

BETWEEN: BRUNO LEINGKONE TAU

Petitioner

AND: THE SPEAKER OF PARLIAMENT

Respondent

Date: 28th September 2023

Before: Justice W.K. Hastings

Counsel: Mr J Ngwele for the Petitioner
Mr G Blake for the Respondent

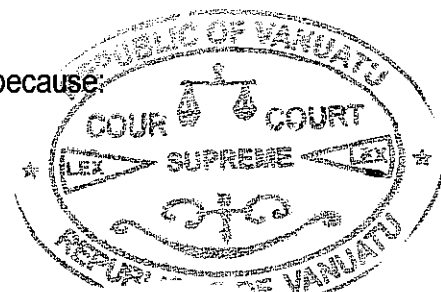
DECISION

Introduction

1. Bruno Leingkone has applied for urgent interim orders to stay the Speaker's ruling that Mr Leingkone vacated his seat in Parliament because he was absent from three consecutive sittings without the Speaker's permission. Mr Leingkone has also filed an election petition asking the Court to declare that his seat has not been vacated, that the Speaker's statement that the seat was vacated was invalid, that the Speaker's orders removing him from Parliament were unlawful, and that the business of Parliament conducted after those orders was unlawful.
2. The application for a stay was initially brought on an ex parte basis, but Mr Blake appeared on short notice on behalf of the Speaker.
3. This judgment only concerns the application for a stay. The petition itself will be heard on Friday 29 September 2023 at 9am.
4. Determining whether or not a stay should be granted depends on whether it is necessary to preserve the status quo because there is a serious question to be tried (which includes a preliminary assessment of the strength of the applicant/petitioner's case) and whether the applicant would be disadvantaged if the order is not made.

Submissions

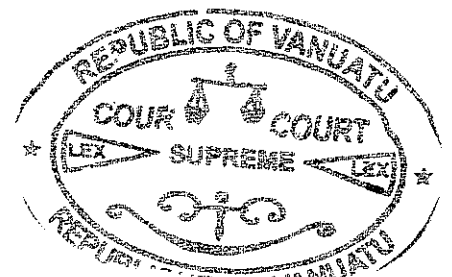
5. Mr Ngwele submitted that a stay of the Speaker's ruling should be granted because



- a. Mr Leingkone sought the Speaker's permission to be absent from Parliament, and that the Speaker, by his actions of acknowledging receipt of Mr Leingkone's letters, acknowledging Mr Leingkone's illness in Parliament, and by paying him sitting allowances, implicitly gave permission for Mr Leingkone to be absent.
 - b. To be consecutive, the three sittings must be in one session, and there is an argument that these were not.
 - c. The Speaker's letter of 11 September 2023 in which he told Mr Leingkone that his seat was vacated was faulty because it did not identify the sittings from which Mr Leingkone was absent.
 - d. Mr Leingkone has obligations to his constituents that he would not be able to fulfil if his seat is vacated.
6. Mr Blake opposed the application to stay the Speaker's ruling. He submitted the applicant's case was not strong on the applicant's own evidence. He submitted:
- a. The letters written to the Speaker on 7 July 2023 and 17 August 2023 do not actually seek the Speaker's permission to be absent, and that it was not until the letter of 31 August 2023 that Mr Leingkone sought permission to be absent.
 - b. There is evidence that Mr Leingkone missed three consecutive sittings, and there is no evidence the Speaker gave permission for him to miss those sittings.
 - c. Section 2(d) of the Members of Parliament (Vacation of Seats) Act is mandatory, and that this has been confirmed by the Court of Appeal in *Shadrack v Speaker of Parliament* [2020] VUCA 14, and *Weibur v Republic of Vanuatu* [2021] VUCA 40.
 - d. Mr Leingkone does not come to Court with clean hands. Mr Blake submitted Mr Leingkone ought to have complied with the law while he challenged the Speaker's ruling. Knowing his seat was vacated by operation of law, he should have stood down as a Minister because only Members of Parliament can be Ministers under the Constitution.

Discussion

7. Section 2(d) of the Members of Parliament (Vacation of Seats) Act is mandatory. It uses the word "shall." It states that a Member of Parliament "shall vacate his seat ...if he is absent from three consecutive sittings of Parliament without having obtained from the Speaker ... permission to be or to remain absent." Although the Speaker knew of Mr Leingkone's absence and the reason for it, and there is evidence that Mr Leingkone sought permission, Mr Ngwele did not direct me to evidence that the Speaker gave explicit permission for Mr Leingkone to be absent as required by s 2(d). Mr Ngwele's submission on this point at its highest seems to be that inferences can be taken from the Speaker's acts that he impliedly gave permission.
8. There may be an issue about whether three consecutive absences from sittings can occur in two consecutive sessions, but that can be left for the hearing of the petition.



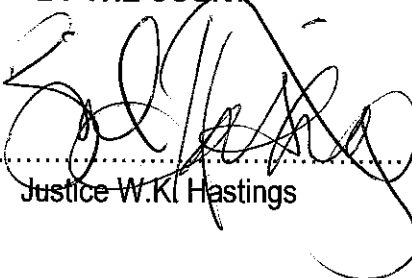
9. If a stay is granted, Mr Leingkone could continue as a Member of Parliament and continue to serve his constituents, but it would be in possible breach of the automatic provisions of the law. The Speaker's ruling did not create the vacancy – the law did. On the evidence so far, and without prejudging the petition, there is a good argument that the Speaker's conclusion was correct if Mr Leingkone was absent for three consecutive sittings without the Speaker's permission.
10. If a stay is declined, the Speaker's conclusion that the seat was vacated as a result of the operation of s 2(d) stands. The automatic provision of the law is maintained until the outcome of the petition is decided after a full hearing of evidence and submissions. As the petition will be heard tomorrow, there is little prejudice to the applicant if the stay is declined.
11. To my mind, weighing the strength of the applicant's evidence and submissions against Mr Blake's submissions with respect to the applicant's evidence and the law, the balance is in favour of declining the application for an interim stay of the Speaker's ruling.
12. I make the following directions:
 - a. The Republic of Vanuatu is added as a respondent under rule 3.4(1)(d) of the Representation of the People Election Petitions Rules and is to be served with the petition and supporting sworn statements, as well as the response and any supporting sworn statements, by 5pm today.
 - b. The response to the petition, and any supporting sworn statements, are to be filed and served by 5pm today.
 - c. All deponents of sworn statements are to make themselves available for cross-examination unless excused by opposing counsel.
 - d. The hearing will take place at 9am on Friday 29 September 2023 in Courtroom No. 1 at Dumbea.

Result

13. The petitioner's urgent interlocutory application for a stay is declined. The Speaker's ruling stands until the outcome of the hearing of the petition on 29 September 2023.

Dated at Port Vila this 28th day of September 2023

BY THE COURT


Justice W.K. Hastings

