt purpose, and once shown that a forbidden act is done for any of the purposes mentioned in the Act, it immediately becomes a corrupt act, though it would otherwise have been a purely innocent one; that is to say, in some cases the act itself afford ground for reasonable inference of the intention with which the act is done, and there the legislature has not introduced the word "corruptly"; and if the act is simply proved to be done, the Court is allowed to draw from it the ordinary reasonable inference prima facie that it was done for a corrupt purpose. But there are other cases in which the legislature from some reason or other (like the situation under Section 45 (1) (a) (ii) and Section 46 of the Act) appear to have thought the inference not so strong and in these cases it introduces the word "corruptly" for the purpose of showing that it did not intend the ordinary inference or intention to be relied upon ... so here, where the legislature has not introduced the word "corruptly", and the actual and reasonable inference from the act is that it was an act done for the purpose contemplated, the legislature has treated it as corrupt without mentioning any thing more about it. But in those cases in which it seems to have been intended that the Court should not infer the purpose simply and solely from the act, it has introduced the word "corruptly". The whole proof of corruption (and/or corrupt practices), as it appears to me, consist in showing that the forbidden act is done for a purpose not innocent according to the Act of Parliament."*





Now applied to the present case, if it were to be proved that the Second Respondent, Morking I. Steven handed over the 13 bank books to the representative of each of the interested communities in order to induce the members of the communities to procure his election as a candidate or to induce an elector or the electors of the communities to vote for him; or upon or in consequence of handover of the bank books, the Second Respondent procures, or engages, promises to procure his election as a candidate or the vote of a voter or voters of the communities, the Court would be entitled to draw a prima facie inference that the Second Respondent did so with a corrupt intention, even though the word "corruptly" has not been used in Section 45 (1) (a) (i); (iii) and Mr Morking must rebut that inference. If he failed to rebut it then the Petitioner would be entitled to succeed.

Although the word "corruptly" is not defined in the Representation of the People Act [CAP. 146], assistance can be taken from the Halsbury Laws of England, Third Edition, paragraph 372 under Footnote (l) which reads:

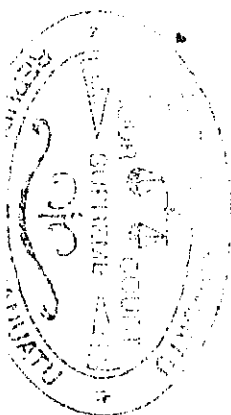
*" "Corruptly" imports intention (Wallingford case (1869), 1 O'M. & H. 57, at p. 58).*

*"Corruptly" does not mean Wickedly, or immorally, or dishonestly or anything of that sort (Brewdley case (1869), 1 O'M. & H. 16, at p. 19), but doing something knowing that it is wrong (Bradford case No. 2 (1869), 1 O'M & H. at p. 37) and doing it with the object and intention of doing that thing which the statute intended to forbid (Norfolk, Northern Division, case (1869), 1. O'M & H. 236, at p. 242)".*

Blackburn J. explained the meaning of "corruptly" in this way:

*"... I believe all the Judges have considered that the word "corruptly" governs the whole, and that means, with the object and intention of doing that thing which the statute intended to forbid. What that is I will see presently.*

*It does not mean corrupt in the sense that you may look upon a man as a knave or villain, but that it is to be shown that he was meaning to do that thing which the*



*statute forbids*" [see Norfolk case (1869), Colman -v- Walpale and Lacon (1869) 1 O'M & H. 236, 21 LT 264.]. (Emphasis Added).

The important question then to be considered is the state of mind of the Second Respondent. Did Morking Steven handed over the bank books to the 13 communities for the purpose of corruptly influencing people to vote for him; Or was his intention merely to pursue the community projects planned for in excess of 2 years with the interested communities.

If the former intention is proved then the Second Respondent will be guilty of bribery and his election will be avoided. If not proved, then the Second Respondent will be declared to have been duly elected and the Petition be therefore dismissed.

#### IX. BURDEN AND STANDARD OF PROOF

It is submitted for the Petitioner that the correct standard of proof to be applied is the Civil standard of proof, that is, on the balance of probabilities.

The Second Respondent, contended by Counsel that the criminal standard of proof, that is, proof on beyond reasonable doubt, is to be applied in the Election Petitions.

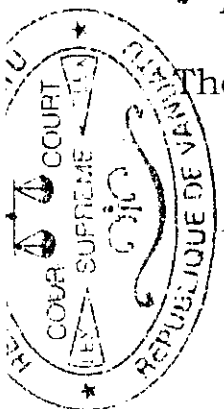
That question is not raised for the first time before this Court, on the contrary.

In the case of Peter Salemallo -v- Paul Ren Tari & Others, Election Petition No. 30 of 1998, similar issues were raised under the form of the following question:

- *Is the Representation of the People Act [CAP. 146] criminal or civil in nature and what are the burden and standard of proof required in election disputes arising under the Act ?*

The following ruling was then made:

*"For my part I think that the Representation of the People Act [CAP. 146] is a mixed or hybrid nature Act, having both*



*criminal and civil characterisation in its provisions. The procedure is as merely as possible the same as that of an ordinary civil action, and the matters in issue need be proved only according to civil standard on the balance of probabilities. Evidence which would be sufficient to justify a finding by a Judge of the Supreme Court hearing an election*

*Petition that a candidate has committed corrupt practices, for example, bribery would not be necessarily be sufficient to support a conviction in criminal proceedings. The fact that on the hearings of an election petition a finding had been made that a candidate had been guilty of bribery would not have any relevance in criminal proceedings brought against that candidate in respect of the alleged bribery ... (at p. 12).*

*The Representation of the People Act [CAP. 146] makes a clear distinction between the hearing of an election Petition by the Supreme Court and the hearing of a charge of an election offence by a Court ...*

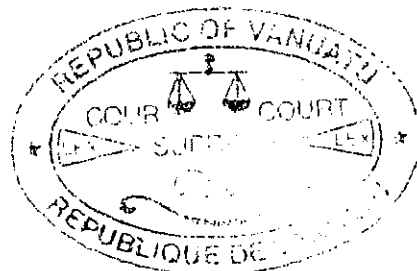
*Therefore, when hearing an election petition, the Supreme Court applies the civil standard of proof, that is, proof on balance of probabilities. When hearing a charge of an election offence, the Court applies the criminal standard of proof, that is, proof on beyond reasonable doubt. That is what the Representation of the People Act [CAP. 146] envisages by its provisions, in my view." [at pp. 12, 13, 14].*

The above view is supported by the following provisions of the Representation of the People Act [CAP. 146] : Sections 54, 64, 66, 68 (3) (4).

I must remind myself that the onus is upon the Petitioner to prove his case according to the civil standard of proof, that is, proof on the balance of probabilities.

Authorities in support: - *Salernalo -v- Paul Ren Tari Election Petition No. 30 of 1998 & cases cited therein.*

- *Vurobaravu -v- Josias Moli, Election Petition No. 29 of 1998.*



## X. PRELIMINARY QUESTION OF LAW TO BE DETERMINED.

Before dealing with the evidence, a question of law was raised by the Second Respondent. The Second Respondent submitted by counsel that during the hearing of the Petitioner, the Petitioner by counsel put forward two new charges or allegations against the Second Respondent which were not contained in the Petition. The two (2) new grounds are respectively:

1. That the Second Respondent promised to purchase truck for the community after the elections of 6th March 1998.
2. That the Second Respondent organised a wedding Feast on 4th March 1998, 2 days before the elections and this is unlawful.

The said two allegations are new allegations/charges and they are not pleaded initially in the Petition.

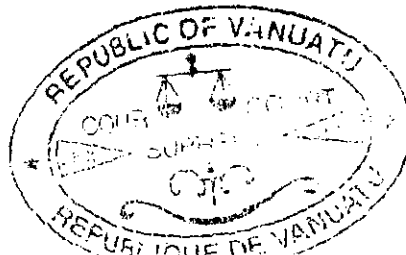
By referring this Court to the provision of Section 57 of the Representation of the People Act [CAP. 146], counsel for the Second Respondent submits in substance that the Petitioner is not allowed by counsel to do so since the time for presentation has elapsed. In effect the submission is that, both allegations/charges are statute-barred.

The Petitioner by counsel omitted to or advanced no reply to the Respondent's submission on that point.

Section 57 says:

*S. 57 (1) Subject to subsection (2) an election petition shall be presented within 21 days of the publication in the Gazette of the results of the election to which the petition relates.*

*(2) If a petition alleges a specific payment of money or other reward after an election by or on the account of a person whose election is disputed, the petition may be presented within 21 days of the alleged payment.*



(3) *The time limit provided for in this section shall not be extended.*

Section 58 (1) reads:

- *S. 58 (1) An election petition shall be in writing and shall specify the ground or grounds upon which an election is disputed.*

By perusing the language of Sections 57 (1) (2) (3) and 58 (1) of the Act, I am of the view that both contain mandatory provisions. "Shall" is used in both provisions. Therefore, if the Court will allow the Petitioner to do so, it will amount to a de facto amendment of a petition after the time prescribed by the Act which is 21 days by the introduction of two (2) fresh substantive charges against the Respondent.

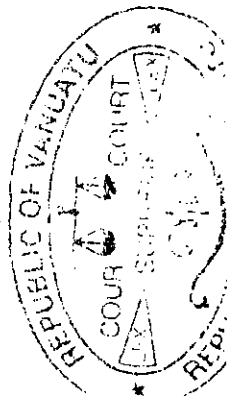
Under the Representation of the People Act [CAP. 146] the Supreme Court has no jurisdiction to allow an amendment of a petition after the time prescribed by statute by the introduction of a fresh substantive charge; nor to convert an offence charged under one statutory related provision, although the facts might support the latter offence.

(See Cork case (1911), 6 O'M & H. 318 at p. 337) as a persuasive authority on that point.

There is not jurisdiction to allow an amendment introducing a fresh charge, whether the charge sought to be added is one only of a fresh nature, or whether it is one of fresh instance but not covered by the allegations in the Petition as standing.

In *Cremer -v- Lowles* (1896) 1. QB. 504, C. A., it was held that there was a general allegation in the petition that the Respondent had been guilty of "*other corrupt and illegal practices before, during, and after the elections*", but on the Petitioner seeking to include in his particulars, offences committed after the presentation of his petition and after the time limited for amendment, such particulars were struck out.

On the basis of the above considerations, allegations made against the Second Respondent of promising interested members of the community to pay a community truck and



of holding wedding feast 2 days before Elections are struck out and the evidence related to the two allegations must be disregarded in the assessment of whole the evidence in this Petition and I so rule.

#### XI. THE EVIDENCE.

The hearing of the Petition took 2 hearing days during which 9 witnesses gave evidence, 3 for the Petitioner and 6 for the Second Respondent.

At the end of the hearing, the only ground of any substance is that contained under ground 2, paragraph 9, particulars A, in the Petition, which reads:

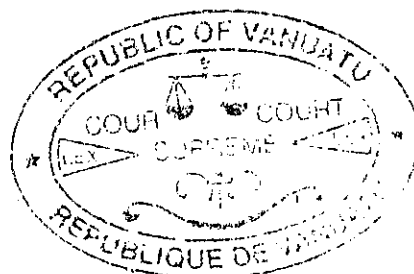
*“9. The Second Respondent breached Sections 45 and 46 of the Act by directly and/or indirectly making gifts or procurements to person in order to induce such persons to procure, or endeavour to procure and/or for the purpose of corruptly influencing that person or any other person to vote for the Second Respondent.*

#### PARTICULARS

A. (1) Lolonuwi W/ Sands Community - 52-692288-30	(1.000VT)
(2) Ienimahu W/ Sands Community - 52-692296-30	(1.000VT)
(3) Imalet W/ Sands Community - 52-692309-30	(1.000VT)
(4) Ienalugunian W/ Sands Comm. - 52-692317-30	(1.000VT)
(5) Ilaring W/ Sands Community - 52-692325-30	(1.000VT)
(6) Imafen N/ Tanna Community - 52-692376-30	(1.000VT)
(7) Port Resolution Community - 52-692333-30	(1.000VT)
(8) Loken South Tanna Comm. - 52-692341-30	(1.000VT)
(9) Lounapkalangis Len/ Tanna - 52-692368-30	(1.000VT)
(10) Waisisi Community - 52-692384-30	(1.000VT)
(11) Ienaula Community - 52-692392-30	(1.000VT)
(12) Ienuhup Community - 52-692405-30	(1.000VT)
(13) Imafaumine Community - 52-692413-30	(1.000VT)

TOTAL = 13.000VT.

I now turn to consider the evidence relating to the Second Ground.



The evidence of the Petitioner is given by Shem Naukaut, the Petitioner, himself, Tom Nipio and Jimmy Tapial. The defence call 6 witnesses: Tom Tusum, Yaoko Manita, Nasse Kasse, Nalau Ben, Teku Martin and Morking Iatika Steven (the Second Respondent).

I am not intended to go into the details of the evidence. What I propose to do is to make a summary of evidence of the Petitioner and that of Respondent and highlight the inconsistencies or conflicting evidence including agreed facts.

I must explain that what it is put in evidence is the part of the respective evidence of the Petitioner and the Respondent, I consider as relevant to the issue before the Court. Part of the evidence not mentioned of particular witnesses are considered to be not relevant or immaterial. This is done upon considering all the evidence of the Petitioner and the Respondent as a whole at the end of the case on the basis of the only issue before the Court.

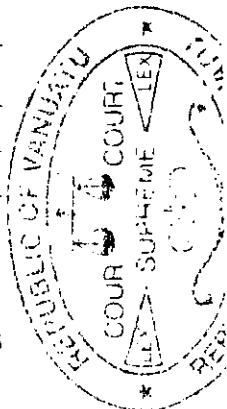
#### 1. Summary of agreed facts.

It is not disputed that on or about 27th January 1998 Morking Steven, Second Respondent opened 13 bank accounts at N. B. V. Tanna in the communities with respective account numbers with a balance of VT1.000 in each as particularised in the Petition.

On 31st January 1998, the Bank books in respect to the said accounts were delivered to the bearers at a ceremonial meeting at White Sands. It was a community fund raising meeting, for interested communities in Tanna.

#### 2. Relevant part of the evidence of the Petitioner.

The evidence of Shem Naukaut and Tom Nipio are that they were both candidates in the General Elections of 6th March 1998. They did their electoral campaign almost around Tanna island although they admit they did not campaign in some areas of East Tanna - White Sands.



Both give evidence that Morking Steven handed over bank books to various communities and made promises. Tom Nipio gave evidence that he did make a report about the actions of Morking to the police. However, both of them deny that they witness the handover of the bank books by Morking Steven. Both also deny witnessing Steven making promises to the members of the communities.

Both knew Morking and that he was previously employed by the Tafea Province as Economist.

Jimmy Tapial gave evidence that he is from Launapkalagis, Tanna. He admits he received a bank book from Morking Steven on behalf of his community. He did not recall about the date but he said sometimes before 1998 Elections. His evidence is that he went to see Morking at Louniel area and he handed over the bank book to him. At the time, he said Morking told him to go and see him. Then he said he went to see him on his own will. When asked if Morking made promises to him he said: "yes".

Then he was asked:

*Q: Did Morking promises to put more money in it ?*

*A: No gat money. Hemi promes be no putum money mo no talem wanem manis.*

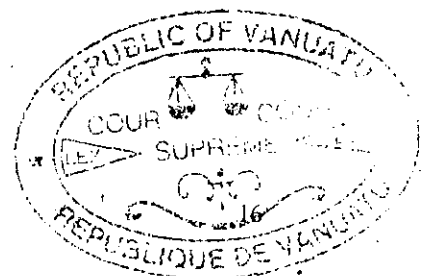
*Q: Promise to give your vote ?*

*A: Yes be mi nomo mi go. Ino something ia I mekem mi go. After mi wantem vote long hem.*

*Q: Did Morking try to get you to get other people to vote for him ?*

*A: No, mi nomo mi takem family blong mi blong vote long hem."*

Under cross-examination, he said Morking is one of his uncle. He knows Morking working at the Tafea Province. He gave evidence about community projects made by Morking (market house at Loweru - organised B. Q. to help local communities.).





He said Morking started to help local community 2 to 3 years before 1997. He gave evidence that he does not know how to read and write.

He further confirmed Morking promise's to the effect that: if he wins he will put more money into the bank book.

### 3. Relevant part of the Respondent evidence.

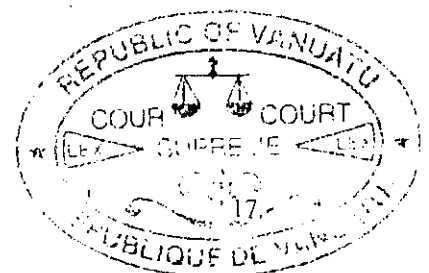
In summary, the evidence of the Second Respondent's witnesses is that they know Morking. He was an Economist of Tafea Province. He has planned to help local communities and did lots of work to help communities around Tanna. They gave evidence about a plan already set up to help local communities.

They gave evidence that on 31st January 1998, the bank books were delivered to them at the community fundraising of White Sands. They deny Morking Steven making promises. They confirmed Morking helping local communities for 2 to 3 years. And he helps also the local communities by setting up the bank accounts. The evidence is that Steven Morking told them that the community will feed in the bank account. They gave also evidence that they gave VT10.000 to Steven Morking to open the accounts.

Morking Steven evidence can be summarised this way. He has plan to help the local communities in his area. He did lots of community projects to help the local communities by doing fundraising - operating local butchers and open up bank accounts of the communities.

The community asks him to stand and contest the National Elections. He explained that because he was no longer employed he approached the community to give him some amount of Vatu so that he could set up their bank accounts. He denies he has any other purpose.

Under cross-examination, he said he thanked people of their support and he wishes to hand over the bank books so that he will become a politician.



He said he will stop doing fundraising because he could not involve a community project with political ideas. He was then asked:

• *“Q: Why wait until 4, 5 weeks before elections ?*

• *A: From mi sick. From August 1997 mi gat one sick. Mi travel long Vila mi takem medical treatment long private doctor. So from reason ia hemi delayem blong mi carry out community project ia.”*

He confirms the evidence of Jimmy Tapial that he came to see him when he was alone. He came after 31st January 1998 fundraising meeting.

He said he made promises to the effect that if after elections he become successful, he will carry out the community project.

Further he was asked:

• *“Q: Why Jimmy Tapial said you promise to pay more if you win ?*

• *A: Mi talem sipos mi win mi continue. Mi no stoppem project. Sipos mi winim election, mi assistem youfala blong carry out project.”*

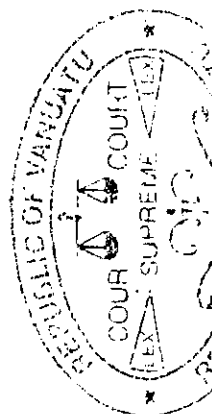
He denied the evidence of witness Tapial that if he wins the elections he will pay more Vatu into his bank book. His evidence is that he will help them setting up the bank accounts and they will feed in their own accounts. This is corroborated by the evidence given by all the Respondent's witnesses.

## XI. CONCLUSIONS

### 1. Discussions of the evidence.

• I have heard a great deal of evidence on the allegations of bribery of the Second Respondent on the basis that he sets up 13 bank accounts and handed over them to 13 communities on 31st January 1998.

For the final decision in this case, the evidence of two (2) witnesses are fundamental. That of Petitioner's witness



Jimmy Tapial and that of the Second Respondent Morking Steven himself.

Jimmy Tapial and Morking Steven agree that when Jimmy Tapial received his community bank book from Morking at Louniel village, there is no other person. Tapial said he went to see the MP alone no other person was there. Morking confirms this when he said Jimmy Tapial came late after the event of 31st January 1998. The conflicting part is that Jimmy Tapial said Morking made promises to him when he handed over the bank book to him to the effect that if he win the election he will pay more money into it with his allocation.

Morking gave evidence denying he did promise to Jimmy in such a way.

Morking said: *"... mi talem sipos mi winim election mifala continue. Mi no stoppem project sipos mi winim election mi assistem youfala blong carry out project ...  
Mi openem accounts, olgeta oli feedim accounts ia."*

The Second Respondent's evidence is in support of the community project planned for in excess of 2 to 3 years before the elections of 6th March 1998.

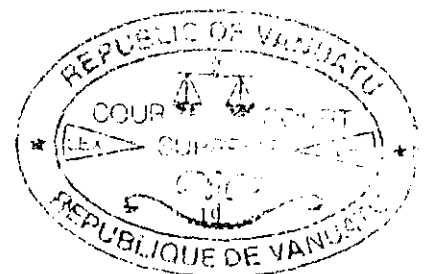
## 2. The Second Respondent's intention.

The onus is on the Petitioner to prove that the Second Respondent had a corrupt intention when he delivered the bank books to the representative of different interested communities including Jimmy Tapial.

The corrupt intention has to be clearly proved by the Petitioner. There ought to be clear proof of corrupt intention first, before any inference can be drawn .

It is the intention behind the hand over of the bank books that is important.

## 3. Application of the law to the facts of the case.



## Allegation under Ground 2 of the Petition

It must be remembered that in this Petition, the Petitioner alleges that the Second Respondent breached Sections 45 and 46 of the Act by directly and/or indirectly making gifts or procurements to persons in order to induce such persons to procure, or endeavour to procure and/or for the purpose of corruptly influencing that person or any other person to vote for the Second Respondent as particularised in A. therein.

Section 46 of the Act deals with the offence of treating. There is no evidence at all in the present case that the Second Respondent committed the offence of Treating under S. 46.

The only relevant provision for the purpose of deciding this case is Section 45 (1) (a) (i) & (iii) of the Act [CAP. 146].

*Section 45 (1): A person commits the offence of bribery -*

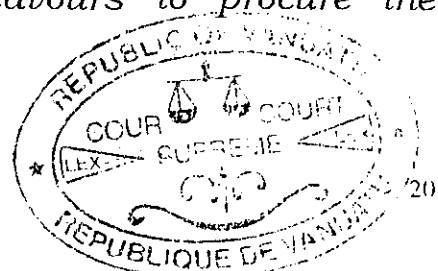
*(a) if he directly or indirectly by himself or by other person -*

*(i) gives any money or procures any office to or for any voter or to or for any other person on behalf of any voter or to or for any other person in order to induce any voter to vote or refrain from voting;*

*(ii) .....*

*(iii) makes any such gift or procurement to or for any person in order to induce that person to procure, or endeavour to procure, the election of any candidate or the vote of any voter;*

*or if upon or in consequence of any such gift or procurement he procures or engages, promises or endeavours to procure the*



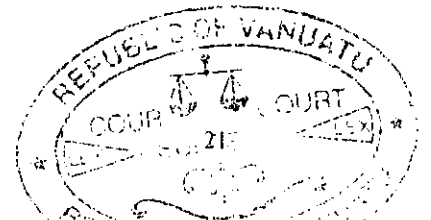
*election of any candidate or the vote of any voter;*

The provision of Section 45 (1) (a) (i) (iii) is directed towards the candidate himself.

Applied to the facts relating to hand over of bank books, I find on the evidence that at the request of the communities, the Second Respondent help the local communities to set up their respective bank accounts in order for them to continue with the community project while he will move on to contest the elections. I find also that the Second Respondent did set up bank books for the communities with the money given by the communities but not with his own money. This has to be understood on the basis of the Second Respondent's evidence that it is difficult for the members of the local communities to open up their community bank accounts, since they do not know how to read and write.

Therefore, the hand over of the bank books is not equivalent to giving money to a person. The Second Respondent does not take his own money to open up the bank books of the communities. The Second Respondent did set up the community bank books at the request of the community and with the community's money. Equally this does not amount to a "gift". Bank books are in the names of the communities but not in the Second Respondent's. The Second Respondent cannot make "gifts" to the communities by delivering to the communities "bank books" belonging to the said communities and not the Second Respondent himself. It does not make sense. For the delivery of the bank books to constitute "gift" the donor (Second Respondent) must intend ownership to pass as a gift. This is not the situation as evidenced in the present case. The corrupt intention of the Second Respondent related to the handing over of the bank books to the members of the communities including Jimmy Tapial, is made out.

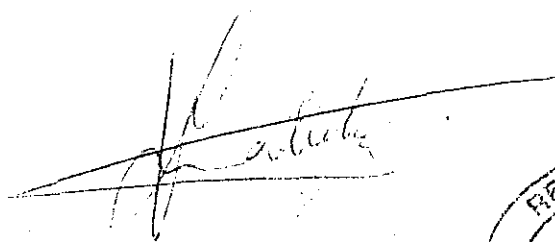
Fundamentally, this is not what Section 45 (1) (a) (i) & (iii) contemplates. The allegations of Bribery in respect to handing over of Bank books as alleged in the Petition is not proved.



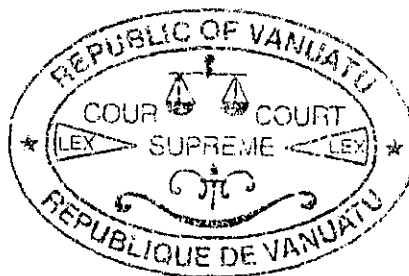
The Petition fails and is therefore dismissed. The election of the Second Respondent is confirmed and a certificate that the Second Respondent was duly elected as MP of the Constituency of Tanna, will be issued to the Speaker of Parliament, the Petitioner, the Second Respondent and the Electoral Commission forthwith.

The Petitioner is ordered to pay the costs of the Second and Fourth Respondents. The costs will be taxed failing agreement.

**Dated at Isangel, this 27th day of January 1999.**



**Vincent LUNABEK**  
**Acting Chief Justice.**



**IN THE MATTER OF THE REPRESENTATION  
OF THE PEOPLE ACT [CAP. 146]**

**BETWEEN:** **SHEM NAUKAUT** of C/- Vanuaaku Pati, Port Vila, Efate in the Republic of Vanuatu.

**AND:** **HARRIS IARIS NAUNUN** C/- John Frum Party, Tanna Island in the Republic of Vanuatu.

**AND:** **MORKING IATIKA STEVEN** C/- Nationa United Party, Port Vila, Efate in the Republic of Vanuatu.

**AND:** **WILLIE POSEN** C/- Union of Moderate Party, Port Vila, Efate in the Republic of Vanuatu.

**AND:** **THE ELECTORAL COMMISSION OF VANUATU** of PMB 033, Port Vila, Efate in the Republic of Vanuatu.

**CERTIFICATE OF ELECTION**

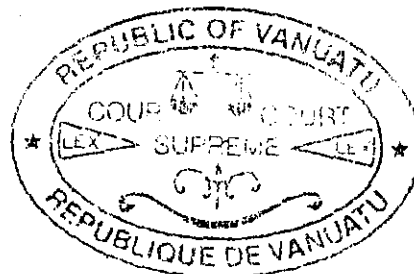
This is to certify and to confirm that the Second Respondent, Morking Iatika Steven, is duly elected as Member of Parliament of the Constituency of Tanna at the general election held on 6th March 1998 as declared by the Fourth Respondent, Electoral Commission of Vanuatu and published in the Official Gazette "extraordinary Gazette" dated the 16th day of March 1998.

Date: 2nd February, 1998.

Place of issue: Port Vila, Efate in the Republic of Vanuatu.

**BY THE COURT**

**ACTING CHIEF JUSTICE LUNABEK J**



TO: The Hon. Speaker of Parliament.  
Mr Shem NAUKAUT, the Petitioner.  
Mr Morking I. STEVEN MP, the Second Respondent.  
The Electoral Commission of Vanuatu.