

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

**Election Petition
Case No. 20/898 SC/EP**

BETWEEN: Jacob Bani

Petitioner

AND: Lulu Sakias

First Respondent

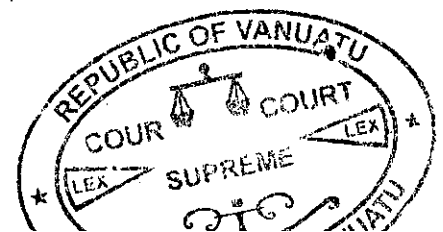
AND: Electoral Service Commission

Second Respondent

***Date of Hearing and
Decision : 19th May 2020***
Issued Date: 20th May 2020
Before: Justice Oliver.A.Saksak
In Attendance: Mr Lent Tevi for the Second Respondent
Mr Daniel Yawha for the First Respondent


DECISION

1. The application by the Second Respondent to have the petition of the petitioner struck out is dismissed.
2. The application was supported by the sworn statement of Counsel Mr Loughman. It was highly improper for counsel to have filed a statement in support of the petition. The appropriate deponent of such statement should have been the Principal Electoral Officer or another officer of that office.
3. The ground that the petitioner did not have any evidence disclosing the details of his allegation is untenable. The sworn statement of Vira Hoe Mele is very telling of improper practices at the Vimele Polling Station which is not by law a registered polling station. The law does not provide for a designated polling station therefore it was entirely wrong and improper for polling to be held at Vimele.
4. Mr Yawha for the First Respondent supported the application for strike out. He argued the Electoral Service Commission was the wrong party: that this body is non-existent.
5. Although that argument is correct the Court has a discretion to order that the Principal Electoral Officer be named as the Second Respondent pursuant to Rule 2.9 (1) (d) of the Rules.



6. The real difficulty with the case is that if in the event the petitioner succeeds, and the election of the First Respondent is declared void, there will likely be a bye-election for the whole of Santo Constituency and not just for South Santo. In that regard the case of Livo Mele v Principal Electoral Officer, Electoral Commission and Lulu Sakeas and others was discussed with the possibility that there should be a consolidation for the two cases to be heard together.
7. All counsel agreed to that course being taken and accordingly I order that-
- a) EP 898 of 2020 be consolidated with EP 910 of 2020 and that the two cases be heard together, with Livo Mele as First Petitioner and Jacob Bani as Second Petitioner.
 - b) The respondents be the same respondent as named EP 910/20.
 - c) The respondents in EP 898/20 be required to file and serve their sworn statements by 26 May 2020.
 - d) There be a final conference on 27th May 2020 at 8:30am.

DATED AT Port Vila this 19th day of May 2020
BY THE COURT


OLIVER A. SAKSAK
Judge

