

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

**Election Petition
Case No. 16/400 SC/ELTP**

BETWEEN: James Bule and Richard Mera

Petitioners

AND: Jay Ngwele

First Respondent

Alickson Vira

Second Respondent

Principal Electoral Officer

Third Respondent

Date of Hearing: *1st day of April, 2016 at 10:00 AM*

Before: *Vincent Lunabek – Chief Justice*

In Attendance: *Mr James Tari for Petitioners*

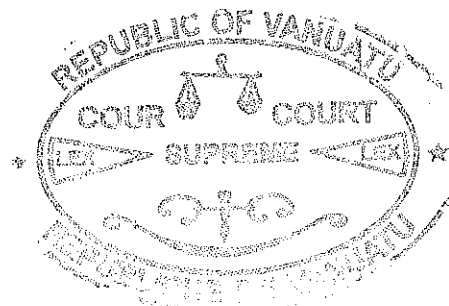
Mr Avock Godden for First Respondent

Mr George Boar for Second Respondent

Mr Aron Sami of SLO for Third Respondent

Reasons for striking out Petition

The Petitioner filed a joint election petition on 19 February 2016 against the elections of the First and Second Respondents as members of Parliament. The Petitioners were both candidates at the elections of 22 January 2016 in the Constituency of Ambae. When the Petition was filed on 19 February 2016, there was no sworn statement filed from any of the two Petitioners setting out details of the evidence each Petitioner relies on and there was no any other sworn statements filed to support the Petition.



The Petition was listed before the Court for a First Hearing on 8 March 2016.

On 8 March 2016, at the request of the Petitioner's Counsel, the Court issued directions for the service of the Petition on the Second Respondent and sworn statements to be filed.

On 8 March 2016, the First Respondent filed a response to the Petition and an application to strike out the petition.

The First Hearing of the Petition was adjourned to 1 April 2016 at 10.00am. On 1 April 2016, both Counsel agree for the Court to deal with the First Respondent's application to strike out the Petition filed 8 March 2016. During the discussions with counsel, the Court informs counsel that the Court will consider whether the Petition has a foundation together with the application to strike out the Petition at this hearing.

The Second Respondent through his counsel makes submissions in support of the First Respondent's application to strike out the Petition.

The essence of the submissions to strike out the Petition is that when the Petition was filed on 19 February 2016 against the First and Second Respondents, the Petitioners did not comply with the provisions of the Election Petition Rules and in particular Rules 2.3(2) (a) (b) and 2.5 (1).

Rules 2.3 (1) (a) (b) (c); (2) (a) (b) and 2.5 (1) are the relevant part of the Rules. They provide:

"what a petition must contain.

2.3 (1) *A petition must set out*

- (a) *whether the person was registered to vote, or claims to have been a candidate, at the election; and*
- (b) *the grounds on which the election is disputed; and*
- (c) *the facts on which the petition is based; and*
- (d) *an application for an order about service of the Petition*

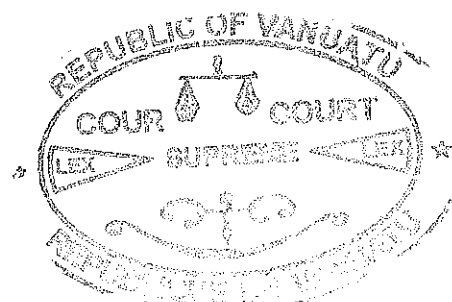
(2) *The Petition must have with it:*

- (a) *a sworn statement by the Petitioner in support of the Petition, setting out details of the evidence the Petitioner relies on; and*
- (b) *any other sworn statements that support the petition."*

"Filing

2.5 (1) *A petition is filed by lodging 4 copies of the Petition and sworn statements with the Court"*

It is submitted on behalf of the Petitioners that the Petitioners comply with Rules 2.3 (1) (a) (b) (c) by setting out in the Petition that they have been candidates at the elections of 22 January 2016; that they set out the grounds of the allegations they made against the First and the Second Respondents in the petition and they also set out the facts on which the Petition is based. They



say it is sufficient despite the fact that they did not comply with Rules 2.3 (2) (a) (b) and 2.5 (1) of the Election Petition Rules when they filed the Petition on 19 February 2016.

The Court accepts that the Petitioners filed their (joint) petition on 19 February 2016 and that on this date, none of the Petitioners filed a sworn statement in support of the Petition, setting out details of the evidence each relies on and there were no any other sworn statements filed to support the Petition pursuant to Rules 2.3 (2) (a) (b) of the Rules. The sworn statements filed in March 2016 cannot cure the breaches of the Election Petition Rules.

To my mind, the Petition filed by the Petitioners on 19 February 2016 is incomplete and as such it is invalid as filed contrary to Rules 2.3 (2) (a) (b) and 2.5 (1) of the Election Petition Rules.

[see *Leinavao Tasso –v- Ioan Simon Omawa*, Election case No.01 of 2008].


The Election Petition must be struck out. The Court makes the following orders:

ORDERS

1. The Election Petition case No.16/400 is struck out.
2. The First and Second Respondents are entitled to costs against the Petitioners
3. The costs are assessed as follow:
 - 80,000 Vatu for the First Respondent
 - 10,000 Vatu for the Second Respondent
 - 10,000 Vatu for the Third Respondent
4. Such costs shall be paid by the Petitioners respectively to the First, Second and Third Respondents by 29 April 2016.

DATED at Port Vila this 1st day of April, 2016.

BY THE COURT



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Vincent Lunabek
Chief Justice

