

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

Judicial Review No. 17 of 2015

BETWEEN : LUGANVILLE MUNICIPAL COUNCIL
First Claimant

AND: VUTI FREDDY, TREVOR MOLIVA, ELIZABETH TASSO,
MAKE KENNETH, PEDRO ANDREW, PETER PATTY,
MORRIS EMBOI, JAMES ULAS, JOHNNY WILLIE,
MORSEN JOEL, PEDRO LAPISAI, AND FRED JOSPEH
Second Claimant

AND: PRINCIPAL ELECTORAL OFFICER
First Defendant

AND: ELECTORAL COMMISSION
Second Defendant

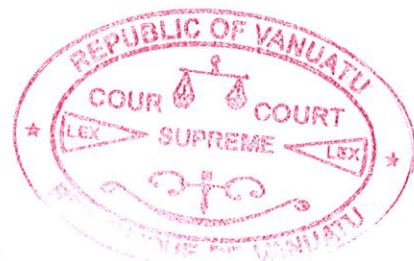
THE MINISTER OF INTERNAL AFFAIRS
Third Defendant

Coram: Justice Aru

Counsel: Mr. S. Stephens for the 1st and 2nd Claimants
Mr. F. Gilu for the 1st, 2nd and 3rd Defendants

RULING

1. The second claimants claim to be members of the Luganville Municipal Council and filed their claim for judicial review to challenge the decision of the Electoral Commission made on 17 April 2015 setting the Polling date for Luganville Municipal elections to take place on 21 July 2015.



2. The orders sought were:-

a) an order quashing the resolution of the Electoral Commission dated 17 April 2015;

b) an injunction to restrain the Respondents from appointing a Commissioner to run the affairs of the Luganville Municipal Council from 27 May 2015; and

c) an injunction to restrain the Respondents from conducting an election on 21 July 2015 until these proceedings are resolved ;

3. The second relief was abandoned given that I had earlier on 4 June 2015 dismissed the claimants application for an injunction on the same terms.

4. At the first conference after a defence is filed, Rule 17.8 of the Civil Procedure Rules requires me to be satisfied of the matters in sub rule (3) which states:-

"(3) The judge will not hear the claim unless he or she is satisfied that:-

(a) the claimant has an arguable case; and

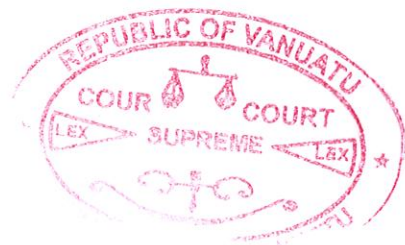
(b) the claimant is directly affected by the enactment or decision; and

(c) there has been no undue delay in making the claim; and

(d) there is no other remedy that resolves the matter fully and directly.

5. If I am not satisfied then I should decline to hear the matter and strike it out as provided by Sub rule (5) which states:-

"(5) If the judge is not satisfied about the matters in sub rule (3), the judge must decline to hear the claim and strike it out."



6. Section 7 of the Municipalities Act [CAP 126] provides for the term of office of councillors and subsection (1) states:-

"7. Terms of office of councillors and elections
(1) Councillors shall be elected for a period of 4 years and together with any councillor elected at a by-election shall retire together at the end of such period.

.....

7. Regulation 27 of the Municipal Council Election Regulations provides for the term of office of mayors and deputy mayors and sub regulation (1) states:-

"27. Term of office of mayors and deputy mayors
(1) Subject to regulation 25, all mayors and deputy mayors shall hold office until the end of 2 years from the date of their election or until the dissolution of the council whichever occurs earlier."

.....

8. The claimants were elected on 30 May 2011 as councillors. Pursuant section 7 of the Municipalities Act their term of office as councillors lapsed on 30 May 2015.

9. The claimants accept that a council once elected has a term of 4 years and it elects its Mayor and deputy Mayor for a term of two years. However, they argue that in their case their term of office did not lapse on 30 May 2015 as the Court of Appeal extended their term of office beyond the 4 years by recognizing that the two year term of the new mayor and new deputy mayor who were elected on 28 November 2013 will lapse on 28 November 2015. That will mean an extension of some 6 months.

10. The claimants rely on what the Court of Appeal said at paragraph 23 of its judgment in *Luganville Municipal Council v. Emboi* [2013] VUCA 38. It said:-

"The council will decide who their leadership will be for the next two year period or how long it will be because of the time which has elapsed since June."



11. The Claimants have misconstrued the judgment as it was clearly recognized at paragraph 2 of the said judgment that the life of a municipal council is 4 years.
12. The argument is also contrary to the clear wording of section 7 of the Act and Regulation 27 referred to above and is therefore without basis. One has to be elected a councilor first before he could be considered for election as a mayor therefore a mayor's term in office cannot exceed the term of a council. I am not satisfied that the claimants have an arguable case.
13. Similarly the claimants are not directly affected by the decision of the Electoral Commission because their term of office as councilors lapsed on 30 May 2015 pursuant to section 7 of the Municipalities Act. They cannot seek the remedy they seek even if there was no undue delay in filing their claim. I therefore make the following orders:-

ORDERS

- i. The claim is hereby struck out;
- ii. The Applicants shall pay the Respondents costs on a standard basis as agreed or to be taxed.

DATED at Port Vila this 22 day of June 2015

BY THE COURT

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D. Aru
Judge

