

PUBLIC PROSECUTOR -v- HON. PAUL REN TARI  
HON. IRENE BONGNAIM  
HON. HARRY LAUKO

RULING

These proceedings have become known as "The Three Speakers Case". In Criminal Case No. 20 of 2001 Paul Ren Tari, Irene Bongnaim and Harry Iauko were committed on 2<sup>nd</sup> July 2001 by the Magistrates Court to stand trial before the Supreme Court on charges of sedition contrary to section 65 Penal Code. They were the Speaker and two deputy Speakers of Parliament at the time of these events.

The three defendants now seek leave for the issue of a prerogative writ quashing the committal and a declaration that their initial arrest and detention were unlawful. The case of Julian Moti-v- Public Prosecutor, Criminal Appeal No, 1 of 1999 is cited in support of this procedure. The Court of Appeal in that case stated that "important issues of law" must be raised. The respondent, the Public Prosecutor, has not contested this procedure and the fact such issues are raised. I proceed on that basis.

A number of grounds are put forward to support the application. The first is based on Article 27 (2) of the Constitution. Article 27 (2) states

"No member ( of Parliament) may, during a session of Parliament or of one of its committees, be arrested or prosecuted for any offence, except with the authorisation of Parliament in exceptional circumstances."

It is agreed that all three defendant/applicants were members of Parliament at the time of these events.

The next question that arises is whether Parliament was in session at the time of arrest or prosecution. This question has been the subject of a hearing before the Supreme Court (Civil Case 59 of 2001) and the Court of Appeal (Appeal Case 11 of 2001) when the Chief Justice's ruling in the former case was upheld.

I need not go into the detail of those two cases which deal with a period of uncertainty and turmoil in Parliament in May of this year. The relevance of those decisions to this case is that the court ruled a session of Parliament was opened on 7<sup>th</sup> May. It was still in session on 15 May. It is a curious paradox that the stance of these three applicants in those proceedings was that in fact the session of Parliament was closed on 7<sup>th</sup> May and not reopened at least until 8.30 a.m. on 15 May. The offences of sedition are alleged to have taken place on 7<sup>th</sup> May and 14<sup>th</sup> May. The defendants were arrested in the early hours of 15<sup>th</sup> May.

In these circumstances it is clear that all three applicants were members of Parliament, they were arrested and prosecuted for offences when Parliament was in session. No authorisation had been obtained from Parliament.

The prosecution continued after the sessions of Parliament closed. However, the prosecution commenced when Parliament was in session, that is when the Public Prosecutor presented the signed formal charges to the magistrate (Section 53(2) Criminal Procedure Code) sometime late on 14 May or early on 15 May. The arrests took place on 15 May.

The proceedings were therefore commenced unlawfully and the arrests were unlawful. The fact that the session of Parliament closed sometime during the continuation of the proceedings cannot retrospectively validate them. Indeed, it would undermine the purpose of the article if that were so. The committal proceedings are therefore invalid.

Accordingly I give leave and issue a Writ Certiorari quashing these proceedings from the start. I need go no further than that for the purpose of this application. There are some important matters I would add. I do not say the prosecution could not have been properly at a time when Parliament was not in session. It would have been open to the Public Prosecutor to recommence the proceedings save for the six month time limit set out in section 67 Penal Code.

Nothing in this Ruling detracts in any way from the ruling of the Court of Appeal in Appeal Case No. 11 of 2001, in particular at page 20 where the Court says " In our judgment the immunity which is provided under Article 27 does not mean that a person can do what they like in Parliament without anyone being able to have recourse to the Court for a breach of their constitutional rights. The heart of the rights preserved by the Constitution is that the rule of law is ensured in all places at all times

for all citizens". Where there is "no option but for the Court to intervene to ensure that the rule of law (is) adhered to and maintained" then it will do so. Such interventions by the Court "are in accordance with Article 6 and 53 of the Constitution and are necessary to maintain the rights guaranteed under Article 5. They cannot be precluded by Article 27 because to do so would ignore the Constitution and its supremacy in this Republic"

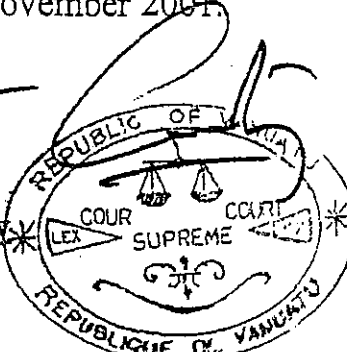
The office of Speaker and deputy Speaker are high positions in the country. Parliament and the people look to the Speaker to act calmly and responsibly for the welfare of the country. All members of Parliament must be responsible and not seek to hide behind Article 27 for acts or words which the founders of the Constitution did not intend to be protected by that Article.

The Court of Appeal concluded " It is now of vital importance that everybody involved in this matter put this litigation behind them and turn their total attention to the future of the Republic and their mutual responsibility to all citizens."

The Public Prosecutor will pay the costs of the three applicant/defendants in both the criminal proceedings and the proceedings for a prerogative writ. The ruling of the Chief Justice in Civil Case 59 of 2001 had been made before these criminal proceedings had commenced. I find in those circumstances the prosecution was unjustified.

Dated at Port Vila this 23<sup>rd</sup> November 2001.

*R. J.*  
**R. J. Coventry**  
Judge

The seal of the Supreme Court of Vanuatu is circular. It features a central scale of justice. The words "REPUBLIC OF VANUATU" are written along the top inner edge, and "REPUBLIQUE DE VANUATU" along the bottom inner edge. In the center, the words "COUR SUPREME" and "COURT" are visible, along with "LEX" on the left and "DIT" on the right. A decorative flourish is at the bottom center.