

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

**Constitutional  
Case No. 22/2240 SC/CNST**

**IN THE MATTER OF: Articles 5(1) (d), 21(2), 43, 53(1), 53(2) of the Constitution  
of the Republic of Vanuatu**

**BETWEEN: MARCELLINO BARTHELEMY, MAHE RICK TCHMAKO,  
ULRICH SUMTOH, FRANÇOIS BATICK, GAETAN  
PIKIOUNE, JACK NORRIS, CHRISTOPHER EMELEE,  
FABIANO STEVENS, JOHN STILL TARI, RALPH  
REGENVANU, GILLION WILLIAM, ALFRED MAOH,  
ANDREW NAPUAT, JOHN SALONG, DANNY SILAS,  
JOTHAM NAPAT, MATAI SEREMAIH, IAN WILSON,  
GRACIA CHADDRACK, JOB ANDY, ANATOLE HYMAK,  
ROBIN KAPAPA, NAKOU NATUMAN, EDWARD NALYAL,  
EDMOND JULUN, ZACHEAS LULU, SANICK ASANG**  
Applicants

**AND: PRESIDENT OF THE REPUBLIC OF VANUATU**  
First Respondent

**AND: THE REPUBLIC OF VANUATU**  
Second Respondent

*Date of hearing* 2 September at 9:00AM  
*Date of Judgment:* 9 September at 2.00 PM  
*Before:* Chief Justice Vincent Lunabek  
*In Attendance:* Mr Nalyal E. and Mr Robin T. Kapapa for the Applicants  
Mr Frederick J. Gilu - Solicitor General and Mrs Florence W. Samuel for the Respondents

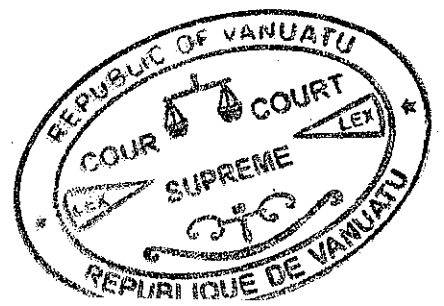
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## **JUDGMENT**

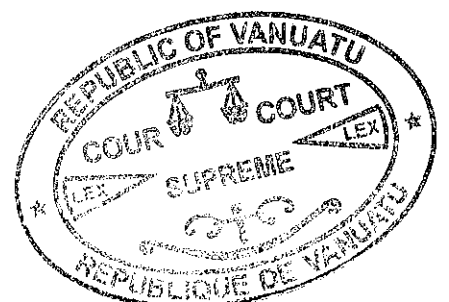
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### **I. Introduction**

1. This was a constitutional application filed against the First and Second Respondents pursuant to Article 53 (1) of the Constitution. It was initially filed by the Applicants on Monday 22<sup>nd</sup> August 2022, but was later amended on 1 September 2022. [As this is a constitutional application, I treat it as an application made against the Republic of Vanuatu as the sole Respondent pursuant to Rule 2.9 of the Constitutional Rules 2003].



2. The Applicants were 27 former Members of Parliament. They alleged that the application challenged the constitutional validity of the advice of the Council of Ministers (COM) to the President of the Republic of Vanuatu dated 14 August 2022 to dissolve Parliament while a Motion of no confidence in the Prime Minister of Vanuatu, Bob Loughman, signed by the majority of 27 Members of Parliament, was already pending before Parliament for debate and vote on Friday 19 August 2022. The Prime Minister and the COM knew or had fore knowledge that the motion was pending before Parliament for debate and vote. But, yet, on 14 August 2022, the COM met and resolved to advise the President of the Republic to exercise his constitutional powers to dissolve Parliament under Article 28(3) of the Constitution; that advice was conveyed to the President of the Republic on the same date by the Prime Minister Bob Loughman and the Deputy Prime Minister Ismael Kalsakau.
3. The President exercised his powers under Article 28(3) of the Constitution and dissolved Parliament on Thursday 18 August 2022 in the afternoon.
4. The Applicants alleged that they did not have an opportunity to debate and vote on the said motion in Parliament. They claimed that rights that they have pursuant to three Articles of the Constitution, namely, Articles 21(2), 43(2) and 66(1) were breached in relation to each of them (Applicants) in the following ways: -
5. Firstly, they claimed that their rights under Article 21(2) of the Constitution to call for an extraordinary session of Parliament, amongst other matters, to debate and vote on a motion against the Prime Minister, were breached as a result of the advice of the COM dated 14 August 2022 to the President of the Republic to dissolve Parliament, when the business of Parliament for which they called Parliament to sit in an extraordinary session was unfinished.
6. Secondly, they claimed that their rights under Article 43 (2) were breached as a result of the COM's advice to the President to dissolve Parliament when the COM knew or had fore knowledge that a motion of no confidence in the Prime Minister Bob Loughman, signed by the majority of the Members of Parliament, was pending before Parliament for debate and vote by them in Parliament on Thursday 19 August 2022. The President, acting on that advice, dissolved Parliament on 18 August 2022. They said that in such circumstances, the COM's advice of 14 August 2022 to the President was invalid and unconstitutional.



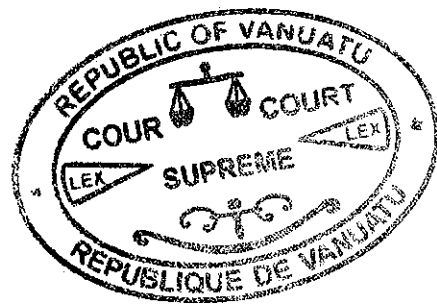
7. Thirdly, they claimed that the advice of the COM to the President of the Republic dated 14 August 2022 to dissolve Parliament placed the Prime Minister Bob Loughman and the COM in a position in which the Prime Minister and COM have or could have a conflict of interests in breach of Article 66 (1) of the Constitution in relation to them (Applicants).
8. They, therefore, alleged that, as a consequence of the unlawfulness of the COM's advice, they claimed that the dissolution of Parliament by the President on 18 August 2022 was also unlawful and unconstitutional.

**ii. Relief sought in the application**

9. The Applicants applied for the following declarations and orders:
  - (a) A declaration that since the 8 August 2022 the COM had no lawful capacity to request the dissolution of Parliament;
  - (b) A declaration that the purported dissolution of Parliament by the President on 18 August 2022 was unconstitutional, null and void and of no effect;
  - (c) An order that the instrument of dissolution dated 18 August 2022 be quashed;
  - (d) A declaration that the Constitutional rights of the Applicants as Members of Parliament and as citizens have been infringed;
  - (e) An order that Parliament of Vanuatu shall continue to meet in its First Extraordinary Session as summoned by notice dated 8 August 2022;
  - (f) Any Orders, this Court considers just;
  - (g) An Order that the First and Second Respondents pay the Applicants' costs of this application.

**iii. The sworn statements filed in support of the application**

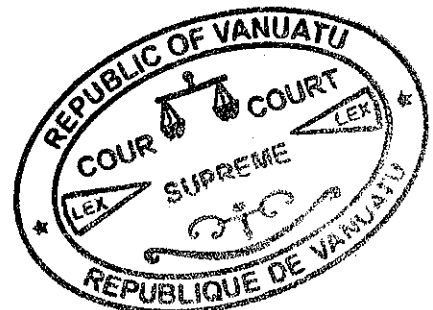
10. The Applicants filed and served 18 sworn statements in support of the application. The statements were filed on the following dates by following deponents:
  - (i) On 22 August 2022 by:
    - Barthelemy Marcellino



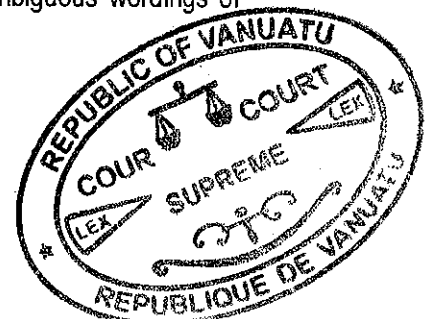
- Emelee Christophe
  - Jotham Napat
  - Mahe Rich Tchmako
  - Natuman Nakou
  - Regenvanu Ralph (x2)
- (ii) On 23 August 2022 by:
- Seoule Simeon Davidson
- (iii) On 25 August 2022 by:
- Berry Meltekue
  - Chaddrack Gracia
  - Emelee Christophe
  - Esau Enis
  - Stevens Fabiano
- (iv) On 29 August 2022 by:
- Regenvanu Ralph
- (v) On 31 August 2022 by:
- laus Joe
  - Willie Daniel Kalo (x2)
  - William Wilkins

**IV. The Response to the Application and the sworn statements in support**

12. The Respondents have filed a response to the initial Constitutional Application on 26 August 2022 and a response to the amended application on 02 September 2022. They asserted in the outset that:
- (a) The First Respondent is independent of the Speaker of Parliament. The exercise of powers by the First Respondent under Article 28(3) is independent of the function of the Speaker of Parliament;
- (b) The First Respondent admitted receiving a letter from the Speaker of Parliament dated 12 August 2022, but they said that the exercise of the constitutional powers by the First Respondent under Article 28(3) is independent and not subject to the direction of the Speaker of Parliament;
- (c) The Speaker of Parliament was under no obligation to write to the First Respondent regarding his (Speaker) ruling relating to internal procedures of Parliament;



- (d) The Speaker's action in writing to the First Respondent amounted to interference in the First Respondent's exercise of powers under Article 28(3) of the Constitution and the First Respondent's exercise of powers under Article 28(3) of the Constitution is independent and not subject to the internal proceedings of Parliament or any ruling of the Speaker of Parliament;
- (e) The Prime Minister (PM) did not request the First Respondent to dissolve Parliament but that the COM in their decision dated 14 August 2022 had advised the First Respondent to dissolve Parliament;
- (f) The executive power of the People of the Republic of Vanuatu is vested in the Prime Minister and the COM in the exercise of the executive power of the people, the COM shall be collectively responsible to Parliament;
- (g) At all material time, the COM was competent to meet and make decisions independently of the business of Parliament;
- (h) The fore knowledge by members of the COM, of a pending motion of no confidence (in Parliament) in the Prime Minister is not wrong in law and is not unconstitutional;
- (i) The fore knowledge by members of the COM, of a pending motion of no confidence (in Parliament) in the Prime Minister does not and cannot prevent the COM from exercising the executive power of the people vested in the COM by Article 39(1) of the Constitution;
- (j) At all material time, the COM was competent to meet and make decisions independently of the business of Parliament and that the exercise of executive power of the people by the COM was pursuant to and in line with Article 39(1) of the Constitution;
- (k) The decision to advise the President to dissolve Parliament pursuant to Article 28(3) of the Constitution, is that of the COM and not of the Prime Minister;
- (l) The application of Article 66 of the Constitution is a matter for proceedings other than constitutional application and therefore is irrelevant and inappropriate for the Court to consider in a constitutional application proceeding.
- (m) The respondents will rely on the plain, clear and unambiguous wordings of Article 21(2), 43(2) and 66(1) of the Constitution;

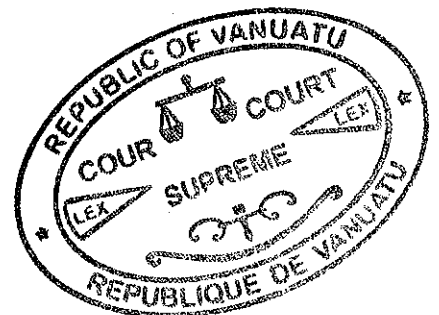


- (n) Article 28(3) of the Constitution empowers the COM to provide advice to the President;
- (o) The exercise of power by the President to dissolve Parliament is one that only he as the President can exercise subject to receiving advice from the COM;
- (p) Article 28(3) empowers the First Respondent a wide discretionary power to dissolve Parliament;
- (q) Any dissolution pursuant to Article 28(3) has the consequential effect of all members of Parliament ceasing to be Members of Parliament and that includes the Prime Minister and Ministers;
- (r) The intent and purpose of Article 28(3) of the Constitution is to allow the process enshrined under Article 4 of the Constitution for the people of the Republic of Vanuatu to democratically express their view in an election of a new Parliament and will rely on the said Articles for their full terms and effect;
- (s) The application is a demonstration of:
  1. A misinterpretation of the relevant Articles of the Constitution;
  2. A misunderstanding of the relevant Articles of the Constitution;
  3. The Applicants' misconstruing of the relevant Articles of the Constitution.
- (t) The Respondents say the application must therefore be dismissed in its entirety with costs.

13. The Respondent filed and served two sworn statements on 31<sup>st</sup> August 2022 respectively from Esther Rory, secretary to COM (Acting) and from Sam Kaiapam, Chief Executive Officer (CEO), Office of the President of the Republic of Vanuatu.

**V. Brief Facts**

- 14. The facts of this case are agreed and not disputed by the parties.
- 15. The brief facts of this case are set out as follows:



- (a) On 08 August 2022, an extraordinary session of Parliament was summoned as requested by the majority of Members of Parliament (MPs) pursuant to Article 21(2) of the Constitution. A motion of no confidence in the prime Minister, a notice of a motion and Agenda was signed in front of the Speaker of Parliament pursuant to Article 43(2) of the Constitution and Rule 15(2) of the Standing orders of Parliament;
- (b) On 09 August 2022, the Speaker ruled that the motion was in order and the office of the Speaker sent to each member the notice of the summons pursuant to Rule 15(6) of the Standing Orders of Parliament;
- (c) On 12 August 2022, the Prime Minister Bob Loughman wrote to the Speaker disputing the validity of the Notice in relation to MP Gracia Chaddrack's signature on the motion as he was suspended by Parliament;
- (d) On 12 August 2022, the Speaker of Parliament wrote directly to the President of the Republic of Vanuatu on the "subject: Motion of no confidence in order for debate by majority of Members of Parliament". That letter was dated 12 August 2022 and attached as Annexure "A" to the sworn statement of Seoule Simeon Davidson, Speaker of Parliament at the relevant time. The relevant part of that letter reads:

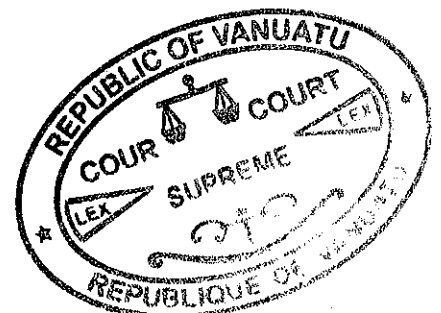
*"His Excellency Nikenike Vurobaravu  
President of the Republic of Vanuatu  
State Office  
Port Vila*

*His Excellency,*

***Subject: Motion of No Confidence in order for debate by Majority of Members of Parliament***

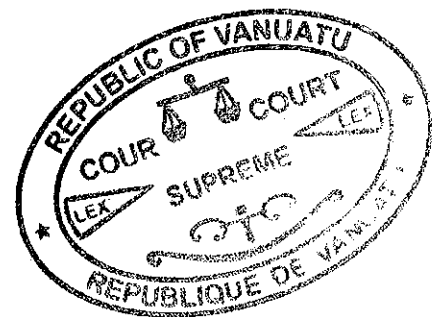
*I, Seoule Simeon, Speaker of Parliament of the Twelfth Legislature hereby affirm that in accordance with Article 43(2) of the Constitution of the Republic of Vanuatu, I wish to confirm that Twenty-Seven (27) Members of Parliament representing an absolute majority of the members of Parliament have signed a Motion of No Confidence in the current Prime Minister, Honourable Bob Loughman Weibur (MP).*

*As such, the Motion of No Confidence is deemed to be in order in accordance with Article 43(2) of the Constitution of the Republic of Vanuatu for debate by the majority of the members of Parliament and does not warrant for the application of Article 28(3) of the Constitution of the Republic of Vanuatu.*



*Therefore, Rule 15(2) of the Standing Order is hereby complied with accordingly.*

- (e) On the same date of 12 August 2022, the then Leader of Opposition, Ralph Regenvanu led a team of Members of Parliament including, Edward Nalyal, Marcellino Barthelemy and Jotham Napat who met the President and served the President with copies of documents including Motion of No Confidence against Prime Minister Bob Loughman, Motion Number 4 of 2022, request for extraordinary session of Parliament and summons to attend Parliament. The same documents were annexed to the 12 August 2022 letter by the Speaker to the President as annexure "SK1" to the sworn statement of Sam Kaiapam;
- (f) On or about 7:00PM on 14 August 2022, Representative of the COM including the Honourable Prime Minister and Deputy Prime Minister met with His Excellency the President to advise him of the COM's decision. Then His Excellency the President was served with a letter enclosing the COM's decision dated the same date together with an annexure titled 2023 Budget Appropriation. A true copy of the letter dated 14 August 2022 attaching the COM's Decision and documents dated also the same date are attached and marked as "SK2" to the sworn statement of Sam Kaiapam;
- (g) By letter dated 14 August 2022, served on the Office of the President, the next day, 15 August 2022, MP Ralph Regenvanu and the Applicants also wrote to the President about COM's decision to dissolve Parliament. A true copy of the letter dated 14 August 2022 is marked and attached as "SK3".
- (h) On 16 August 2022, 27 MPs attended Parliament including the Speaker. Government MPs and ministers did not attend. Parliament was adjourned to Friday 19<sup>th</sup> August 2022 in the morning pursuant to Article 21(4) of the Constitution.





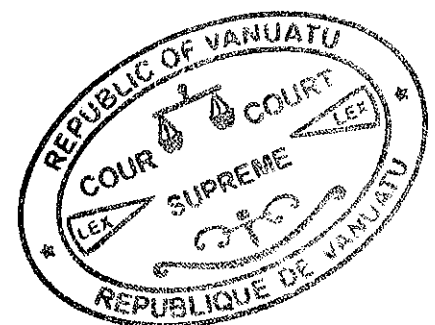
- (i) Sometime between 9:00AM to 11:00AM on 18 August 2022, MP Regenvanu made a phone call to the office of the President to talk to the CEO to arrange a meeting with the President. That meeting did not take place as the Office of the President did not allow any meetings with the President. But if MP Regenvanu wished to speak through phone with the President, then he could do so. Within this same time MP Regenvanu called the mobile phone of the CEO of the President and the CEO passed his phone to His Excellency the President. They were sitting outside the President's official residence veranda and his phone was on speaker and the CEO listened to their conversation. He could hear they were talking about the situation in that the COM came and met with His Excellency and that it advised him to dissolve Parliament. MP Ralph Regenvanu asked "so are you thinking of taking a decision or you watchem situation nomo". His Excellency in response said, "Bae me takem wan decision we bai u jes harem".
- (j) On 18 August 2022, Parliament was dissolved by the President of the Republic of the Vanuatu in the afternoon. The sworn statements of Sam Kaiapam filed on 31 August 2022 and Ralph Regenvanu filed on 23 August 2022 exhibited a copy of the Official Gazette containing the instrument of Dissolution of Parliament by the President on 18 August 2022 and the statement of Ralph Regenvanu exhibited a copy of the statement by His Excellency Nikenike Vurobaravu, President of the Republic of Vanuatu. The copies of these two documents were attached and marked as Annexures "I" and "J" to the said sworn statement of Ralph Regenvanu.

## VI. Issues

16. There are two issues to be determined by this court:
- (1) Was the COM's advice dated 14 August 2022 to the President to dissolve Parliament invalid and unconstitutional?
  - (2) If yes, what is the effect of that invalidity on the President's decision to dissolve Parliament on 18 August 2022?

## VII. Law

17. Below are the relevant Constitutional Provisions:



Article 53 says:

- "(1) Anyone who considers that a provision of the Constitution has been infringed in relation to him may, without prejudice to any other legal remedy available to him, apply to the Supreme Court for redress.
- (2) The Supreme Court has the jurisdiction to determine the matter and to make such order as it considers appropriate to enforce the provisions of the Constitution."

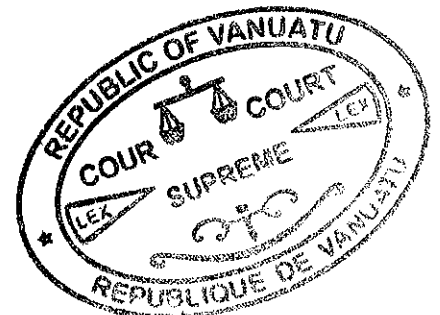
Article 21 provides for procedure of Parliament as follows:

- "(1) Parliament shall meet twice a year in ordinary session.
- (2) **Parliament may meet in extraordinary session at the request of the majority of its members, the Speaker or the Prime Minister.**
- (3) Unless otherwise provided in the Constitution, Parliament shall make its decisions by public vote by a simple majority of the members voting.
- (4) Unless otherwise provided in the Constitution, the quorum shall be two-thirds of the members of Parliament. If there is no such quorum at the first sitting in any session Parliament shall meet 3 days later, and a simple majority of members shall then constitute a quorum.
- (5) Parliament shall make its own rules of procedure."

Article 28 says:

- "(1) Parliament, unless sooner dissolved under paragraph (2) or (3), shall continue for 4 years from the date of its election.
- (2) Parliament may at any time decide, by resolution by the votes of an absolute majority of the members at a special sitting when at least three-fourths of the members are present, to dissolve Parliament. At least 1 week's notice of such a motion shall be given to the Speaker before the debate and the vote on it.
- (3) **The President of the Republic may, on the advice of the Council of Ministers, dissolve Parliament.**
- (4) General elections shall be held not earlier than 30 days and not less than 60 days after any dissolution.
- (5) There shall be no dissolution of Parliament within 12 months of the general elections following a dissolution under sub article (2) or (3)."

Article 39 says:



- (1) *The executive power of the people of the Republic of Vanuatu is vested in the Prime Minister and Council of Ministers and shall be exercised as provided by the Constitution or a law.*

Article 40 says:

- (1) *There shall be a Council of Ministers which shall consist of the Prime Minister and other Ministers.*

Article 43 says:

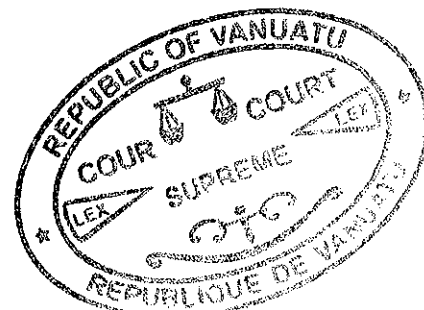
- "(1) **The Council of Ministers shall be collectively responsible to Parliament.**
- (2) **Parliament may pass a motion of no confidence in the Prime Minister. At least 1 week's notice of such a motion shall be given to the Speaker and the motion must be signed by one sixth of the members of Parliament. If it is supported by an absolute majority of the members of Parliament, the Prime Minister and other Ministers shall cease to hold office forthwith but shall continue to exercise their functions until a new Prime Minister is elected."**

Article 66 provides for conduct of leaders as follows:

- "(1) Any person defined as a leader in Article 67 has a duty to conduct himself in such a way, both in his public and private life, so as not to –
- (a) place himself in a position in which he has or could have a conflict of interests or in which the fair exercise of his public or official duties might be compromised;
  - (b) demean his office or position;
  - (c) allow his integrity to be called into question; or
  - (d) endanger or diminish respect for and confidence in the integrity of the Government of the Republic of Vanuatu.
- (2) *In particular, a leader shall not use his office for personal gain or enter into any transaction or engage in any enterprise or activity that might be expected to give rise to doubt in the public mind as to whether he is carrying out or has carried out the duty imposed by subarticle (1).*

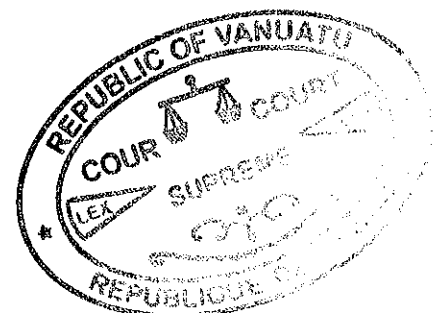
Article 67 defines of a leader as follows:

*"For the purposes of this Chapter, a leader means the President of the Republic, the Prime Minister and other Ministers, Members of Parliament, and such public servants, officers of Government agencies and other officers as may be prescribed by law."*



## VIII. Submissions and Discussion

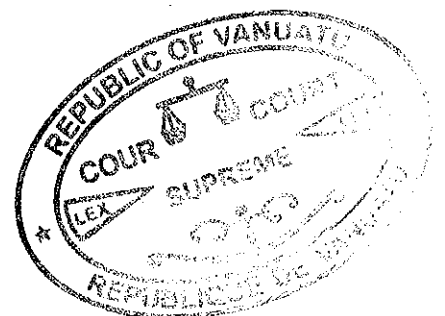
18. Before the court considered the facts presented by each party, submissions of their respective counsels and applied the law to the facts of this case, as was said by this court on these type of cases previously, the court repeated what was said as follow: The Court is not concerned with the political views or policies of any person or party. The Court is not concerned with the desirability or undesirability of any particular course of action and *"the Court considers only whether the rights and responsibilities which are enshrined in the Constitution have been lawfully and properly exercised and whether the law as created by Parliament has been given effect."*
19. The Court will begin with the submissions in respect to breaches of Article 66(1) of the Constitution in respect to Applicants.
20. The Applicants submitted that the COM was not competent to advise the President on 14 August 2022 to dissolve Parliament and that the advice of the COM to the President was a fundamental conflict of interest, contrary to Article 66(1) of the Constitution as Prime Minister Bob Loughman stood to benefit from the dissolution of Parliament because the dissolution stopped the Applicants from moving and voting on the motion of no confidence in the Prime Minister.
21. The Applicants submitted that as a result of the incompetent decision by the COM dated 14 August 2022, it rendered the decision by the President to dissolve Parliament on 18 August 2022 invalid and unconstitutional.
22. In relation to the arguments and submissions that the advice of the COM of 14 August 2022 to the President was a fundamental conflict of interest, the Respondents submitted that, based on the facts, there was no substantive evidence that would support the allegation of conflict of interest on the part of the PM Bob Loughman. The pleadings of the Applicants (paragraphs 14, 15, 16 and 17) suggested that, Mr Bob Loughman, had a conflict of interest and had abused his power in summoning the COM to meet to recommend dissolution of Parliament.



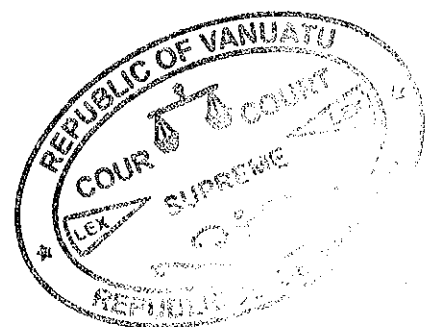
23. The Respondents submitted that, apart from the fact of the insufficient evidence to prove conflict of interest, the proposition of the Applicants was flawed for reasons that a provision of an advice to the President pursuant to Article 28(3) of the Constitution is a collective responsibility and decision of the COM and not that of the Prime Minister per se. The case of *Nari v Republic of Vanuatu* [2015] VUSC 132; *Constitutional Application 05 of 2015*, was in support of this proposition when the Supreme Court said:

*"Article 66(2) prohibits a leader from using his officer for personal gain or from entering into any transaction or engaging in any enterprise or activity that would give rise to doubt in the public mind as to the propriety of his conduct".*

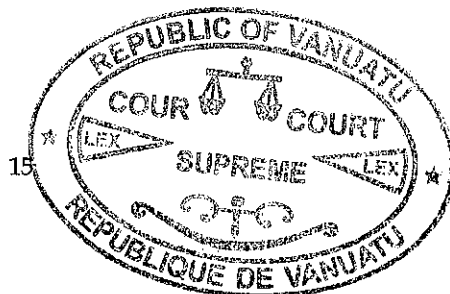
24. The Respondents submitted that the decision made to advise the President pursuant to the requirements of Article 28(3) of the Constitution, was an executive decision of the COM under Article 39(1) of the Constitution.
25. They further submitted that the assertions of the Applicants that there was a conflict of interest on the part of the Prime Minister Bob Loughman, was untenable as such an exercise was a collective decision of the COM. Furthermore, once the advice was given, Prime Minister Bob Loughman has no control in the act of dissolving Parliament that was a discretionary power vested on the President alone.
26. In this case, there was insufficient evidence to prove conflict of interest. Most of the evidence was in relation to conducts of each Member of Parliament or group(s) of Members of Parliament at the relevant time. Some of them were part of the COM. The evidence was directed towards negotiations to maintain a majority government. It was the case for the Applicants as well as the case for the Members of Parliament on the Government side. It was a course of political affairs before Parliament. The intent of Article 28(3) is to revert back to the people of the Republic of Vanuatu so that they can exercise their constitutional right to democratically express their view in an election of a new Parliament. Once Parliament is dissolved, each and all MPs including Prime Minister Loughman and his other Ministers are in the same position to face the people for the election of a new legislature.
27. Here, the Applicants failed to demonstrate breaches in respect to Article 66(1) of the Constitution in respect to them.



28. The Court will now deal with the main gist of the Applicants' case which is that Parliament was in session and pursuant to Article 43(2) of the Constitution, the COM is collectively responsible to Parliament. In the circumstance, the Applicants asserted and submitted that the COM should not have advised the President to dissolve Parliament when there was a motion of no confidence in the Prime Minister pending debate. The Prime Minister and the COM had fore knowledge of such a motion pending before Parliament.
29. They asserted and submitted that their rights to call an extraordinary session of Parliament to meet and debate, amongst other matters, a motion of no confidence against the Prime Minister under Article 21(2) of the Constitution was breached because the business for which Parliament was called to meet in extraordinary session was unfinished as Parliament was dissolved on 18 August 2022 by the President acting on the advice of the COM. They finally asserted and submitted that their rights under Article 43(2) was also breached as a result of the COM's advice to the President to dissolve Parliament where the COM knew or would have known that a motion of no confidence in the Prime Minister Bob Loughman, signed by the majority of the MPs, was pending before Parliament for debate and vote in Parliament on Thursday 19 August 2022.
30. The Respondent submitted that the facts relating to the application of Article 28(3) of the Constitution were that:- the COM on 14 August 2022 had met and resolved to advise the President to dissolve Parliament. Parliament was in session on 16 August 2022 to debate the motion of no confidence in the Prime Minister. That did not occur as the requirements of Article 21(4) of the Constitution was not met. Parliament was adjourned to 19 August 2022 to deliberate on matters before it. On 18 August 2022, the President had exercised his discretionary power under Article 28(3) of the Constitution and dissolved Parliament.
31. Corollary to that argument, they said that, whatever was intended to be invoked pursuant to Article 43(2) of the Constitution, should not and cannot be construed to obstruct or prevent the application of Articles 28(3) and 39(1) of the Constitution. As such, they submitted that the exercise of power under Article 28(3) of the Constitution is independent of Article 43(2) of the Constitution. The Respondents relied on the judgment of the Court of Appeal in *In re the Constitution, President of the Republic of Vanuatu v Korman* [1998] VUCA 3; Civil Appeal Case 08 of 1997.



31. In the present case, despite the attempts undertaken by the Applicants to show the factual singularity of this case in comparison with the previous cases decided by the courts of Vanuatu and in particular, the cases of the *President of the Republic v Korman [1998] VUCA 3* and *Vohor v Abiut [2004] VUCA 1*, the facts of this present case are, in essence, similar to the previous cases and in particular the case of *Vohor v Abiut*. In the case of *Vohor v Abiut [2004]*, a motion of no confidence in the Prime Minister was lodged before Parliament. The Speaker accepted the motion to be in order and therefore to be listed for debate before Parliament, the COM and everyone had fore knowledge of the motion pending before Parliament. The COM advised the President to dissolve Parliament. The President, acting on that advice, dissolved Parliament. This Court and the Court of Appeal upholding the decision of this Court held that the dissolution of Parliament by the President, acting on the advice of the COM was lawful and constitutional. The Court pointed out that the rights under Article 43(2) of the Constitution exists only when Parliament exists. In *Vohor v Abiut [2004] VUCA 1*, the court applied the *ratio decidendi* of the case of *in re President of the Republic of Vanuatu v Korman [1998] VUCA 3*.
32. In the present case, in order for the Applicants to assert and submit that the advice of the COM dated 14 August 2022 was invalid and unconstitutional, they need to factually prove that the advice of the COM was wrong in law and was unconstitutional. If the assertion of the unconstitutionality of the advice is based on the fact that the Applicants disagreed or did not like the advice of the COM to the President to dissolve Parliament, they will fail to meet the requirement of unlawfulness and, thus, unconstitutionality. If the assertion was that the COM knew or had fore knowledge of the motion pending before Parliament for debate, but, went on and advised the President to dissolve Parliament despite their fore knowledge of the pending motion in Parliament. Was this unlawful and, thus, unconstitutional in the circumstance? In *Vohor v Abiut [2004] VUCA*, the court answered to the effect that the dissolution of Parliament, based on the advice of the COM, was lawful and constitutional. The facts of the current case did show that the COM had fore knowledge of the motion pending before Parliament for debate, however, there was no evidence that the Council of Ministers' fore knowledge of the motion pending before Parliament for debate, rendered the advice unlawful and unconstitutional.
33. In any event, the President, acting on the advice of the COM dated 14 August 2022, dissolved Parliament on 18 August 2022. The existence of Parliament came to an end on 18 August 2022. The Applicants filed their application to the Supreme Court on 22 August 2022 after the dissolution of Parliament claiming rights under Article 43(2) of the Constitution that belong only to Members of Parliament when Parliament was still in existence. This is no longer the case here.

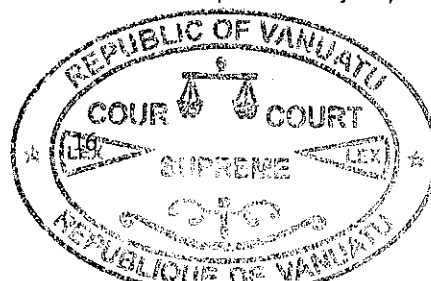


34. In the present case, the Court agreed and accepted the submissions of the Respondents that the exercise of rights by the COM under Article 28(3) of the Constitution to advise the President to dissolve Parliament, was made in accordance with the Constitution. The claim of the Applicants that their rights under Article 21(2) of the Constitution to call an extraordinary session of Parliament to debate a motion of no confidence in the Prime Minister, was infringed, was misconceived because that right has been exercised by 27 MPs in the present case as the facts illustrated this in the present case. A clear case of breach of this right under Article 21(2) was provided and illustrated in the case of *in re Attorney-General v Jimmy* [1996] VUCA 1; Civil Appeal Case 07 of 1996 (16 September 1996). The judgment of the Court of Appeal illustrated the breach when the Court said:

*"In our view the only tenable construction of Article 21(2) is that a majority of members can require that Parliament be summoned to consider business in Extraordinary Session. Unless that construction is adopted there would be no purpose in the Constitution providing for extraordinary sessions. It follows that if the Respondents' request was within the parameters of Article 21(2), the Speaker's rejection of that request was a breach of the Respondents' right under that Article to have Parliament summoned."*

35. It has to be noted that it was never the intention that Article 28(3) of the Constitution would succumb to the domain of the proceedings of the legislature. What the then Speaker did in his letter of 12 August 2022 to the President of the Republic was beyond the constitutional responsibility of a Speaker of Parliament.
36. The judgment of the Court of Appeal in *re the President of the Republic of Vanuatu v Korman* [1998] VUCA 3 supports the case of the Respondents. In this case, the Court agreed and relied on it, where the Court said:

We do not see a sharp conflict between the provisions of Article 43 and the provisions of Article 28 of the Constitution which played such a large part in the Supreme Court hearing and decision. In our judgment a course of action which had the effect of denying Members of Parliament their right "to express an unfavourable opinion in the Government leadership" cannot be elevated to a priority over the right of the Council of Ministers to advise the President that Parliament should be dissolved and the constitutional right of a President (having received such advice) to exercise the responsibility vested in him under the Constitution. We are of the view that the right of the people of Vanuatu to democratically express their view in the election of a new Parliament must be accorded the priority. Article 43 is not one of those Articles which is specifically covered by Article 5. The right which Members of Parliament have under Article 43, is a right which exists only if Parliament exists. It is to allow the tail to wag the dog to suggest that the rights of the Members of Parliament ought to be accorded priority over the rights of the people to elect a new Government when the President, having exercised the provisions of the Constitution, has determined that Parliament should be dissolved (underline my emphasis).

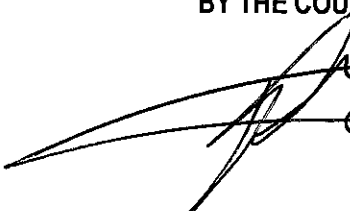


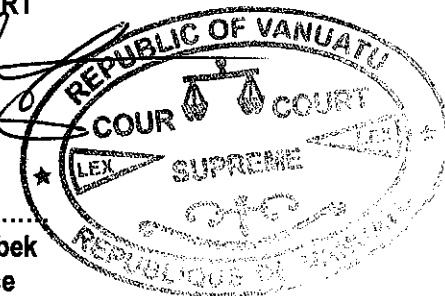


38. In the present case, there were no constitutional infringements on the part of the COM when it resolved and advised the President to dissolve Parliament. Equally, there was no constitutional infringement on the part of the President of the Republic when he proceeded to dissolve Parliament pursuant to Article 28(3) of the Constitution.
39. The court answered to the two issues as follow:
- Issue 1:** No. There was insufficient evidence to support the unlawfulness and unconstitutionality of the advice of the COM to the President dated 14 August 2022 to dissolve Parliament;
- Issue 2:** Not required to answer as the answer to issue 1 is No.
40. The Respondents are entitled to costs assessed at VT250,000 against the Applicants. Such costs shall be paid within 28 days.

DATED at Port Vila this 9<sup>th</sup> day of September, 2022

BY THE COURT

  
.....  
Vincent Lunabek  
Chief Justice

The seal of the Supreme Court of Vanuatu is circular. It features a central emblem of a scale of justice. The text "REPUBLIC OF VANUATU" is written along the top inner edge, and "REPUBLIQUE DE VANUATU" along the bottom inner edge. The words "COUR" and "COURT" are positioned on either side of the scale, with "SUPREME" centered below it. The word "LEX" is written on the left side of the seal.