

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

Election Petition Case No. 03 of 2012

**BETWEEN:** SABI NATONGA  
First Petitioner

**AND:** NAUKA MERIANGO JACQUES  
Second Petitioner

**AND:** TOM L. YARIS YAWAH  
Third Petitioner

**AND:** ROBIN TOM KAPAPA  
Fourth Petitioner

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

**AND:** ELECTORAL SERVICE COMMISSION  
Second Respondent

**AND:** SILAS YATAN ROUARD  
Third Respondent

**AND:** IAUKO HARRY IARIS  
Fourth Respondent

**AND:** RICHARD RUAN NAMEL  
Fifth Respondent

**AND:** THOMAS LAKEN  
Sixth Respondent

**AND:** BOB LOUGHMAN  
Seventh Respondent

**AND:** MORKING STEPHEN IATIKA  
Eighth Respondent

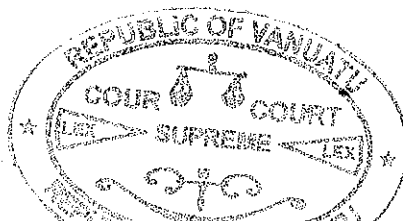
**AND:** JOE NATUMAN  
Ninth Respondent

*Petitioners:  
1<sup>st</sup> & 2<sup>nd</sup> Respondents:  
3<sup>rd</sup> - 6<sup>th</sup> Respondents:  
7<sup>th</sup> & 9<sup>th</sup> Respondents:  
8<sup>th</sup> Respondent:*

*Mr. D. Yawha  
Mr. K. T. Tari  
Mr. R. Warsal  
Mr. J. Kilu  
Mr. J. L. Napuati*

**JUDGMENT**

1. In this Election Petition the petitioners were unsuccessful candidates in the Tanna Constituency during the national general election held on 30 October 2012. The named third to ninth respondents are the seven (7) successful candidates who were declared duly elected to represent the Tanna constituency in Parliament. The first and second respondents, namely the Principal Electoral Officer and the Electoral Commission are constitutional



entities charged with overall responsibility for the registration of voters and the conduct of parliamentary elections in Vanuatu.

2. The officially declared results of the Tanna Constituency on **6 November 2012** so far as relevant was as follows:

	<u>Candidate</u>	<u>Votes</u>
(1)	Silas Yatan Rouard	- 1067
(2)	Iauko Harry Iaris	- 1054
(3)	Richard Ruan Namel	- 922
(4)	Thomas Laken	- 890
(5)	Bob Loughman	- 791
(6)	Moking Stephen	- 788
(7)	Joe Natuman	- 764

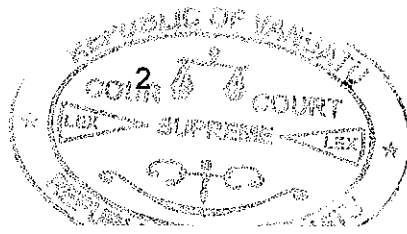
3. The Petitioners for their part polled:

(a)	Nauka Mariango Jacques	- 736
(b)	Sabi Natonga	- 698
(c)	Tom Yaris Yawah	- 512
(d)	Robin Tom Kapapa	- 450

4. There were, in all, 34 candidates contesting in the Tanna Constituency and the difference between the lowest winning candidate (**Joe Natuman**) and the highest losing candidate (**Nauka Meriango Jacques**) was  $(764 - 736) = 29$  votes. The total number of valid votes cast in the Tanna Constituency was 16,860 which had a 69% turnout of eligible voters.

5. Although undoubtedly desirable that the membership of Parliament should be ascertained as quickly as possible, it is equally as important that petitioners who challenge an election result should be given adequate time and access to election records (especially in a proxy challenge) to enable them to prepare properly. In the present case given the number of election petitions after the 2012 general elections which included challenges to the **tanna Constituency** proxy votes, the petitioners were given over 12 months to prepare.

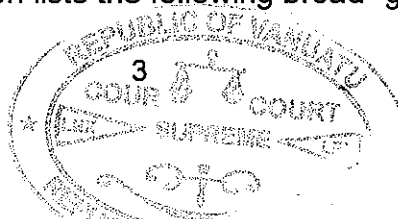
6. By way of introduction I make some preliminary observations about the fundamental constitutional provisions that apply to parliamentary elections in Vanuatu and which I have kept in mind. These are **Article 17** which deals with the election of members of Parliament through an 'electoral system' and prescribes minimum qualifications for a candidate seeking to stand for election to Parliament; **Article 18** establishes an Electoral Commission; **Article 19** establishes the position of a Principal Electoral Officer; and **Article 20** sets out the general functions of the Electoral Commission and the Principal Electoral Officer. In general terms the **Electoral Commission** has "responsibility for and shall supervise the registration of electors and the conduct of elections to Parliament ..." and the **Principal Electoral Officer** (who is answerable to the Electoral Commission) has "... such powers and functions relating to such registration and elections as may be prescribed by Parliament".



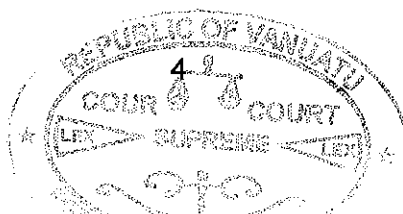
7. Additionally reference may be made to **Article 4** which provides:
- (1) *"National sovereignty belongs to the people of Vanuatu which they exercise through their elected representatives.*
  - (2) *The franchise is universal, equal and secret. Subject to such conditions or restrictions as may be prescribed by Parliament, every citizen of Vanuatu who is at least 18 years of age shall be entitled to vote.*
  - (3) *Political parties may be formed freely and may contest elections. They shall respect the Constitution and the principles of democracy."*
8. These Articles, collectively, make it clear that the "right to vote" at elections and the "right to contest parliamentary elections" as a candidate are critical elements in the formation of a democratic Parliament in Vanuatu, and, subject to certain non-derogable minimum requirements, both rights are subject to legislative conditions and restrictions. I accept that the right to be a candidate in parliamentary elections is an indispensable element in the formation of a Parliament, but equally, the existence and exercise of the right is no guarantee, that a candidate will be successful in being elected to Parliament in a contested election or by-election.
9. The Articles also envisage the creation of "an electoral system" which is "universal, equal and secret" and which regulates and controls the exercise of those critical elements. Indeed parliamentary elections would prove unmanageable and chaotic in the absence of some form of organization or regulatory process.
10. Parliament in 1982 enacted the **Representation of the Peoples Act [CAP. 146]** "to provide for registration of voters and elections to Parliament". The Act has **70** sections divided into **17** parts and establishes with "electoral system" which includes the registration of voters; the establishment an electoral rolls; the conduct of elections; the eligibility, declaration and publication of lists of candidates for election; the furnishing of election reports; election petitions for challenging the validity of an election; and the creation and penalties for election offences.
11. The scheme of the Act indicates that it is intended, in part, to give effect to the two fundamental rights recognized in the Constitution as well as to establish an "electoral system" within which those rights may be exercised in an environment which upholds and protects those rights in an orderly and transparent manner.
12. The petition challenges the election results of the Tanna Constituency on the following basis set out in paragraph 6:

*"... for alleged breaches pursuant to section 61(1), (A)(B)(C) as amended and section 45 and 46 of the Act. Furthermore the Petitioners allege the breaches of Section 37 (Schedule 5 Section 17) of the Act."*

More particularly, the petition lists the following broad "grounds":



- The Unauthorised Envelops Used During Elections;
  - The Uses of Proxy in Tanna; and
  - Corrupt Practice of Bribery (only against the eighth respondent – Morking Stephen).
13. If I may say so this composite “scatter-gun” manner of combining unspecified alleged breaches of numerous (in this instance 7) different provisions of the **Representation of the Peoples Act** into a single paragraph is unhelpful and non-compliant with the requirements of **Section 58**. It also ignores the significant amendments to **Section 61** that were brought about in 2012.
14. Although the Petition later provides some specific “grounds”, it is noteworthy that “*Treating*” contrary to **Section 46** is not raised. Likewise none of the four (4) grounds for voiding an election in **Section 61(1)** are raised or expressly referred to in the “grounds” as they should have been if they were being relied upon.
15. At the commencement of the hearing of the Petition counsel indicated that the allegation of “*bribery*” and “*use of torch light*” (nowhere mentioned in the grounds) were not being pursued.
16. The petitioners called 19 witnesses in support of the petition, namely:
- |                     |                          |
|---------------------|--------------------------|
| • John Iameih;      | • Romety Jack;           |
| • Robin Tom Kapapa; | • Roy Iati;              |
| • Peter Kaulei;     | • Daniel Gideon Kaio;    |
| • Katerine Tawah;   | • Peter Sack;            |
| • Jacob Putal;      | • Satric Meto;           |
| • Namu Peter;       | • Saby Natonga;          |
| • Tom Jacob;        | • August lake William;   |
| • David Kiel;       | • Nasse Pele; <u>and</u> |
| • Jeffrey Lauha;    | • Andrew Nakat Walu;     |
| • Ellen Wap;        |                          |
17. During his closing address however counsel for the Petitioners did not seek to rely on the evidence of **August William** who testified to blatant criminal activities involving forged electoral cards at **Louni** polling station. Nothing more need be said about that evidence which is not a ground in the petition.
18. In general terms most of the petitioners’ evidence was directed to the remaining 2 issues, namely (A) the use of unofficial envelopes and (B) the issuance and counting of proxy votes.
- (A) USE OF UNOFFICIAL ENVELOPES**
19. The evidence in support of this ground is based primarily on the radio interview given by the Tanna Constituency Polling Coordinator **David Tovovour** to



FM104 and **Robin Tom Kapapa** who was an unsuccessful candidate in the Tanna Constituency.

20. In brief, the petitioners' evidence is that there was a shortage of official brown envelopes at the **Isangel Polling Station** on polling day and voters were directed to use yellow envelopes from a previous general election and white envelopes bought from retail shops in the area. In all a total of **170** white envelopes were used.
21. In support of this ground the Petitioners rely on **section 37** of the **Representation of the People Act** [CAP. 146] ("*the Act*") and **Schedule 5 Rule 17**.
22. **Section 37** provides:

*"The method of voting procedures to be observed during polls, and the manner of counting votes and declaring election of candidates, shall be in accordance with the provisions of Schedule 5."*

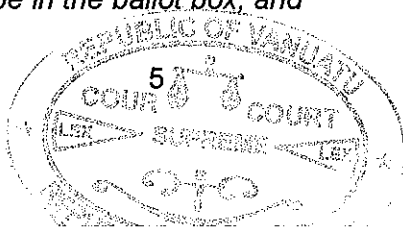
23. **Schedule 5** entitled: "*Election of Candidates Rules*" sets out the rules dealing with the several matters set out in Section 37. It deals specifically with the creation and equipping of polling stations; voting at a polling station; the counting of votes and recounts; and the declaration of candidates elected.
24. For present purposes it is only necessary to set out **Rules 4 (1); 10 (1) (d); 10 (2)** and **17**. They read as follows:

**"Rule 4 Equipment at Polling Stations**

- (1) *Every registration officer shall be provided by the Principal Electoral Officer with such number of ... envelopes bearing official markings as shall be necessary for them to supply to returning officer for the purpose of carrying out their duties."*

**Rule 10 Voting**

- (1) *Every vote desiring to vote shall present himself at his allotted polling station. The returning officer or polling clerk shall satisfy himself that –*
- (a) ...;
  - (b) ...;
  - (c) ...; and
  - (d) *Deliver to the voter one ballot paper for each candidate and one envelope;*
- (2) *Immediately on receipt of the ballot papers and envelope a voter shall –*
- (a) *Enter a polling booth;*
  - (b) *Record his vote by placing the ballot paper bearing the name and symbol of his chosen candidate in the envelope;*
  - (c) *Leave all other ballot papers in the booth;*
  - (d) *Present himself to the presiding officer or polling clerk who ... shall verify that the voter tenders one envelope;*
  - (e) *Place the envelope in the ballot box; and*



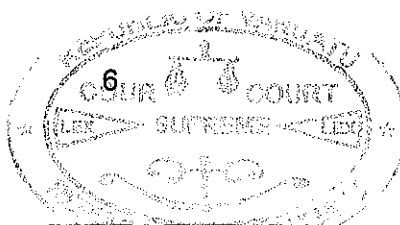
- (f) Leave the polling station without undue delay after the completion of the formalities referred to in Rule 11.

**Rule 17 Void ballot papers**

Any ballot paper which –

- (a) ... (not relevant);  
(b) Is not in an envelope or is in a non-official envelope; or  
(c) ... (not relevant);  
Shall be void and shall not be counted.”

25. A plain reading of the above Rules highlights the absence of any specific requirements, dimensions or colouration for the “envelope” which is to be used to hold a voter’s ballot paper. I also agree with defence counsel’s submission that the purpose and function of the envelope is to facilitate and ensure the secrecy of the ballot and the integrity of the counting process.
26. Needless to say it is the ballot paper or vote contained within the envelope that matters and is counted not the envelope that it is contained within. Indeed **Rule 16 (2)** appears to recognise that on occasion there may be more or less “envelopes” found in a ballot box and such “discrepancy” is to be reported by the returning officer in his official report on polling.
27. In this regard **Section 51** relevantly provides that:
- “Every election officer ... shall maintain and aid in maintaining the secrecy of voting ...”*
28. The section imposes a positive duty on election officials which, in my view, can extend to the provision of substitute envelopes where there is a shortage of official envelopes. Voters should not be denied their constitutional right by the mere absence of a receptacle to hold their votes.
29. Given the draconian consequences of not enclosing a ballot paper (vote) in an envelope (“... shall be void and shall not be counted”), I have no hesitation in construing the above Rules relating to the provision and use of an envelope, liberally so as to maintain the secrecy of the ballot and ensure that a voter’s “right to vote” is not denied.
30. I turn next to consider the evidence and I accept that it is common ground that 3 different coloured envelopes were used at **Isangel Polling Station** to hold the ballot papers of the voters.
31. In this regard **Robin Tom Kapapa** deposed that his discovery inspection of the **Isangel Polling Station** ballot papers that were counted as valid votes and were contained in non-official white and yellow envelopes numbered **170** in total. This evidence is unchallenged and I accept it, but, without knowing the candidate for whom those votes were cast and counted, it cannot be said that the counted votes “affected the result of the election”.



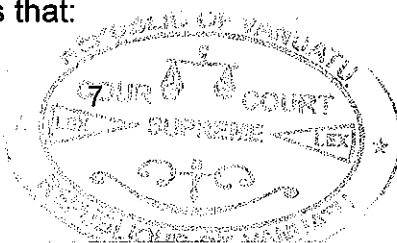
32. The respondent's case on this issue based principally on the evidence of **Martin Tete** is to the effect that when the shortage of envelopes arose at Isangel Polling Station, the Principal Electoral Officer was informed and, after consultations with the Presiding Officer and the Registration Officer in Tanna, an urgent decision was taken to use readily available alternative substitute envelopes.
33. Although not quite amounting to an "act of God" as in the case of **Boe v. Principal Electoral Officer** [2013] VUSC 87, I accept State Counsel's submission that what occurred at **Isangel Polling Station** on polling day was "an unusual circumstance" and an emergency which needed to be quickly and practically resolved.
34. Significantly, workshop training materials to assist polling teams carryout their duties as the officials stationed 'on the ground' so-to-speak, includes an instruction that they:

*"Must...be firm and prepared to make rapid decisions when problems arise as in most circumstances there will be no opportunity to refer to the registration officer or the Electoral Officer."*

35. Respondent counsels uniformly submit that in the absence of any specific statutory requirement as to the dimensions, distinguishing markings or colouration of an "official" envelope, once the decision was made to use other coloured envelopes by the appropriate Election officials, such envelopes became officially sanctioned envelopes and could not be described as "non-official" envelopes for the purpose of **Rule 17 (b)** so as to render their contents void votes.
36. I agree with the respondents' submissions and accordingly dismiss this first ground of objection as unproven. In my view the phrase "in accordance with" in **section 37** means substantially in accordance with, such that, the use of white and yellow coloured envelopes is a substantial compliance with the requirement to provide and use an "envelope" to hold a voter's ballot paper.
37. Having said that there should be no excuse in my view, for polling stations to run out of or be short of envelopes which are meant to be supplied by the Principal Electoral Officer. I say this because the total number of voters registered in a constituency would be known well in advance of polling day as well as the number of polling stations established for each constituency [see: **Section 31; Rules 11 (1)** and annexures "MT10" to the sworn statement of Martin Tete].

**(B) IRREGULARITIES IN THE ISSUANCE AND COUNTING OF PROXY VOTES**

38. In this regard the Petitioners allegation is that there were irregularities in the issuance of proxy votes and double voting by persons who also voted by proxy.
39. **Section 34** relevantly provides that:



*"A person may vote by proxy in the circumstances and in the manner provided for in Schedule 4."*

40. Plainly the law allows for a genuine voter who is outside his constituency to vote by proxy in certain clearly defined circumstances and provided that acceptable evidence is provided to justify his absence from his constituency. Having said that, the petitioners' evidence left me with an uneasy feeling that a large number of applicants for proxy votes merely signed blank application forms without any real understanding of what was entailed or being sought.
41. In addition, in the absence of an accurate and reliable birth certificate or record the names on several of the proxy application forms were quite unreliable even where a subsequent audit or reconciliation was attempted. Although enclosing the applicant's electoral card might assist in identifying the applicant's personal details, it is not uncommon for persons to be genuinely known by several different names arranged in different ways.
42. The oral evidence of **Andrew Nakat Walu** speaks volumes in this regard and is typical when he said in answer to the Court:

*"We can drop and adopt our family name in Tanna and use the 3 names I have in combination 'Andrew', 'Nakat' and 'Walu'".*

43. The court also heard evidence of voters who were born and registered to vote in Tanna who had subsequently moved and settled in Port Vila where they were again registered to vote in an Efate constituency and were given electoral cards. I accept as pointed out by Martin Tete that the registration system relies on a person's "*honesty*" to avoid such irregular duplications.
44. **Schedule 4** entitled: "Rules For Voting By Proxy" sets out seven (7) rules dealing with how applications for proxy are to be made and the manner in which the proxy vote is to be exercised or cast. The Schedule also prescribes an Application Form and a Proxy Form which is to be produced at the time of voting. **Rule 7 (3)** states that:

*"When a person votes as a proxy he must produce his own electoral card, the proxy form authorising him to vote as proxy and the electoral card of the person for whom he is voting".*

45. A reading of the Rules clearly shows that the lodgement, assessment, approval of a proxy and the issuance of a Proxy Form all occur within the confines of an electoral office. Furthermore the prescribed application Form requires the





provision of documentary evidence justifying the issuance of the proxy Form as well as the applicant's electoral card. [See: **Rules 1 (4) to (8)**].

46. On receipt of the application and supporting documentary evidence the registration officer, if he approves the application, is required to notify the applicant and nominated proxy by delivering to the nominated proxy one half of a completed Proxy Form and the applicant's electoral card. This may be done by informing the proxy that the Proxy Form and electoral card "are available for collection at the polling station on polling day". [See: **Rule 2**].
47. In my view the processing and approval of proxy applications and the issuance of Proxy Forms is supported by a 'presumption of regularity' which applies to all official actions and records. The presumption may however be displaced by proper proof to the contrary by the person seeking to displace the presumption namely the petitioners in this petition. In my view the petitioners bear a heavy burden to discharge in seeking to upset the proxy votes cast and counted in the Tanna Constituency.
48. As was said of a not dissimilar complaint by Spear J. in **Kalsakau v. Principal Electoral Officer and Others** [2013] VUSC 99: (at paras. 66 to 69):

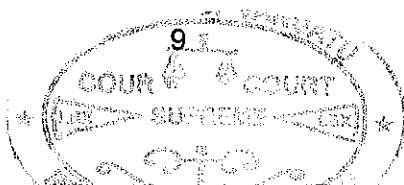
*"66. .... Essentially, the complaint is that a number of people who would be eligible to be registered to vote in Port Vila were allowed a proxy vote to have their vote cast on Tanna.*

*67. The evidence in this respect certainly establishes that 181 applications for proxy voting were allowed for those from Tanna who were in or around Port Vila at the time of the elections. However, the individual circumstances of each of those persons would have had to be examined in order to determine whether they should have been registered on Tanna or whether they were required to have been registered in Port Vila.*

*68. The qualification for registration turns on the polling district in which the person is residing at the time of the preparation of the electoral list – s. 9 (1).*

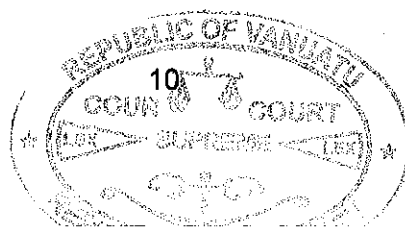
*69. It is simply inadequate to refer to the number of proxy votes allowed for people in Port Vila at the time of the election and who remain registered on Tanna as being in non-compliance with the Act. That might well be the case in some or more respects but there is simply insufficient evidence for the Court to find that that is so and furthermore to assess the degree of non-compliance. A voter might, for example, be a student who is studying here in Port Vila but still legitimately claim to be residing on Tanna."*

49. The petitioner's evidence concerning proxies is mainly based on the sworn statements of **Tom Jacob, Peter Kaulei** and **Robin Tom Kapapa**.
50. **Tom Jacob** deposed to assisting "ova 200" persons living in Port Vila to obtain proxy votes in Tanna. This was confirmed by **Peter Kaulei** who was also an observer at **Kings Cross Polling Station** on White Sands, East Tanna during



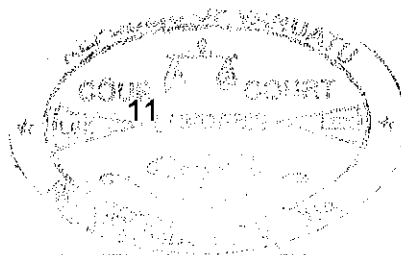
polling day. Both witnesses included the same table listing 120 persons who allegedly voted as proxies for other named person(s) in the list. The table included a list of 20 names of proxy voters at **Waisisi Polling Station**. No primary documents were included nor was any attempt made to reconcile their list with official election records of the Tanna Constituency.

51. Their evidence of helping people to get proxy votes for Tanna, which is not really challenged left me with the distinctly unfavourable impression that the processing and approval of proxy applications during the 2012 General Election was done en masse in an unseemly haste with inadequate scrutiny or verification of necessary details.
52. Having said that as with the complaint about "*envelopes*", this complaint about irregular proxy applications, if accepted, would constitute a non-compliance with the provisions of the Act but much more is needed to establish that "*such non-compliance affected the result of the election*" [**Section 61 (1) (b)**].
53. To establish this latter essential ingredient which forms part of what the petitioners must prove to the Court's satisfaction, evidence would need to be produced to establish:
  - (1) That the disputed proxy applications were non-compliant with the Act and should not have been approved by the issuance of Proxy Forms; and
  - (2) That the improperly issued Proxy Forms were acted upon by the named proxy casting a proxy vote; and
  - (3) The total number of disputed proxy votes cast and counted in a constituency was of such a magnitude and number that it would be "*within the bounds of possibility that other candidates might have been elected had the disputed proxy votes not been counted*" [per Dawson J. in **Sope v. Principal Electoral Officer & Others** (2009) VUSC 62 at para 47].
54. Plainly general assertions and long lists of names or hearsay assumptions will not suffice to establish the above elements but, equally in my view, there would be no need to establish for which candidate, the disputed proxy votes were cast.
55. Likewise to establish "*double-voting*" by proxy applicants the petitioners would, in addition to the above elements, have to produce clear evidence that the proxy applicant also voted in another constituency.
56. The evidence of **Robin Tom Kapapa** on the proxy issue is contained in a bound sworn statement which, with annexures, is 263 pages long. His evidence is based on his personal examination of the Tanna Constituency election



records kept at the Electoral Office. In summary his sworn statement is to the effect that he discovered a large number of "*incomplete proxy (application) forms*" during his inspection which he had typed up and attached to his sworn statement. As to *why?* he claims the forms are "*incomplete*" is not clearly expressed in the sworn statement as it should have been.

57. As best as I can understand the allegation of incompleteness, Mr. Kapapa states:
- (a) Some application forms did not have supporting written evidence attached;
  - (b) Some written evidence did not have completed application forms attached;
  - (c) Some application and proxy forms contained names of villages and nakamals as polling stations; fictitious names of polling stations; and in one instance, **Launasunan Polling Station**, was a non-existent polling station;
58. **Martin Tete** the principal witness for the Principal Electoral Officer provided a sworn statement in response with 3 large lever-arch folders of attachments. In his sworn statement he describes the normal procedure adopted in dealing with proxy applications and he specifically answered several important paragraphs in **Mr. Kapapa's** sworn statement namely **paras. 4, 7, 10**. He also answered the sworn statements of **Tom Jacob** and **Peter Kaulei** (see: paras 45 to 48).
59. In my view the applicant for a proxy even if he did not personally complete the application form, is primarily responsible for its contents and for providing the supporting written materials [*"... shall accompany his application with a certificate of ... (an identified person)*] required by **Rules 1 (3) to (9)** of the "Rules for Voting by Proxy". This duty on the applicant is further re-inforced by the clear warning on the PROXY FORM that "*any fraudulent statement made to obtain a form of proxy ... is punishable by a fine not exceeding VT20,000 or imprisonment not exceeding 12 months or both*" [see also: Section 40(1)(b)].
60. Having carefully considered the competing sworn statements and mindful of the witnesses cross-examination and the heavy burden cast upon the petitioners, I can confidently say that I am not satisfied from the petitioners' evidence that there was widespread non-compliance in the approval and issuance of proxy forms for the Tanna Constituency during the lead up to the General Elections on 30 October 2012.
61. Even if the court was satisfied that there had been widespread non-compliance with the Act in the issuance of proxy Forms, I find and accept the submission of State counsel that:



*"most of the proxies cited and relied upon by the petitioners were in relation to polling stations at Waisisi and Kingcross polling stations. The official results show that the last successful candidate (Joe Natuman) only obtained 7 votes at Kingcross and 0 votes at Waisisi polling station. In those circumstances it would not be possible for the petitioners to suggest that the proxy (votes) could have affected the result."*

62. The petitioners also complain of "double-voting" by proxy applicants which is in clear breach of **Section 33 (2)** which provides:

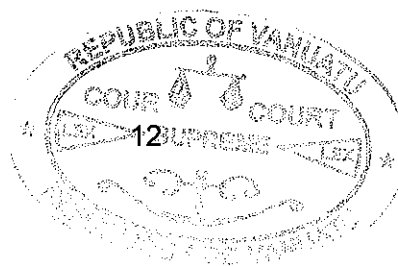
*"Subject to section 34 (the proxy vote) no person shall have more than 1 vote nor vote for more than one candidate".*

63. In order to prove this complaint the petitioners must establish to the Court's satisfaction on a balance of probabilities several cumulative elements (in this case):

- (1) The proxy maker is registered to vote in the Port Vila or Efate Constituency as well as in the Tanna Constituency;
- (2) The proxy maker obtained a proxy vote for a named representative to cast his proxy vote in the Tanna Constituency;
- (3) The proxy maker did cast his vote in the Port Vila or Efate Constituency;
- (4) The proxy maker's named representative cast the proxy vote in the Tanna Constituency;
- (5) That the proxy maker's vote and proxy vote were both counted in the Port Vila/Efate Constituency and in the Tanna Constituency; and
- (6) The cumulative result of the instances of "double voting" affected the result of the election in the Tanna Constituency.

64. In my view the petitioners' evidence falls well short of establishing all of the above elements. Needless to say the elements are not established by providing a list of approved proxy applications and a list of proxy votes cast in the Tanna Constituency without calling each and every one of the applicants and their nominated proxies or at the very least clearly cross-matching the entries on the lists provided with official election records and primary documents.


65. Given the above "elements" and the failure of the petitioners to establish all of them to the Court's satisfaction, I have no hesitation in saying that allegations of "double voting" by proxy applicants, although easily made are extraordinarily difficult to prove.



66. For the foregoing reasons this petition must be and is hereby dismissed as unproven.
67. Having said that it is a matter of concern that persons who are otherwise registered to vote in the Tanna Constituency appear to have little or no difficulty at all in becoming registered in the Port Vila/Efate Constituency without having to return their Tanna Constituency electoral card or having their names removed from the Tanna Constituency lists.
68. In my view unless the rules with regard to the eligibility and registration of voters is tightened up and properly policed, the real problem is not so much: "*double voting*" but rather "*double registration*". If voters were prevented from being registered in two (2) constituencies at the same time, the incidents of so-called "*double voting*" and abuse of the proxy voting system would be considerably reduced and even eliminated.
69. The Respondents are awarded costs to be taxed if not agreed.

**DATED at Port Vila, this 23<sup>rd</sup> day of May, 2014.**

**BY THE COURT**

  
**D. V. FATIAKI**  
Judge.

