

## *VOHOR V ABIUT*

[2004] VUSC 5

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This was a matter which involved an application by the Respondent, the Speaker of the House of Parliament of Vanuatu and also Acting President of the country to strike out a constitutional application lodged by certain members of the then opposition grouping within the Parliament. That application had been filed on 11<sup>th</sup> May 2004 seeking a declaration that the dissolution of Parliament by the Speaker and Acting President on 10<sup>th</sup> May 2004 pursuant to article 28 of the *Constitution of Vanuatu* was null and void and of no effect.

The purpose of that application appears clearly to have been to restore the Parliament to a state of continuance of its current life, thus enabling a no confidence motion filed by the applicants against the then Natapei-led government, to be heard and disposed of by the Parliament. This occurred after some key members of the Natapei coalition group, including senior members of his own Vanuaku Party had, in effect, changed sides. That Notice of Motion of No Confidence had been presented to the Speaker on 10<sup>th</sup> May 2004 and, according to Standing Orders of Parliament the Speaker was required to present the motion to the Parliament for debate.

The respondent, as the Speaker of the Parliament, had assumed the role of Acting President of the Republic of Vanuatu as a result of a declaration by the Supreme Court of Vanuatu on 7 May 2004 that the appointment of the President was null and void. Thus there was a vacancy in the presidential office. Pursuant to article 37(1) of the *Constitution of Vanuatu* the Speaker assumed the role of Acting President.

### **MAJOR ISSUES**

The major issues raised by the decision of the Court were as follows:

1. So far as the respondent's motion was concerned, the general issue was whether the constitutional application of the applicants, taking the grounds of application at their highest, disclosed sufficient merits in law to enable it to continue. Put another way, whether the constitutional application ought to be struck out.
2. In turn, on the specific grounds alleged in the constitutional application:
  - (a) Whether the respondent, either in his capacity as Speaker or Acting President or both, was prohibited from dissolving the Parliament on the ground of possible political bias or partiality, if in fact such could be proven;
  - (b) Whether the Speaker was entitled to exercise the Presidential powers with regard to dissolution of the Parliament pursuant to section 43(2) of the Constitution;
  - (c) Whether, given the fact that a Motion of No Confidence had been presented to the Parliament the Speaker was entitled to dissolve the Parliament at all;

- (d) Whether the powers attaching to the presidential office ought to be taken as curtailed or limited in the case of an Acting President of the Republic of Vanuatu appointed only to prevent a lacuna in the presidential office.
- (e) The interpretation of Article 43(2) of the Constitution in its relation to Article 28 of the Constitution;
- (f) The role of an Acting President under article 43(2) of the Constitution.

### Major constitutional provisions considered

Article 37 of the Constitution states as follows:

#### SPEAKER OF PARLIAMENT

37. (1) Whenever there is a vacancy in the office of the President of the Republic or the President is overseas or incapacitated, the Speaker of Parliament shall perform the functions of President under this Constitution and any other law.

(2) When Parliament is dissolved and there is a vacancy in the office of the President of the Republic or the President is overseas or incapacitated, the Speaker of Parliament at the time of the dissolution shall perform the functions of the President of the Republic under this Constitution and any other law until a new Speaker is elected.

Article 28 of the Constitution provides

#### LIFE OF PARLIAMENT

28. (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 supported 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 later 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 subarticle (2) or (3).

Article 43(2) of the Constitution says

#### COLLECTIVE RESPONSIBILITY OF MINISTERS AND VOTES OF NO CONFIDENCE

43. (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.

### DISCUSSION

The recent instability of the Parliament in Vanuatu has prompted a spate of litigation of which this particular case is one. Essentially it arises from possible confusion between the roles of Speaker who also happens to be the Acting President of the country at a time when a decision on a no-confidence motion is before the house.

In a Parliamentary democracy such as Vanuatu professes to be, the Speaker has a well defined role in the conduct of the affairs of the Parliament. The Parliament is required to elect a Speaker under article 22(1) of the Constitution. Under article 22(2) the Speaker is required to “preside at sittings of Parliament and shall be responsible for maintaining order”. As with most written constitutions much is left unstated in the constitutional document itself. The ‘maintenance of order’ in the Parliament presumes that the Speaker has the responsibility for the application of the Standing Orders of the Parliament. There are however numerous other conventions which purport to define the role and the functions of the office.

As a Speaker is elected it is most usually the case that he or she is drawn from the governing party. Occasionally this does not occur, but that would be a rare event. Given the normal state of affairs, there is always the possibility of at least the apprehension of partiality in the case of a Speaker, although convention would have it that the Speaker is bound to exercise his or her role with balance fairness and neutrality as far as possible. Whilst much is made of a tradition of impartiality of a Speaker in Great Britain, actual experience in countries, such as Australia, New Zealand and Canada, which have adopted this aspect of the British Parliamentary system, has tended to be otherwise.

One of the contentions in this case was that there was in fact bias on the part of the Speaker in view of the existence of a no-confidence motion against the government coalition of which he, the Speaker, was a member. It was contended that this element of bias, or possible bias, was such as was likely to affect his actions when also acting as President. The constitutional application challenging the dissolution of Parliament in fact sought to challenge the Speaker’s decision to dissolve on the grounds that such bias, even if not specifically proven, would proscribe the possibility of the exercise of the constitutional power of the Acting President to dissolve Parliament.

The court in fact rejected this line of argument out of hand. In doing so it followed the decision of the Court of Appeal in *President of Vanuatu v. Maxime Carlot Korman*, Civil Appeal Case No. 8 of 1997, even though in that case there was a President rather than, as here the Speaker filling the roles of both Speaker and Acting President under article 37(1). The Court held that the clear wording of article 28(3) could not be rendered useless by reading into them some disqualification on the exercise of the presidential power to dissolve the Parliament merely because the power happened to be vested at the time in an Acting President 28(3). The vesting of that power was, in effect a plenary vesting and not subject to implied disqualification.

There was also a related contention to the effect that the presentation of the no confidence motion invoked some prior right of those sponsoring the motion to have their motion heard and subject to vote. It seemed that, on the part of the claimants, this right might be accorded some degree of priority in the interests of formal democratic processes over the interests of the populace as a whole to elect a new Parliament after dissolution. Did the presentation of a no-confidence motion invoke some higher right in the interests of those proposing it than the dissolution process expressly provided for in article 28(2) of the Constitution? Put another way, does article 43(2) of the Constitution limit or perhaps override those in article 28(3)?

The court again clearly rejected this argument. It approved the comments in *Korman’s* case (above) as follows:

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.

## CONCLUSION

The case makes an important contribution to the articulation of the role of the Speaker and the Acting President in Vanuatu and to the understanding of the relevant provisions of the Constitution of the country. Vanuatu is country which achieved constitutional independence in 1980. Like many of the recently independent countries of the South Pacific region it has inherited a system of government and law which is based, in important respects, on that of one of its former colonial rulers Great Britain. Again like many such countries, there is and has been an absence of established constitutional experience, very often expressed in terms of conventions and traditions, which colours and provides a background to the operation of the written constitutions adopted at the time of independence.

The court in this case, as in others, sought to avow again its political neutrality and to uphold the need to give full force to the clear wording of the constitutional provisions which it was required to interpret. This might appear unremarkable in itself, but there is a constant need for the court to reinforce its own legitimacy in contexts such as this. One should acknowledge that the frequency of reference to the courts of disputes concerning the operation of Parliament and the roles and functions of political actors and office holders appears to have much greater frequency in the South Pacific than in the case in more developed countries. Clearly this is a consequence of the absence of a well established tradition of political experience.

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