

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

Election Petition Case No. 06 of 2008

BETWEEN: **BARAK TAME SOPE**
First Petitioner

AND: **NASSAM NADUMURI**
Second Petitioner

AND: **STEVEN KALSAKAU**
Third Petitioner

AND: **JIMMY TASONG**
Fourth Petitioner

AND: **THE PRINCIPAL ELECTORAL OFFICER**
First Respondent

AND: **ALFRED CARLOT**
Second Respondent

AND: **JOSHUA KALSAKAU**
Third Respondent

AND: **BAKOA KALTONGA**
Fourth Respondent

AND: **RORO SAMBO**
Fifth Respondent

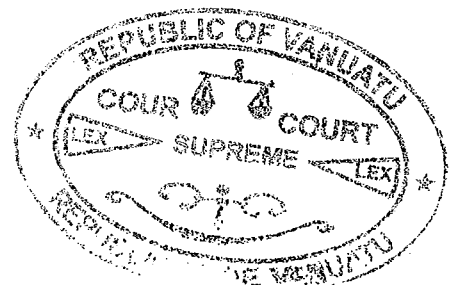
Coram: Justice N. R. DAWSON

Counsel: Mr. J. Malcolm for Petitioners
Ms. F. Williams for 1st Respondent
Mr. G. Boar for 2nd Respondent
Mr. N. Morrison for 3rd & 4th Respondents
Mr. F. Laumae for 5th Respondent

Date of Hearing: 14th, 15th, & 17th April, 2009

Date of Decision: 15th June, 2009

DECISION



1. The General Election of 2nd September, 2008 in the Efate Rural Constituency is challenged by the Petitioners pursuant to Section 54 of the Representation of the People Act CAP. 146 (hereafter referred to as "the Act"). They allege breaches pursuant to Section 61 (1)(b) and pursuant to Sections 45 and 46 of the Act.

2. The chronology of events is as follows:-

14 th April 2008 -	the election day is named
11 th August 2008 -	political campaigns commence
30 th August 2008 -	political campaigns close
2 nd September 2008 -	election day
12 th September 2008 -	the results of the election are gazetted

3. The four highest polling candidates in this constituency were declared duly elected to represent the Efate Rural Constituency. The election result was as follows:-

1) Joshua Kalsakau-	1,381 votes
2) Pakoa Kaltonga -	1,208 votes
3) Alfred Carlot -	959 votes
4) Roro Sumbo -	803 votes
5) Nassam Nadumuri -	748 votes
6) Steven Kalsakau -	735 votes
7) Jimmy Tasong -	641 votes
8) Barak Sope -	603 votes

The Four Petitioners are unsuccessful candidates and the Second to the Fifth Respondents are the four successful candidates.

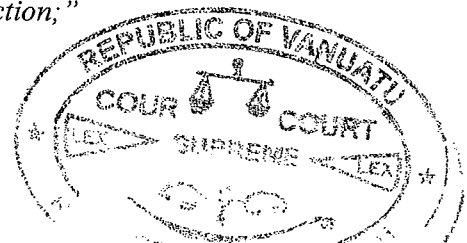
4. The grounds for declaring an election void are in Section 61 of the Act and the parts relevant to this petition are as follows:-

"61. Grounds for declaring election void

(1) The election of a candidate may be declared void on an election petition if it is proved to the satisfaction of the Supreme Court, that –

(a) bribery, treating, undue influence or other misconduct or circumstances whether similar to those herein before enumerated or not, have so extensively prevailed that they may be reasonably supposed to have affected the result of the election;

(b) there has been such non-compliance with the provisions of this Act, in the conduct of polling or in any other matter that such non-compliance affected the result of the election;"



5. It is the submission of the Petitioners that the First Respondent and his officers through various errors and non compliance with the provisions of the Act have made errors to the extent that the result of the Election has been affected because of those errors, [s.61(1)(b)].
6. The Petitioners also submit that the Third and Fourth Respondents have breached the Act pursuant to Section 45 by committing the offence of bribery and section 46 by committing the offence of treating, in order to induce people to vote for them, [s. 61(1)(a)].
7. The responsibilities of the Principal Electoral Officer are set out in the Act. Section 2 says:

“2. Organisation and administration of elections by the Principal Electoral Officer

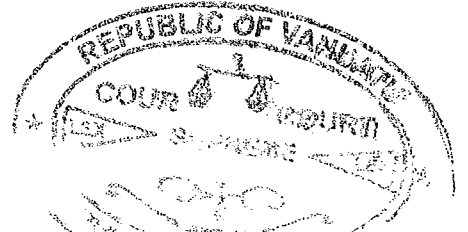
- (1) The Principal Electoral Officer shall be responsible for the Organisation and administration of elections subject to the powers of the Electoral Commission under the Constitution and this Act.”*

Section 3 then goes on to say:

“3. Responsibilities of Principal Electoral Officer

- (1) The Principal Electoral Officer shall be responsible for the registration of electors and the conduct of elections.*
- (2) The Principal Electoral Officer shall in particular be responsible for –*
- (a) control of electoral expenditure;*
 - (b) dividing Vanuatu into registration areas for the purpose of registering voters;*
 - (c) instruction and supervision of registration officers;*
 - (d) transport, travel and equipment for registration officers;*
 - (e) the design and printing of electoral cards, forms and other materials;*
 - (f) arrangements for voters resident overseas;*
 - (g) production, distribution and publication of electoral lists;*
 - (h) providing information to voters and the general public;*
 - (i) provision and distribution and security of ballot papers, ballot boxes and equipment for polling stations;*
 - (j) preparation and distribution of instructions for returning officers, and polling clerks;*
 - (k) maintenance, preservation and security of all electoral records;*
 - (l) preparation of the electoral report required under section 39(1);*
 - (m) such other duties as may from time to time be assigned by the*
- Electoral Commission in accordance with its powers under the Constitution and this Act.”*

8. The Principal Electoral Officer is to appoint registration officers to assist, pursuant to Section 6 of the Act :-



“6. Registration officers

- (1) *The Principal Electoral Officer shall appoint a registration officer for each constituency.*
- (2) *Registration officers shall each year draw up electoral lists for the purpose of compiling electoral rolls.”*

Section 9 of the Act then goes on to say:-

“9. Qualifications for registration as a voter

- (1) *A person shall be eligible for registration in the electoral list for the polling district in which he is a resident at the time of the preparation of the electoral list if he –*
 - (a) *is a citizen; and*
 - (b) *will have attained 18 years on or before the qualifying date.*

The Act then goes on to say in Section 12:-

“12. Issue of electoral cards

- (1) *When a person is registered in an electoral list or the overseas electoral list he shall be issued with an electoral card in the form and containing the particulars set out in Part 4 of Schedule 1.”*

Section 20 of the Act makes it clear that the establishment of electoral rolls is the responsibility of the Principal Electoral Officer. Producing electoral rolls that are perfect is virtually impossible given the size of some electorates, the numbers of persons involved, their mode of living and the literacy rate. Such a standard has not been imposed upon the Principal Electoral Officer by the Act. It is implicit from the Act that the Principal Electoral Officer has a responsibility to establish electoral rolls that are as complete and as accurate as is reasonably possible so that an election may be held so that the results of that election fairly reflect the will of the voters in each electorate.

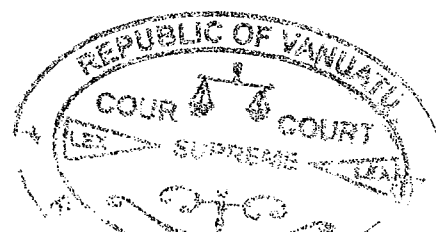
9. For the day of the election, section 30 of the Act says:-

“30. Returning officers

Every polling station shall be presided over by a returning officer appointed for that purpose by the registration officer.

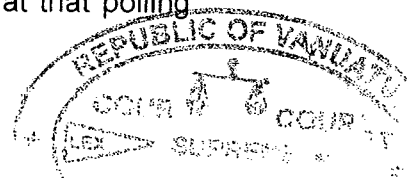
31. Electoral rolls to be in polling stations and voters only to vote if therein and have electoral cards

- (1) *During voting a copy of the electoral roll shall be kept in every polling station.*
- (2) *No person may vote unless his name is contained in the roll of electors of the polling district of the station at which he presents himself for voting, and he produces a valid electoral card issued to him.”*



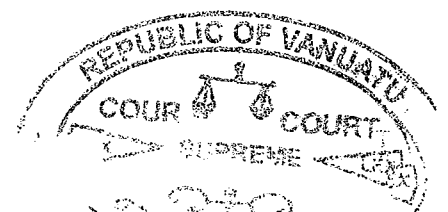
10. It is the submission of the Petitioners that the Principal Electoral Officer and or other officers appointed by him have made errors in the compiling of the Electoral Roll for the Efate Rural Constituency and have made further errors during the conduct of the election to the extent that non-compliance with the Act has affected the result of the election.
11. Evidence was given by Mr. Tete, the Principal Electoral Officer. In his evidence he said that he has been the Principal Electoral Officer since 2003 and confirmed that pursuant to the Act the Electoral Roll was updated for the Efate Rural Constituency in 2008. His evidence was that he appointed the appropriate officers who went around the electorate on a house to house to basis to check the Electoral Roll, to amend it where appropriate, and to enroll voters not already enrolled. This happens between January and May in every year, including 2008. He said that voting cards are issued to voters which record the name and residence of that voter, his voting area, and signature. Each time a voter votes, that he has voted is then recorded on the card and it is stamped accordingly.
12. During the course of the hearing evidence was given in relation to four of the polling stations in the electorate. These were the Teouma Bush Polling Station, the Ifira Polling Station, the Rentapau Polling Station, and the Matantapua Polling Station.
13. The Official Report from the Teouma Bush Polling Station noted as follows:

"18 voters not allowed to vote as they are at the wrong polling station. 18 voters not allowed to vote because of "lost sheet" 14 voters possessed voting cards but were not on the electoral roll".
14. The report records that pages 80, 82, and 83 were missing from the Electoral Roll at that polling station. The evidence of Mr. Tete was that there would be approximately 20 persons recorded on each of those pages and therefore a total of approximately 60 persons who were enrolled to vote would not have been permitted to vote at that polling



station. The Official Report notes that one hundred plus persons could not vote because of those 3 lost pages (which is at variance of the estimate of 60 persons given by Mr. Tete although it must be remembered that Mr. Tete was giving his evidence in Court from his memory). Mr. Tete said in evidence that the Teouma Bush Polling Station rang and asked for the three lost pages but that he did not provide them and could not recall an explanation of why not.

15. At the Ifira Polling Station it was recorded that eight names were "deleted" by an AR Officer with no explanation as to why those persons were deleted. In his evidence Mr. Tete was unable to provide any explanation and said that he did not know why those persons had been deleted and not allowed to vote. Therefore the possible error rate and the Ifira Polling Station could be up to 8 voters.
16. At the Rentapau Polling Station 399 voters were registered to vote. Seventy nine voters recorded a vote amounting to only 19% of the voters registered to vote at that polling station. Voting percentages varied from polling station to polling station but the polling rate of 19% is significantly lower than any other polling station and well below the average of 57.7% of voters voting throughout the electorate in that general election.
17. The Official Report from the Rentapau Polling Station notes that at 9 am there were arguments outside and the police were required to calm down about 20 people. At 9:45 am the official report notes:
*"more and more people are turning up
cards that are not registered
call office about situation
Office confirmed that no names of electoral roll
no vote."*
18. There is no record from the Rentapau Polling Station as to the numbers of persons who were turned away and were unable to register a vote. If the electorate average of 57.7% of voters had turned up to vote then that polling station would have had approximately 151 more



voters. Not every polling station had a polling rate of 57.7% and therefore the figure of 151 can only be regarded as indicative.

19. The Matantopua polling station in its Official Report noted as follows:-

“MAJOR ISSUES WORTH NOTING

- 1) *It is worth noting that there are typographical errors in the electoral roll.*
- 2) *The issue of shit (sic chit) number not matching electoral roll needs to be noted and must be rectified by the electoral commission.*
- 3) *Most of these voters were allowed to cast their votes after clerks were able to rectify/change shit (sic chit) numbers on electoral card to match re electoral roll.*
- 4) *A few voters were turned back and were disallowed to vote because their names were not registered in the electoral roll.”*

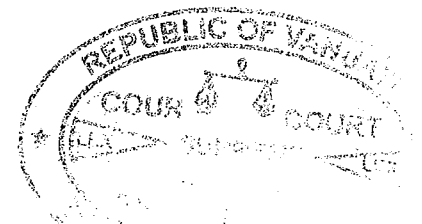
The official report from this polling station then goes on to say:-

“RECOMMENDATION

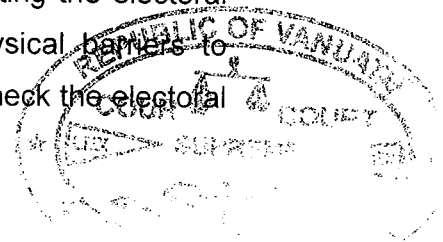
It is highly recommended that because of unusually high number of voting cases of improper shit (sic chit) no. allocation, which resulted in polling clerks having a rewrite new shit (sic chit) no. to match official electoral roll, it is recommended that Electoral Commission would need to update the electoral roll prior to the upcoming provincial elections.”

There is no indication from this polling station in its report as to the number of voters that were disallowed other than “a few”.

20. It was apparent from the evidence that a considerable number of voters were issued with valid electoral cards by registration officers, but when they turned up to vote, their names did not appear on the Electoral Roll at their polling station and they were denied the opportunity of voting. In explanation of this Mr. Tete said that the reason was probably because registration officers issued electoral cards to voters, that would be recorded on that officers Election Sheet, and he could only assume that a number of these Election Sheets were lost and that these voters were never listed on the Electoral Roll as they should have been.



21. During the course of his evidence Mr. Tete said that voters had avenues under the Act to inspect the electoral roll between the 1st June 2008 and 15th June 2008 to see if the information on their voting card and on the electoral roll correctly matched and that their names were on the roll. His evidence was that electoral rolls for this electorate were available in two locations in Port Vila during this period of time. His evidence was that he had done everything required of him under the Act and the voters themselves had a responsibility to ensure that they were on the electoral roll.
22. Section 16 of the Act is as follows:-
- “16. Making electoral list available for inspection and applications for changes thereto***
- (1) The electoral list shall be made available for inspection by the public each calendar year during a period of not less than 14 days which shall end on or before the 15th day of June.*
 - (2) The electoral list shall be made available for inspection by –*
 - (a) each registration officer having a copy available on request; and*
 - (b) copies being lodged at such places or with such other persons both in Vanuatu and outside as the Electoral Commission shall direct or cause to be lodged.*
 - (3) Any person who is eligible for registration in the electoral list but whose name has not been included in the list may make an application before the end of the inspection period for the inclusion of his name in the list.*
 - (4) Before the end of the inspection period any person may make application to the Principal Electoral Officer for –*
 - (a) the inclusion or deletion of any names from an electoral list;*
 - (b) the correction of any matter in an electoral list;*
 - (c) the addition or deletion of any matter in a list; or*
 - (d) the correction of any matter or the addition or removal of any matter in any electoral card.”*
23. It needs to be noted that section 16 of the Act does not place a positive obligation on each voter to check the electoral roll to see that he or she is registered. Section 16 provides a mechanism to enable voters to check the electoral roll but not a responsibility to do so. It is also needs to be noted that the Efate Rural Electorate is a very large electorate. It is effectively the whole of Efate Island and some neighbouring islands with the exception of the town of Port Vila. There are difficulties in both time and cost to voters, particularly those at a distance from Port Vila, to travel to Port Vila to check the electoral roll. Locating the electoral roll only in Port Vila places large financial and physical barriers to voters throughout the electorate should they wish to check the electoral

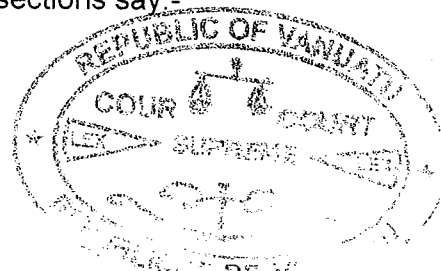


roll. Whilst it is not a requirement of the Act, it would be appropriate to have copies of the electoral roll at locations in the electorate itself to enable more voters to check the electoral roll which would improve its accuracy, which would assist in obtaining a proper election. This is a matter the Electoral Commission may wish to consider for this and other large electorates for future elections.

24. The responsibility for establishing an electoral roll that is as accurate as is reasonably possible in all the circumstances lies with the Principal Electoral Officer and not upon the individual voters. It is not unreasonable for a voter to assume that if he or she has been issued with an electoral card by a registration officer in proper form then their name will appear on the electoral roll and they will be able to vote at the upcoming general election.
25. The third highest polling candidate in the general election registered 959 votes. The sixth highest polling candidate registered 735 votes, a difference of 224 votes. This difference in the number of votes between those two candidates and those candidates in between is well within the margin of error with respect to the evidence the Court has heard with respect to the four polling stations mentioned above. Therefore the election of the third and fourth highest polling candidates in the general election, through no fault of those candidates, cannot be considered to be the result of a fair election as the evidence establishes that too many voters in the electorate were deprived of the opportunity to vote through no fault of those voters.
26. In the final submissions to the Court, it was accepted on behalf of Petitioners that there were no assertions or evidence against the Fifth Respondent and that any allegations against the Second Respondent had been answered. The Petitioners claims against the Second and Fifth Respondents were withdrawn.
27. The claims against the Third and Fourth Respondents pursuant to Sections 45 and 46 of the Act were maintained. These sections say:-

“45. Bribery

(1) A person commits the offence of bribery –



- (a) if he directly or indirectly by himself or by any 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) corruptly does any such act on account of any voter having voted or refrained from voting; or
 - (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;

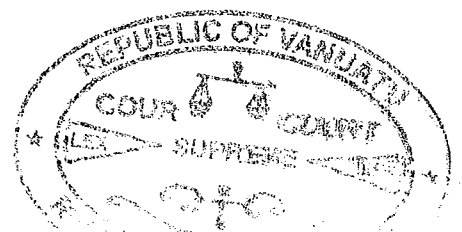
or if upon or in consequence of any such gift or procurement he procures or engages, promises or endeavours to procure the election of any candidate or the vote of any voter;

- (b) if he advances or pays any money or causes any money to be paid to or to the use of any other person with the intent that such money or any part thereof shall be expended in bribery at any election, or knowingly pays any money or causes any money to be paid to any person in discharge or repayment of any money wholly or in part expended in bribery at any election;
 - (c) if before or during an election he directly or indirectly, by himself or by any other person on his behalf, receives, agrees or contracts for any money, gift, loan or valuable consideration or any office, place or employment for himself or for any other person for voting or agreeing to vote or from refraining or agreeing to refrain from voting;
 - (d) if after an election he directly or indirectly by himself or by any other person on his behalf receives any money or valuable consideration on account of any person having voted or refrained from voting or having induced any other person to vote or refrain from voting.
- (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; and
 - (b) references to procuring office include references to giving, procuring, agreeing to give or procure, offering, promising and promising to procure or to endeavour to procure any office, place or employment.

46. Treating

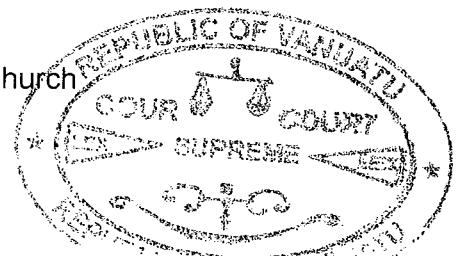
A person commits the offence of treating –

- (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 voted 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."

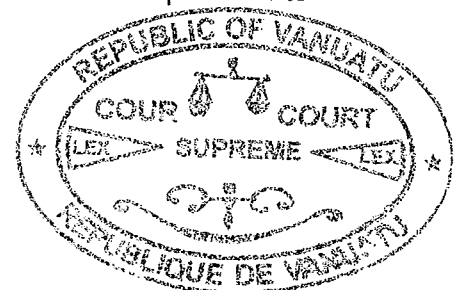
28. The Court heard evidence from a number of witnesses concerning allegations of bribery by payments of money in breach of Section 45 of the Act. This evidence was confused, often contradictory, and inconclusive. There is no reason for this Court to conclude that observations by witnesses of the payment of sums of money on behalf of the Third and Fourth Respondents were for other than legitimate campaign expenses.
29. The Third Respondent chose not to give evidence. In respect to the allegations against him evidence was given by Jimmy Ben, a member of the Third Respondent's election team. In his evidence he confirmed that 6 bullocks and 20 bags of rice had been handed out by the election team to sub committees for the purpose of providing food for workers of the party at polling stations. There was no indication that such a large amount of food was necessary to feed the election team and sub committees and from the evidence, no effort was made to restrict the consumption of all this food to only those persons. One witness made it clear that when food was made available, anybody present could participate in its consumption. Making available a feast of food to anybody provided by campaign members supporting the Third Respondent can only have been for the purpose of fostering a positive view of him as a candidate, thereby making it more likely those persons would vote for him. These type of activities are bribery in breach of Section 45 (i)(ii) and also treating in breach of Section 46 (a) of the Act.
30. Jimmy Ben also gave evidence that on 23rd July, 2008 a large truck belonging to Port Vila Hardware travelled around North Efate and distributed the following items:-
- 1) 1 Generator to the Eton PWMU
 - 2) 1 tonne cement and 1 wheelbarrow to the Epule community
 - 3) 1 wheelbarrow and assorted of tools to the Paunangisu Farmer's Association.
 - 4) 1 tonne of cement to the Emau Pentecostal Church



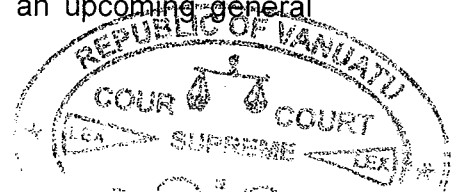
- 5) 26 pieces of roofing iron to the Saama Community
- 6) 1 tonne of cement and 1 toilet to the Tanoliu Community

His evidence was that all of these items were paid for by the Regional Executive for Efate of the Labour Party.

- 31. Evidence was also given by Lawikoto Kaltapang a member of the 3rd Respondent's election sub committee. He said in evidence that his sub committee handed out pots to supporters who had requested them. This took place on 17th July, 2008. He said that it was his decision to hand the pots out. Those pots that were left over were handed to churches. One pot was received by the Assembly of God church at Ifira, another by the Presbyterian church from Ifira, and one pot was received by the Elem Church. Pastor Kal Maling Mangawai gave evidence saying that his church received a campaign gift of one such aluminum pot on 12th July, 2008 and the pot was prayed over with thanks at the service of the church on 13th July 2008.
- 32. The Fourth Respondent did give evidence on his own behalf. His evidence was given in a very frank and open manner. He said that in June/July 2008 he purchased cement from Port Vila Hardware for a church at Manples and two churches at Mele Village. He said he did this because they asked him.
- 33. In his evidence he made it clear that it was his understanding that there was a cut off date in August beyond which he would not be able to make gifts to people in his electorate. The date he was referring to was the 11th August, 2008, the date when political campaigns were due to commence.
- 34. The Fourth Respondent also confirmed that he handed out 12 mobile phones, two at Paunagisu Village and 10 at Magaliliu Village. He said these mobile phones were handed to his subcommittees for communication purposes during the election campaign. He said he gave them to the chairman of the subcommittee and it was up to him to do what he chose with them.

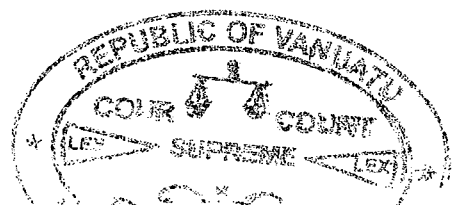


35. During the course of his evidence the Fourth Respondent said that he does not use money to influence people, he used it to pay for costs. He did not keep a record of payments made and he did not know how much money he had spent during the election.
36. In Court the Fourth Respondent confirmed that he gave communities various items on 25th July 2008. He was of the view that he was not giving a bribe or treating and he was only handing to them items that they had asked or requested of him. It was his view that bribery could only take place if he forced items upon people. He was of the view that if the supporters of a church asked him to assist them by giving them cement then it is in order for him to do so provided he did so before 10th August 2008. His understanding was 10th August 2008 was the cut off time for any activities of this nature. His evidence was that he had given out three tonnes of cement and 12 mobile phones. He also paid expenses to feed his campaign assistants, purchased food from shops in areas where they were campaigning during the campaign and he regarded that as nothing extraordinary.
37. The evidence given by Charley Vung was that 6 tonnes of cement and the 12 cell phones had been handed out. Whether it was three tonnes of cement or six tonnes of cement is not a matter of importance. Either is a significant amount of cement.
38. The Third and Fourth Respondents deny that they have been involved in bribery and or treating in an attempt to encourage voters to elect them to Parliament. A summary of their view appears to be:-
- a) It is not bribery or treating if they are giving gifts and food to people in their electorate who have asked them to provide these gifts to them. It is more a case of not losing votes and influence if they were to fail to respond in the manner that was expected of them by people within the electorate.
 - b) They are entitled to make such gifts and provide food provided they did so before the 11th August, 2008.
39. Mr. Tete, the Principal Electoral Officer said in his evidence that when candidates enroll themselves as candidates in an upcoming general



election, he gives them a form which sets out those things which they can and cannot do during an election. When asked in cross examination as to whether in his view that there is a time during which candidates can give gifts that might otherwise be regarded as bribery or treating he was quite clear in his answer that in his view candidates cannot give gifts before, during, or after an election campaign period. In his view that included any period of time prior to or later than 11th August, 2008.

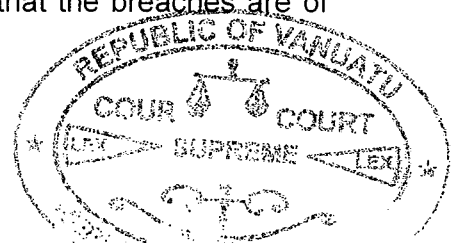
40. The interpretation of Sections 45 and 46 by Mr. Tete is correct. Section 45 does not proscribe bribery at certain times. It bans the actions of bribery whenever it might be used to procure votes or endeavour to procure votes. Section 46 specifically states that the offence of treating can occur *“either before, during or after an election directly or indirectly.”*
41. From the evidence heard by the Court it would seem that there are some persons who regard it as in order to request gifts from candidates in a general election. It also appears to be an assumption by some candidates that provided they are asked for gifts then it is in order for them to give gifts. Both assumptions are incorrect. A proper election is one in which voters vote for candidates of their choice uninfluenced by gifts or any expectation of gifts. It is a principle of the Act, s. 61 (1) (a) that voters should vote for those candidates of their choosing uninfluenced by bribery or treating. The evidence of a number of witnesses makes it clear that the Third Respondent was ^{involved in} bribery and ^{Mr. J} treating in breach of Sections 45 and 46 and on his own evidence the Fourth Respondent was in breach of the same sections.
42. Section 61 of the Act sets out the grounds for declaring an Election void. It states :-
- “61. Grounds for declaring election void***
- (1) The election of a candidate may be declared void on an election petition if it is proved to the satisfaction of the Supreme Court, that*
- (a) bribery, treating, undue influence or other misconduct or circumstances whether similar to those herein before enumerated or not, have so extensively prevailed that they may*



- be reasonably supposed to have affected the result of the election;*
- (b) there has been such non-compliance with the provisions of this Act, in the conduct of polling or in any other matter that such non-compliance affected the result of the election;*
- (2) The election of a candidate shall be declared void if he is convicted by a Court of committing a corrupt practice or of attempting or conspiring to commit a corrupt practice.*
- (3) Notwithstanding the provisions of subsection (1) –*
- (a) where upon the hearing of an election petition the Supreme Court finds that any agent of a candidate has been guilty of a corrupt practice and the Supreme Court further finds that the candidate has proved to the Supreme Court that –*
- (i) no corrupt practice was committed by the candidate himself or with his knowledge or consent or approval;*
- (ii) the candidate took all reasonable means for preventing the commission or corrupt practices at such election;*
- (iii) in all other respects the election was free from any corrupt practice on the part of the candidate; and*
- (iv) such corrupt practices did not affect the result of the elections,*
- then, if the Supreme Court so decided, the election of such candidate shall not by reason of any such practice be void;*
- (b) where upon the trial of an election petition the Supreme Court finds that there has been failure to comply with any provision of this Act but the Court further finds, that it is satisfied that the election was conducted in accordance with the principles laid down in this Act and that such failure did not affect the result of the election, the election of the successful candidate shall not by reason of such failure, be void.”*

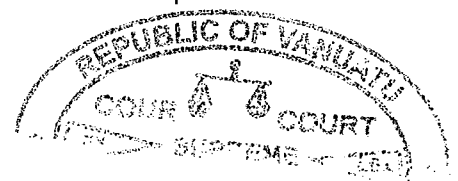
43. It has been submitted that the standard of proof in an election petition case is a higher standard than that which is applied in normal civil cases. Some reference has been made to obiter comments of this Court in Lop v. Isaac & Others EPCS of 2008 and Taranban v. Boedoro (2004). That submission cannot be correct for if it was so then this Court would be required to make its findings based upon an undetermined standard of proof that has no statutory authority to support it. The standard of proof in an election petition case of this type must be the civil standard of proof and decided upon the balance of probabilities.

44. The Act contains a protection from frivolous or minor breaches of the Act. If the Court finds that the Act has been breached on a balance of probabilities basis, it must then take the next step pursuant to Section 61(3)(a)(iv) and Section 61 (3)(b) and decide that the breaches are of



such magnitude that the result of the election was affected before declaring the election void.

45. A prosecution of a candidate that results from a referral pursuant to Section 64, is a different matter. A successful prosecution could lead to that candidate losing rights granted to any normal citizen, and therefore the standard of proof for such a prosecution must be the standard of proof of beyond reasonable doubt. There is no third unidentified indeterminate standard of proof
46. The Third and Fourth Respondents and their agents bribed and treated widely throughout the electorate on an organised basis. Neither the Third or Fourth Respondent have shown pursuant to Section 61 (3) (a) that no corrupt practice was committed by the candidates themselves or their agents without their knowledge, and nor have either shown that they took reasonable steps to prevent the commission of corrupt practices at the election. Upon considering Section 61(3)(a)(iv) and Section 61(3)(b), the Court finds that the conduct of the Third and Fourth Respondents was a blatant breach Section 45 and 46 and of the principles laid down in this Act, that many people in the electorate may have been wrongly influenced by the bribery and treating activities, and that it is entirely possible that the outcome of the general election would have been different, had such conduct not occurred.
47. The combined effect of the errors made by the officers responsible for the conduct of the election and the conduct of the Third and Fourth Respondents are such that cannot be said that the successful candidates were elected as a result of a properly conducted election as it is well within the bounds of possibility that other candidates might have been elected had the election been conducted in a proper manner in accordance with the principles of the Act. The election of all four candidates is therefore declared void.
46. This Court therefore Orders :-
 - a) Pursuant to Section 61 (1)(a) and (b) of the Representation of the People Act [CAP.146] a declaration is hereby made that the elections of the Second, Third, Fourth, and Fifth Respondents



on 2nd September, 2008 at the Constituency of Efate Rural are void due to breaches of the provisions of Section 61(1)(b) and Sections 45 and 46 of the Act.

- b) That a by election pursuant to Section 22 Representation of the People Act be held in the Efate Rural Electorate as soon as reasonably practicable, in relation to the four seats of Parliament for this electorate as a result of the declaration in a) above.
 - c) That a Certificate shall be issued to inform the Speaker of Parliament.
 - d) That a copy of this decision be provided to the Public Prosecutor pursuant to Section 64 of the Representation of the People Act.
 - e) That a copy of this decision be forwarded to the Electoral Commission for consideration by that Commission.
47. Costs are awarded against the Petitioners in favour of the Second and Fifth Respondents on a standard basis. Costs are awarded in favour of the Petitioners against the First, Third and Fourth Respondents on a standard basis. The apportionment of costs, amongst the parties shall be as agreed by the parties, and failing agreement, then as taxed and apportioned by the Court.

Dated at Port Vila, this 15th day of June, 2009

BY THE COURT

N. R. DAWSON

Judge

