

**IN THE SUPREME COURT OF
THE REPUBLIC OF VANUATU**

(Civil Jurisdiction)

Constitutional Case No.05 of 2011

BETWEEN: HON. EDWARD NIPAKE NATAPEI MP
First Applicant

AND: HON. MOLISA SELA MP
SERGE VOHOR MP
CHARLOT SALWAI MP
LORIN SOLOMON MP
KISITO TEILEMP MP
TAI VOISUSU MP
BRUCE ASAL MP
PAUL TELUKLUK MP
JOSHUA KALSAKAU MP
IOANE SIMON MP
ETA RORY MP
BOB LOUGHMAN MP
MOSES KAHU MP
PHILIP BOEDORO MP
THOMAS ISOM MP
DAVID ABEL MP
PATRICK CROWBY MANAREWO MP
JOSIE MASMAS MP
DOMINIQUE MORIN PM, All Members of
Parliament of Port-Vila, Vanuatu
Second Applicants

AND: Hon. MAXIME CARLOT KORMAN, MP
Speaker of Parliament
First Respondent

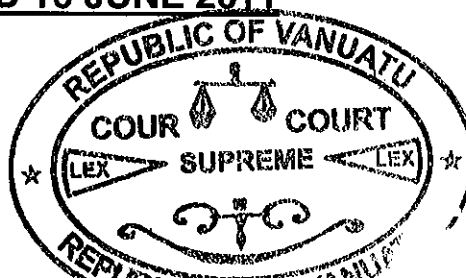
AND: Hon. SATO KILMAN, MP
Prime Minister of the Republic of Vanuatu
Second Respondent

AND: THE STATE REPUBLIC OF VANUATU
Third Respondent

Coram: V. Lunabek CJ

Counsel: Mr George Boar and Mr Daniel Yawha for the Second Respondent
Mr Edward Nalyal, counsel for the First and Second Applicants
Mr Frederick Gilu for the First and Third Respondents

**REASONS FOR ORAL ORDER STRIKING OUT
THE URGENT APPLICATION**
FILED 16 JUNE 2011



1 

On 16 June 2011, Mr George Boar and Mr Daniel Yawha filed on behalf of the Applicant, Hon. Sato Kilman, an Urgent Application for Orders to direct the First Respondent Speaker of Parliament to reconvene Parliament on 16 June 2011 to elect a Prime Minister pursuant to Order 5 of the Court Judgment dated 16 June 2011. The Application seeks for the following relief:-

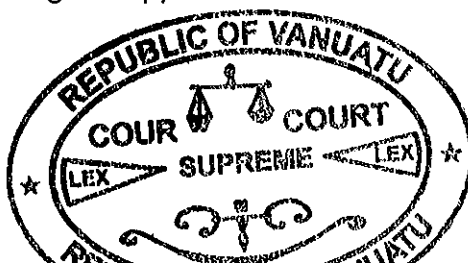
1. Time for hearing of the application to be abridged.
2. The First Respondent be ordered and directed to reconvene Parliament on 16 June 2011 at 10.00PM tonight to elect a Prime Minister pursuant to Order 5 of this Court Judgment dated 16 June 2011.
3. The First Respondent be charged for contempt of this Honourable Court Order and Judgment dated 16 June, 2011 for failure to comply with Order 5 of the Court Judgment dated 16 June 2011.

The Court hears the Urgent Application on 17 June 2011 at 9.00am o'clock and strikes out the Application for three (3) reasons and orders costs (wasted) personally against the lawyers of the Applicants:-

The first reason is that the Application is misconceived and inappropriate. On 16 June 2011, the Supreme Court found that the declaration made by the First Respondent Speaker of Parliament on 2 December 2010 that Hon. Sato Kilman was declared Prime Minister of Vanuatu unopposed, was made contrary to the provisions of Article 41 and Scheduled 2 of the Constitution and therefore it was unconstitutional and invalid. The Court also declared that the purported election of Hon. Sato Kilman on 2 December 2010 was unconstitutional and invalid.

In its Order 5 of the "Declaration and Orders" by the Supreme Court dated 16 June 2011, the Court ordered the First Respondent Speaker of Parliament to reconvene Parliament as soon as possible to ensure that a Prime Minister of Vanuatu is elected by Parliament in accordance with Article 41 and Schedule 2 of the Constitution.

It is wrong for Mr George Boar and Mr Daniel Yawha to proceed in the way they do on behalf of the Applicant in the Urgent Application filed 16 June 2011. If the



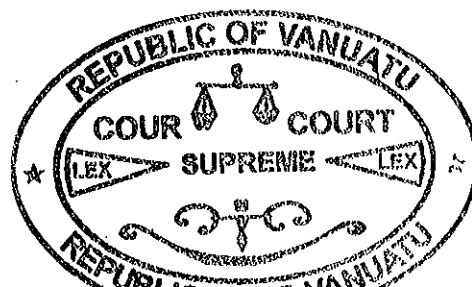
Applicant does not like Order 5, it must be appealed against before the Court of Appeal, although there is no merit for such an application in law.

The second reason for the striking out of the application is that, the Supreme Court can only assist if a proper application is made with evidence in support to vary Order 5 of the Supreme Court Orders dated 16 June 2011. There is no such an application for variation. After discussion with the Court, Mr. George Boar realized that he was mistaken and he so apologized to the Court for misleading the Court and he then applied for leave to amend the oral Urgent Application into a variation application. The Court refuses that leave to Mr George Boar because, even if leave is granted to him to amend the Urgent Application into a variation application of Order 5 of the Supreme Court Orders of 16 June 2011, there is evidence before the Court that the First Respondent Speaker of Parliament has already complied with Order 5 of the Supreme Court Orders dated 16 June 2011, by issuing a Summons to all Members of Parliament in accordance with the provisions of Article 21(2) of the Constitution and Standing Orders 14 of the Standing Orders of Parliament to meet in an extraordinary session of Parliament ("the Fourth Extraordinary Session of Parliament") on Thursday 23rd June 2011 at 8.30am o'clock at Parliament House to elect a Prime Minister.

The last reason for the striking out Order is that the Applicant through his counsel sought in terms of Order 3 of the Urgent Application which is misconceived and so premature as there is no evidence of any breach by the First Respondent Speaker of Order 5 of the Supreme Court Orders dated 16 June 2011. The 27 sworn statements filed in support of the Urgent Application do not provide evidence of any breach by the First Respondent Speaker of Parliament. Consequently, the Court makes the following Orders:

ORDERS

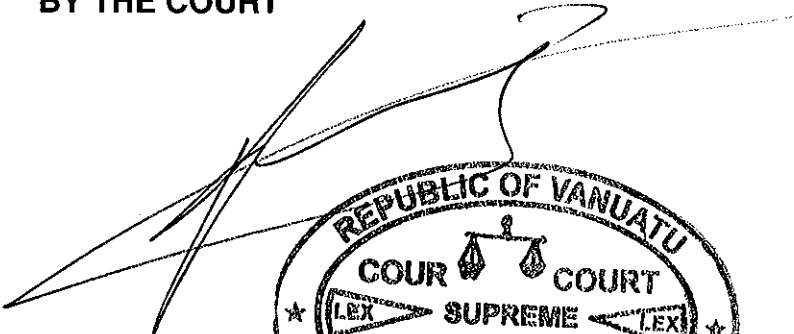
1. The Urgent Application for Orders to direct the First Respondent Speaker of Parliament to reconvene Parliament (today 16 June 2011) to elect a Prime Minister pursuant to Order 5 of the Court dated 16 June 2011, is hereby struck out.



2. The First Respondent Speaker of Parliament and Third Respondent Republic are entitled to their costs.
3. Such costs shall be awarded against counsel of the Applicants but not against the Applicants. This is because of the incompetent way counsel brought this application before the Court.
4. Mr George Boar and Mr Daniel Yawha are ordered and directed to personally pay the (wasted) costs of Vatu 200,000 to the First and Third Respondents to the Urgent Application dated 16 June 2011.
5. Such payment of costs shall be paid as ordered by 16 August 2011.

DATED at Port-Vila this 17th day of June 2011

BY THE COURT



Vincent LUNABEK
Chief Justice

