

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

**Civil Case**  
**No's 22/1509 and 22/1527 SC/CIVL**

CC 22/1509

**BETWEEN: Union of Moderate Partis (UMP)  
Committee (Inc.) represented by  
Rialuth Serge Vohor**

First Claimant

**AND: Olivier Etul**

Second Claimant

**AND: Alatoi Ishmael Kalsakau**

First Defendant

**AND: Tom Robin Kapapa**

Second Defendant

CC 22/1527

**BETWEEN: National Executive Committee**

First Claimant

**AND: Alatoi Ishmael Kalsakau, Robin  
Kapapa, Anthony Iarish Harry, Georgio  
Calo, Charlie Ulas & Tom Lorry**

Second Claimants

**AND: Serge Vohor**

First Defendant

**AND: Marcellino Pipite, Saby Natonga, Noel  
Lango, Vincent Kapalu, Luo Jesse,  
Gaston Rory & Jean Kaisipai**

Second Defendants

*Dates of Trial:* 15, 18 & 19 July 2022

*Before:* Justice V.M. Trief

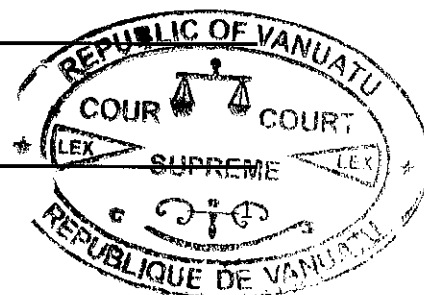
*Counsel:* Claimants in CC 22/1509 & Defendants in CC 22/1527 – Mr C. Leo  
Claimants in CC 22/1527 & Defendants in CC 15/1509 – Mr S. Kalsakau

*Date of Decision:* 5 August 2022

---

**JUDGMENT**

---

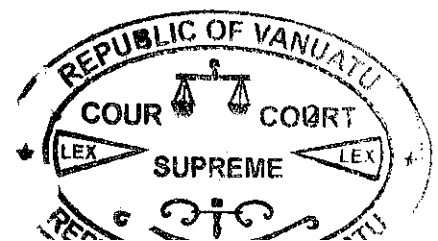


A. Introduction

1. The parties are members of the political party, the Union of Moderate Parties (interchangeably the 'Party' and the 'UMP').
2. The Claims in the consolidated proceedings challenge various matters including the suspension of Rialuth Serge Vohor, the Party President and First Claimant in Civil Case No. 1509 of 2022 ('CC 22/1509'), and who may represent the UMP Committee (Inc.). Also challenged are the suspension and termination of the First and Second Claimants in Civil Case No. 1527 of 2022 ('CC 22/1527') Alatoi Ishmael Kalsakau, Tom Robin Kapapa, Anthony Iarrish Harry, Georgio Calo, Charlie Ulas and Tom Lorry as members of the National Executive Committee of the UMP (the 'NEC').
3. Other matters challenged are Mr Vohor's appointment of the Second Defendants in CC 22/1527 Marcellino Pipite, Saby Natonga, Noel Lango, Vincent Kapalu, Luo Jesse, Gaston Rory and Jean Kaisipai as "interim" members of the NEC, and of the decision to move the National Congress of the Party to be held at Mele Village on Efate.

B. Pleadings

4. By the Amended Claim filed on 1 July 2022 in CC 22/1509, the First Claimant UMP Committee (Inc.) represented by Rialuth Serge Vohor and Second Claimant Olivier Etul sought the following orders:
  - i) Declaring the purported suspension of Mr Vohor on 23 May 2022 as President of the UMP null and void;
  - ii) An order upholding the suspension and termination of Mr A.I. Kalsakau, Mr Kapapa, Mr Harry, Mr David Seule and Mr Calo pending the decision of the National Congress of the UMP;
  - iii) Costs; and
  - iv) Any other Order the Court deems just.
5. In their Defence, the First and Second Defendants Mr A.I. Kalsakau and Mr Kapapa alleged that Mr Vohor did not have approval to bring the proceeding in the name of the UMP Committee (Inc.) therefore lacked standing, that the NEC was "vested generally with the broadest powers" which included the power to suspend the President of the Party pending disciplinary action, and that Mr Vohor's decision to suspend Mr A.I. Kalsakau, Mr Kapapa, Mr Harry and Mr Seule was invalid as it was made on 31 May 2022, after he had himself been suspended.
6. Further, that the Disciplinary Committee's decision to terminate Mr A.I. Kalsakau, Mr Kapapa, Mr Harry and Mr Seule pending the final decision of the National Congress was unlawful in that that Disciplinary Committee was not elected by the National Council but by Mr Vohor contrary to art. 138 of the UMP Constitution, and alternatively, that the Disciplinary Committee did not provide an adequate opportunity to be heard.



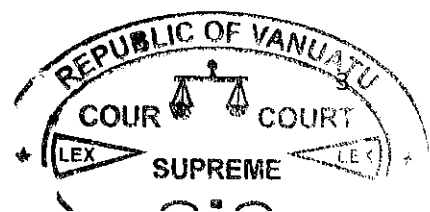
7. By the Claim filed on 4 July 2022 in CC 22/1527, the First Claimant NEC and Second Claimants Mr A.I. Kalsakau, Mr Kapapa, Mr Harry, Mr Georgio Calo, Mr Charlie Ulas and Mr Tom Lorry sought the following orders:
- i) That the *ex parte* Orders be made permanent or at least until after the National Congress;
  - ii) Declaring that the suspension of the UMP President Mr Vohor was within the powers of the NEC;
  - iii) Declaring Mr Vohor's decision to appoint the Second Defendants Mr Marcellino Pipite, Mr Saby Natonga, Mr Noel Lango, Mr Vincent Kapalu, Mr Luo Jesse, Mr Gaston Rory and Mr Jean Kaisipai as members of the NEC as null and void;
  - iv) Declaring that the National Congress of the UMP be held in Tanna as per the resolution of the National Congress in 2019 and the resolution of the National Council made on 3 June 2022; and
  - v) Costs.
8. In their Defence, Mr Vohor and Mr Pipite and others alleged that the UMP Constitution is superceded by subs. 2(4) of the *Charitable Associations (Incorporation) Act* [CAP. 140] (the 'Act') so that it is the UMP Committee (Inc.) who can sue and be sued rather than the NEC. Further, that the current dispute within the UMP affects the membership of the NEC (First Claimant) so that it is compromised and cannot legitimately represent the UMP.
9. It was also alleged that Mr Lango and Mr Kasipai are also members of the NEC and that the NEC did not have any powers to suspend Mr Vohor, that it lacked a quorum and it was not Mr Vohor who chaired that meeting (in other words, that the President was not absent therefore Mr A.I. Kalsakau could not act as President to call and chair the meeting). Finally, they alleged that that Mr Vohor had the power to suspend the NEC members (Mr A.I. Kalsakau and others), to terminate the Disciplinary Committee, to appoint a new Disciplinary Committee and to appoint an "interim" NEC until the National Congress held at Mele Village.

C. Onus and Standard of Proof

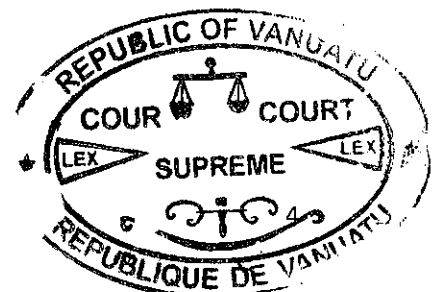
10. This is a civil proceeding, as opposed to a criminal matter. Accordingly, the onus of proof lies on the Claimants to prove their Claim. The standard of proof is on the balance of probabilities.

D. Background

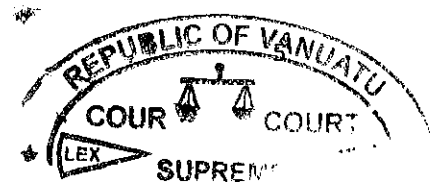
11. The Constitution of the Party was adopted by the National Congress held at Ifira island on 16-18 October 2003 (the 'UMP Constitution').
12. On 8 March 2012, the Union of Moderate Partis ('UMP') Committee (Inc.) ('UMP Committee (Inc.)') was registered by the Registrar of Charitable Associations (at the Vanuatu Financial Services Commission (the 'VFSC')) (the 'Registrar') as a charitable association pursuant to the Act.



13. The UMP Constitution was amended by the 25<sup>th</sup> National Congress held at Lycee Louis Antoine de Bougainville ('Lycee LAB') in Port Vila on 20 May 2016. That amended Constitution was registered as the Articles of Association of the UMP Committee (Inc.).
14. Article 116 of the UMP Constitution was amended by specific resolution of the 25<sup>th</sup> National Congress. Article 116 (as amended) provides as follows:
116. *The number of the National Executive Committee shall be elected by the National Congress in the following order: President, Vice President, Secretary General, Assistant Secretary General, Treasurer, Assistant Treasurer, National Coordinator and eight (8) ordinary members of which six (6) shall represent each of the Provinces, two (2) of the Municipalities.*
15. Article 138 of the UMP Constitution provides as follows:
138. *The National Council shall elect a Disciplinary Committee composed of five members for a term of four years. The members shall be elected on the basis of their good character, sense of justice and legal background.*
16. Article 138A of the UMP Constitution was inserted by specific resolution of the 25<sup>th</sup> National Congress. Article 138A does not appear in the registered UMP Constitution however no one took issue with that. Article 138A of the UMP Constitution (as amended) provides as follows:
- 138A. a) *The President is given the discretionary power to suspend any member or officer of the party.*
- b) *Upon suspending any member of the party in accordance with (a), the President must within 7 days of the date of suspension inform in writing the Disciplinary Committee of such suspension.*
- c) *The Disciplinary Committee must afford the suspended member due process within 7 days and determine the disciplinary action and punishment as appropriate to be afforded to the suspended member. Such decision of the Disciplinary Committee must be made within 14 days after the expiry of 7 days due process accorded to the affected person.*
- d) *If upon determination by the Disciplinary Committee no disciplinary action is found it shall immediately reinstate the member.*
17. The 25<sup>th</sup> National Congress of the Party held at Lycee LAB on 20 May 2016 elected, relevantly, the following:
- i) National President – Rialuth Serge Vohor; and
- ii) First Vice President – Alatoi Ishmael Kalsakau.
18. After the 25<sup>th</sup> National Congress, Mr Vohor and Mr A.I. Kalsakau's names were included as Committee Members of the UMP Committee (Inc.) at the VFSC.
19. The 26<sup>th</sup> National Congress of the Party held at Santo on 1-2 September 2019 elected the members of the NEC as follows:
- a) National President – Rialuth Serge Vohor;
- b) First Vice President – Alatoi Ishmael Kalsakau;



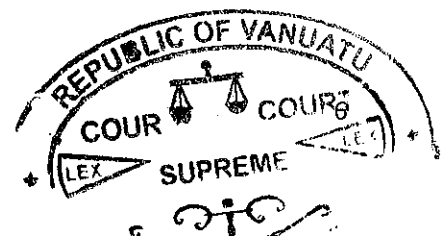
- c) Second Vice President – Sabi Natonga;
  - d) Secretary General – Wendy Himford;
  - e) Assistant Secretary General – Robin Kapapa;
  - f) National Treasurer – Anthony Harry Iauko;
  - g) National Vice-Treasurer – Noel Rory;
  - h) Member: Luganville – Charley Ulas;
  - i) Member: Santo – Kalvau Moli; and
  - j) National Coordinator: Georgio Calo
20. The 26<sup>th</sup> National Congress also resolved that the next National Congress be held on Tanna island.
21. After the 26<sup>th</sup> National Congress, Mr Harry, Ms Himford, Mr Kapapa and Mr Noel Rory's names were included as Committee Members of the UMP Committee (Inc.) at the VFSC.
22. The members of the UMP Committee (Inc.) currently registered with the VFSC are as follows:
- i) Anthony Iarrish Harry, appointed on 2 September 2019;
  - ii) Wendy Lai Chang Himford, appointed on 2 September 2019;
  - iii) Alatoi Ishmael Kalsakau, appointed on 17 November 2016;
  - iv) Robin Kapapa, appointed on 2 September 2019;
  - v) Noel Rory, appointed on 2 September 2019; and
  - vi) Serge Vohor, appointed on 17 November 2016.
23. Ms Himford and Noel Rory are deceased.
24. Mr Kapapa has been the Acting Secretary General since Ms Himford's passing on 24 February 2022.
25. On 21 May 2022, Mr Vohor as UMP President suspended the National Coordinator Georgio Calo pending the decision of the Disciplinary Committee on allegations of wrongful interference in matters of the UMP Port Vila Region.
26. On 23 May 2022, by urgent meeting of the NEC chaired by the Vice President Mr A.I. Kalsakau, the NEC resolved that Mr Vohor's decision to suspend Mr Calo was null and void therefore Mr Calo was reinstated and was still a member of the NEC.
27. At the same NEC meeting on 23 May 2022, it resolved that Mr Vohor was suspended immediately and to refrain from exercising his functions until the Disciplinary Committee determined the allegations and confirmed by the National Congress. The allegations against Mr Vohor included that:



- i) He had appointed Olivier Etul as Chairman of Port Vila Region without decision of the Regional Council and without the knowledge of the NEC, contrary to the UMP Constitution;
  - ii) He had attempted to move the UMP National Congress to Port Vila without the decision of the National Council and the NEC, contrary to the UMP Constitution; and
  - iii) He was dealing with the Party's affairs without consulting the 6 UMP Members of Parliament.
28. By letter dated 23 May 2022, Mr Vohor suspended Mr Kapapa as Secretary General of the Party pending the decision of the Disciplinary Committee.
  29. On 23 May 2022, Mr Vohor terminated the Disciplinary Committee chaired by Willie Daniel Kalo.
  30. Also on 23 May 2022, Mr Vohor appointed a new Disciplinary Committee chaired by Arthur Bae (the 'new Disciplinary Committee').
  31. On 30 May 2022, Mr Vohor suspended Mr A.I. Kalsakau, Mr Harry and David Seule (Member of Port Vila Region) pending the decision of the Disciplinary Committee.
  32. On 31 May 2022, Mr Vohor suspended Mr Kalo. He was subsequently re-instated as Chairman of the Disciplinary Committee.
  33. On 3 and 4 June 2022, the National Council met and resolved to endorse Mr Vohor's suspension, that Mr A.I. Kalsakau act as President until the next National Congress and that the National Congress be moved to the August 2022 school holidays.
  34. On 3 June 2022, the new Disciplinary Committee terminated Mr A.I. Kalsakau, Mr Kapapa, Mr Harry and Mr Seule pending the decision of the National Congress.
  35. On 3 June 2022, Mr Vohor appointed Marcellino Pipite, Saby Natonga, Noel Lango, Vincent Kapalu, Luo Jesse, Gaston Rory and Jean Kaisipai as "interim" members of the NEC.
  36. On 5 June 2022, the "interim" NEC members met and resolved that the UMP hold its National Congress at Mele Village on Efate from 24 June to 2 July 2022.

E. The Issues

37. The following are the issues from the pleadings:
  - i) Whether or not Mr Vohor had the approval of the members of the UMP Committee (Inc.) and thus standing to bring the Claim in CC 22/1509? [**Issue 1**]
  - ii) Whether the UMP Committee (Inc.) or the NEC is the body to sue and be sued on behalf of the Party, and how is the UMP Committee (Inc.) to be understood within the framework of the UMP Constitution and the Act? [**Issue 2**]
  - iii) Who are the members of the NEC? [**Issue 3**]



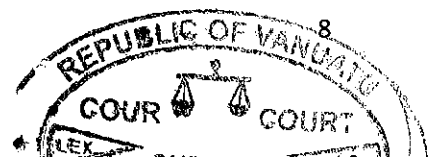
- iv) Whether or not Mr Vohor's suspension of Mr Calo was valid? **[Issue 4]**
- v) Whether or not the NEC's re-instatement of Mr Calo was valid? **[Issue 5]**
- vi) Whether or not the NEC's suspension of Mr Vohor was valid? **[Issue 6]**
- vii) Whether or not Mr Vohor's suspension of Mr A.I. Kalsakau, Mr Kapapa, Mr Harry and Mr Seule was valid? **[Issue 7]**
- viii) Whether or not Mr Vohor's termination of the Disciplinary Committee and his appointment of a new Disciplinary Committee were valid? **[Issue 8]**
- ix) Whether or not the termination by the new Disciplinary Committee of Mr A.I. Kalsakau, Mr Kapapa, Mr Harry and Mr Seule pending the decision of the National Congress was valid? **[Issue 9]**
- x) Alternatively, whether or not the Disciplinary Committee provided Mr A.I. Kalsakau, Mr Kapapa, Mr Harry and Mr Seule an adequate opportunity to be heard? **[Issue 10]**
- xi) Whether or not Mr Vohor's appointment of Mr Pipite, Mr Natonga, Mr Lango, Mr Kapalu, Mr Jesse, Mr Gaston Rory and Mr Song as "interim" members of the NEC was valid? **[Issue 11]**
- xii) Whether or not the decision of the "interim" members of the NEC to hold the National Congress at Mele Village was valid? **[Issue 12]**
- xiii) Whether or not to make a declaration that the National Congress of the Party be held on Tanna island as decided by resolutions of the 26th National Congress in 2019 and of the National Council on 3-4 June 2022? **[Issue 13]**
- xiv) Whether or not the *ex parte* Orders should be made permanent or at least after the National Congress? **[Issue 14]**

38. I now discuss each issue in turn.

F. Discussion

- 39. The parties are members of the political party and the charitable association known as the UMP.
- 40. Membership of an association is voluntary. If a person wishes to be a member of the association, then they are required to abide by and recognise the rules of the association: *Union of Moderate Patis Committee (Inc) v Salwai* [2012] VUSC 179 at [50] per Spear J.
- 41. As members of the UMP, the parties are bound to respect and adhere to the UMP Constitution.
- 42. The law recognises the right of the association and/or its individual members to insist upon the rules set out in the UMP Constitution being observed by its members.

43. The first issue raised by the pleadings in CC 22/1509 is whether or not Mr Vohor had the approval of the UMP Committee (Inc.) and thus standing to bring that Claim? **[Issue 1]**
44. There are six registered members of the UMP Committee (Inc.). Two members (Ms Himford and Mr Rory) are deceased leaving Mr Harry, Mr A.I. Kalsakau, Mr Kapapa, and Mr Vohor as the 4 remaining members of the UMP Committee (Inc.).
45. Mr Vohor on behalf of the UMP Committee (Inc.) as First Claimant filed the Claim in CC 22/1509. Mr A.I. Kalsakau, Mr Kapapa, Mr Harry and others filed the competing Claim in CC 22/1527. Mr Kalsakau submitted that this shows that Mr Vohor acted alone out of the 4 members of the UMP Committee (Inc.) to file the Claim in CC 22/1509.
46. Mr Kapapa deposed that Mr Vohor did not have his and the other Committee (Inc.) members' approval to initiate proceedings in the name of the UMP Committee (Inc.) **[Exhibit D13]**.
47. A committee makes its decisions by consensus or majority vote. Mr Vohor's filing of the Claim in CC 22/1509 in the name of the UMP Committee (Inc.) was done without the agreement of the other 3 members of the committee. It follows therefore that Mr Vohor did not have standing to bring the Claim in CC 22/1509 on behalf of the UMP Committee (Inc.).
48. At oral delivery of the judgment, I pronounced that the Claim in CC 22/1509 would be dismissed however I overlooked that there is a Second Claimant in CC 22/1509.
49. The Second Claimant Mr Etul is stated to be the President of the UMP Port Vila Region and a member of the UMP. He does have standing to bring the Claim therefore I will not dismiss the Claim in CC 22/1509.
50. In case I am wrong, I consider in any event the other issues raised by the pleadings in CC 22/1509.
51. The second issue I consider is whether the UMP Committee (Inc.) or the NEC is the body to sue and be sued on behalf of the Party, and how is the UMP Committee (Inc.) to be understood within the framework of the UMP Constitution and the Act? **[Issue 2]**
52. The UMP Constitution does not contain any express reference to the UMP Committee (Inc.). Accordingly, that Constitution must be read as a whole alongside the Act to understand what the UMP Committee (Inc.) is within the framework of the UMP Constitution and the Act.
53. Subsection 2(1) and (4) of the Act provide as follows:
2. (1) *The Committee, having not less than six members, of any association established for charitable purposes, may apply to the Registrar for a certificate of incorporation of the committee as a corporate body.*
- ...
- (4) *On the date set out in the certificate of incorporation a committee shall become a body corporate and may sue and be sued and do and suffer to be done all that corporate bodies may do and suffer to be done.*





54. Subsection 8(1) of the Act provide as follows:

8. (1) *On the date set out in a certificate all assets and liabilities held for the benefit of the association named in the certificate including any interest in land referred to in its application shall vest in its committee.*

55. Subsections 13(1)-(3) of the Act provide as follows:

13. (1) *A committee must give the Registrar written notice of a change in any or all of the following within 30 days after the change occurs:*
- (a) *the registered office of the committee;*
  - (b) *the articles, rules or constitution of the association;*
  - (c) *a key person;*
  - (d) *the circumstances of a key person that may affect whether he or she meets fit and proper criteria;*
  - (e) *the rules or policies relating to the source of funds of the committee.*
- (2) *If a committee fails to comply with subsection (1), the committee commits an offence punishable upon conviction by a fine not exceeding VT125 million.*
- (3) *If a committee fails to comply with subsection (1), the Registrar may cancel the certificate of incorporation of that committee.*

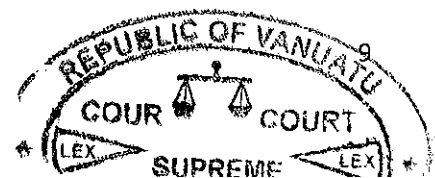
56. "Key person" is defined in s. 1 of the Act as follows:

*"key person" means a member of a committee, or a beneficial owner of a member of a committee;*

57. Chapters 2 and 3 of the UMP Constitution provide as follows:

## **CHAPTER 2 - OBJECTIVES**

2. *The objectives of the UNION OF MODERATE PARTIS are to:*
- 2.1 *recruit and train a large majority of the people of VANUATU to achieve the Party's goals and to form the country's government;*
  - 2.2 *prepare for municipal, provincial and general elections in accordance with the programme set out in the political platform;*
  - 2.3 *run its candidates in the municipal, provincial, general and presidential elections;*
  - 2.4 *encourage all VANUATU men and women to fulfil their duties towards the Nation and exercise their political, economical, social and religious rights as defined by the Constitution of the Republic of VANUATU;*
  - 2.5 *suggest and implement solutions to satisfy the needs of the people of VANUATU;*
  - 2.6 *help and encourage all Ni-Vanuatu to develop according to their potential;*
  - 2.7 *act as steering and coordinating body in respect of ideals, policies and principles;*



- 2.8 *establish and maintain such administrative and technical services as are necessary for the promotion and in furtherance of the ideals and principles of the Party;*
- 2.9 *act as the custodian of constitutional parliamentary democracy and universal suffrage;*
- 2.10 *promote the progress of democracy and the welfare of the people cooperation with international organizations;*
- 2.11 *promote cooperation among international organizations which contribute to the furtherance of democratic society;*
- 2.12 *and generally, take all necessary steps to the objectives of the UNION OF MODERATE PARTIS.*

### **CHAPTER 3 – MEANS OF ACTION**

- 3. *The Party may implement all appropriate means and techniques for the purpose of achieving its objects, enter into agreements with any public, statutory or private bodies, private persons or corporation, acquire and manage real and/or personal assets.*
- 4. *The Party shall work in conjunction with non-governmental, trade union and cultural organizations professing to share the same fundamental values for the purpose of organizing joint actions in furtherance of the purpose which the Party has attributed to itself.*
- 5. *The Party shall take an active plan in the broadcasting of political news.*
- 6. *The Party may dispose of, assign, hire out all or part of its know-how, its intangible assets to any entity which may be more suitable for the purpose of achieving its objectives. In its structures and operations the Party shall endeavour to apply the most advanced forms of organizations and technology (e.g. new information and communication technologies).*
- 7. *Generally, the Party shall make itself know by any means of action in the furtherance of the provisions of Article 2 of these Articles of Association.*

58. Article 115 of the UMP Constitution provides as follows:

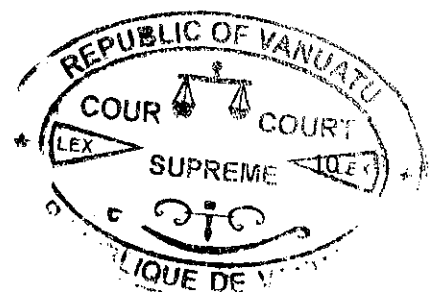
- 115. *The general business of the Party is administered by a National Executive Committee made up of fourteen members at the most, elected for a term of two years. Retiring members are eligible for Re-election.*

59. Article 118 of the UMP Constitution provides as follows:

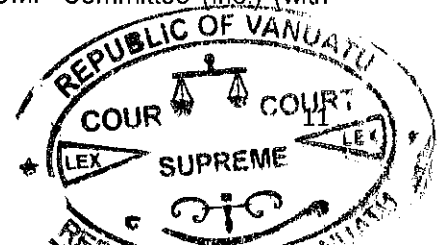
- 118. *The National Executive Committee shall be vested generally with the broadest powers, within the goals and means of action of the Party as provided under Chapters 2 and 3 of these Articles, in general compliance with these Articles providing for its duties, and within the resolutions approved by the National Congress, the Extraordinary National Congress and the National Council.*

60. Article 119 of the UMP Constitution provides as follows:

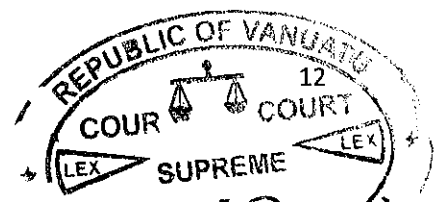
- 119. *The National Executive Committee may sue and be sued on behalf of the Party as plaintiff and as defendant.*



61. From the date in the UMP Committee (Inc.)'s certificate of incorporation (8 March 2012), the UMP Committee (Inc.) was a body corporate and may sue and be sued pursuant to subs. 2(4) of the Act.
62. Also on incorporation, all assets and liabilities held on behalf of the association named in the certificate (the UMP) vested in its committee (the UMP Committee (Inc.)) pursuant to subs. 8(1) of the Act.
63. It is clear that the association is the political party known as the UMP.
64. The articles of association, also known as the constitution, of the UMP is its Constitution, a copy of which is registered at the VFSC in accordance with the Act.
65. Within the UMP Constitution, the only body that may sue and be sued on behalf of the Party is the NEC.
66. The NEC is the body charged with administering the general business of the Party pursuant to art. 115 of the UMP Constitution. Under art. 118, the NEC is vested generally with the broadest powers, within the Party's goals and means of action (which are provided under Chapters 2 and 3 of the Articles) and within the resolutions approved by the National and Extraordinary National Congresses and the National Council.
67. It follows from the provisions of the UMP Constitution and the Act that both the UMP Committee (Inc.) and the NEC may sue and be sued on behalf of the Party, and that if the UMP Committee (Inc.) is named as a claimant or defendant, that the instructions on its behalf be given by the NEC.
68. Given the NEC's powers and functions, it is unsurprising that the NEC constitutes the UMP Committee (Inc.) which under the Act is not only the body that may sue or be sued on behalf of the Party but also is the body in which the assets and liabilities held for the benefit of Party are vested in.
69. I am fortified in that all the members of the UMP Committee (Inc.) registered at the VFSC are current members of the NEC.
70. At the 25<sup>th</sup> National Congress of the Party on 20 May 2016, Mr Vohor and Mr A.I. Kalsakau were elected as members of the NEC. They were then registered as members of the UMP Committee (Inc.) (both with appointment date of 17 November 2016).
71. At the 26<sup>th</sup> National Congress of the Party on 1-2 September 2019, the following, relevantly, were elected as members of the NEC:
  - i) Secretary General – Wendy Himford;
  - ii) Assistant Secretary General – Robin Kapapa;
  - iii) National Treasurer – Anthony Harry Iauko; and
  - iv) National Vice-Treasurer – Noel Rory.
72. Subsequently, all 4 were registered as members of the UMP Committee (Inc.) (with appointment date of 2 September 2019).



73. I note that members of a committee fall within the definition of "key person" in s. 1 of the Act. Accordingly, the committee is required under subs. 13(1)(c) of the Act to give the Registrar written notice of a change in any of its members within 30 days after the change occurs. Failure to do so is a criminal offence punishable on conviction by a fine of up to VT125 million (subs. 13(2)) and/or may result in the Registrar cancelling the committee's certificate of incorporation (subs. 13(3)).
74. In light of these provisions, it is little wonder that the changes in the members of the UMP Committee (Inc.) were notified to the Registrar after each of the 25<sup>th</sup> and 26<sup>th</sup> National Congresses of the Party.
75. Finally, there are 6 registered members of the UMP Committee (Inc.), presumably because the minimum number for an association to have to apply for registration as a charitable association is 6: subs. 2(1) of the Act.
76. However, that does not mean that in the future, the number of the registered members of the UMP Committee (Inc.) need be restricted to 6. All the elected members of the NEC could be notified to the Registrar and registered as members of the UMP Committee (Inc.).
77. For completeness, I note that the NEC was the First Claimant in CC 22/1527 and the Second Claimants members of the NEC (other than Mr Vohor). For the reasons given, the NEC has standing to bring a Claim on behalf of the Party.
78. The third issue I consider is who are the members of the NEC? **[Issue 3]** Mr Leo submitted that Noel Lango and Keasipai Song (also known as Jean Kasipai) are members of the NEC as they were elected at the Extraordinary National Congress held in 2020 on Atchin island.
79. It is accepted that there was an Extraordinary National Congress held on 20-21 January 2020 on Atchin island (the 'Atchin Congress'). Mr Lango and Mr Song deposed in their sworn statements **[Exhibits C8 and C9 respectively]** that they were elected at the Atchin Congress as members of the NEC.
80. Peter Manwo deposed that he was one of the minute-takers for the Atchin Congress but that subsequently, the flash drive containing the minutes was lost.
81. Mr A.I. Kalsakau deposed in cross-examination that he attended the Atchin Congress but was not aware that there was an election of NEC members as that occurs every second year; that 2020 was not a year for a NEC election.
82. There may have been an election of NEC members at the Atchin Congress. Equally, there may have not been such an election. The minutes of the Atchin Congress may well have been lost.
83. What would conclusively prove what happened at the Atchin Congress are its minutes and/or resolutions. Neither of those are in evidence. By way of contrast, Mr Kapapa adduced into evidence the resolutions of the 25<sup>th</sup> National Congress including the resolution for the election of NEC members **[Exhibit D13]**. Mr Vohor adduced into evidence the resolutions of the 26<sup>th</sup> National Congress including the resolution for the election of NEC members **[Annexure "SV1", Exhibit C2]**.



84. Without the minutes or resolutions of the Atchin Congress in evidence, I cannot determine that Mr Lango and Mr Kasipai were elected at the Atchin Congress as members of the NEC. I therefore hold that Mr Lango and Mr Kasipai are not members of the NEC.
85. In the circumstances, there is no legal merit to the submission that Mr Lango and Mr Kasipai were not present at the NEC meeting on 23 May 2022 therefore invalidating Mr Vohor's suspension.
86. Mr Leo submitted that Tom Lorry, the Vice-National Coordinator of the Party is not a member of the NEC as that position is not included in the positions prescribed in article 116 of the UMP Constitution. Mr Kalsakau on the other hand submitted that even though the position of Second Vice-President is not included in article 116, Sabi Natonga was nevertheless elected by the 26<sup>th</sup> National Congress as a member of the NEC and is therefore a member. In the same vein, even though the Vice-National Coordinator position is not included in article 116, Mr Lorry was elected then and must also be held to be a member of the NEC.
87. Mr Vohor adduced into evidence the minutes and resolutions of the 26<sup>th</sup> National Congress [**Annexure "SV1", Exhibit C2**]. Mr Manwo also adduced into evidence minutes and resolutions of the 26<sup>th</sup> National Congress of the UMP which he stated he had been a minute-taker for [**Exhibit C6**]. These minutes and resolutions adduced by Mr Manwo contained material differences to those adduced by Mr Vohor. Further, the minutes and resolutions adduced by Mr Vohor were the ones accepted by Mr Kalsakau's clients. Accordingly, I had no regard to the minutes and resolutions adduced by Mr Manwo.
88. In the minutes and resolutions of the 26<sup>th</sup> National Congress [**Annexure "SV1", Exhibit C2**], the following resolutions 24-27 appear under the section heading, "7. Eleksen blo niufala UMP National Executive":

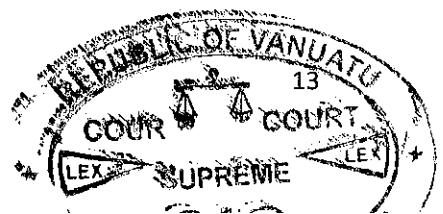
**7. Eleksen blo niufala UMP National Executive**

**24. Resolve: mo elektem ol niufala office bearers blo National Executive blo UMP**

a)	<b>National President:</b>	Rialuth Serge VOHOR
b)	<b>First Vice-President:</b>	Alatoi Ishmael KALSAKAU
c)	<b>Second Vice-President:</b>	Sabi NATONGA
d)	<b>Secretary General:</b>	Wendy HIMFORD
e)	<b>Assistant Secretary General:</b>	Robin KAPAPA
f)	<b>National Treasurer:</b>	Anthony Harry IAUKO
g)	<b>National Vice-Treasurer:</b>	Noel RORY
h)	<b>Member: Luganville:</b>	Charley ULAS
i)	<b>Santo:</b>	Kalvau MOLI

**25. Resolve: mo elektem**

- **National Koordinator:** Georgio CALO
- **Vice-National Koordinator:** Tom LORRY



26. **Resolve:** *blo revokem resolusen mo leta blo terminasen blo ol MP aot lo UMP blo alowem olketa blo oli save kambak lo UMP blo kontestem GE2020*

- MP Hon. Jerome LUDVAUNE
- MP Hon. Seule SIMEON
- MP Hon. Noris Jack KALMET
- MP Hon. Nako NATUMAN

27. **Resolve:** *mo elektem tufala Port-Vila region office bearers:*

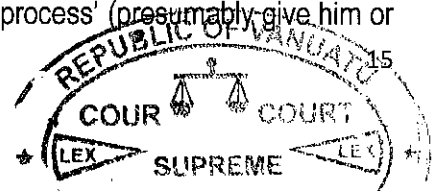
- **President:** Johnson KAPI
- **Vice-President:** Olivier ETUL

89. The NEC is made up of 14 members at the most, elected for a term of 2 years: article 115. It is accepted that the last election of NEC members occurred at the 26<sup>th</sup> National Congress in 2019. The next election will be at the next National Congress.
90. The order in which NEC members will be elected is set out in article 116. With the amendment of article 116 to include the position of National Coordinator as a member of the NEC, there are 15 members of the NEC provided for although that inconsistency with article 115 has not been challenged by any person.
91. In similar vein, there was an inconsistency with article 116 in that the 26<sup>th</sup> National Congress also elected a Second Vice-President of the Party (Sabi Natonga) even though that position is not named in that article. Mr Natonga's membership of the NEC has not been challenged by any person.
92. The election of the majority of the members of the NEC was set out in resolution 24 of the 26<sup>th</sup> National Congress. The elections of the National Coordinator (Mr Calo) and the Vice-National Coordinator (Mr Lorry) were the subject of resolution 25. It is accepted that the National Coordinator is a member of the NEC. Similar to what occurred with the election of a Second Vice-President even though such position is not named in article 116, I consider that the Vice-National Coordinator was also elected by the 26<sup>th</sup> National Congress as a member of the NEC.
93. As for the other 8 members of the NEC (of which 6 would represent each of the country's Provinces and 2 the Municipalities), resolution 24 of the 26<sup>th</sup> National Congress provided only for the election of Kalvau Moli to represent Santo (presumably Sanma Province) and Charley Ulas to represent the Luganville Municipality. None of the other provincial or municipality representatives were included in resolution 24. However, by resolution 27, the Port Vila Region President Johnson Kapi and Vice-President Olivier Etul were also elected as members of the NEC. Again there was an inconsistency with article 116 as it provides for only 2 members to represent the Municipalities however the 26<sup>th</sup> National Congress elected 3 such members: Mr Ulas, Mr Kapi and Mr Etul.
94. All of resolutions 24, 25 and 27 of the 26<sup>th</sup> National Congress appear under the heading "7. Eleksen blo niufala UMP National Executive". I conclude therefore that even though set out in 3 different resolutions, those resolutions were passed to elect the members of the NEC.
95. The UMP Constitution has conferred the power to the National Congress to elect members of the NEC every 2 years. The last election was at the 26<sup>th</sup> National Congress. The election resulted in several inconsistencies with articles 115 and 116 of the UMP



Constitution, however no one immediately after that Congress or since has challenged Mr Natonga, Mr Kapi and Mr Etul's membership of the NEC. Mr Lorry's membership of the NEC was challenged by Mr Leo's clients only in the present proceedings.

96. It is telling that Mr Natonga and Mr Etul gave evidence [Exhibits C10 and C5 respectively] for Mr Leo's clients while Mr Lorry gave evidence [Exhibit D12] for Mr Kalsakau's clients yet only Mr Lorry's membership was challenged.
97. For the reasons given, I consider that Mr Natonga, Mr Lorry, Mr Kapi and Mr Etul must be held to be members of the NEC.
98. I hold therefore that the 11 members of the NEC are the following:
  - i) National President – Rialuth Serge Vohor;
  - ii) First Vice President – Alatoi Ishmael Kalsakau;
  - iii) Second Vice President – Sabi Natonga;
  - iv) Assistant Secretary General – Robin Kapapa;
  - v) National Treasurer – Anthony Harry Iauko;
  - vi) Member – Luganville – Charley Ulas;
  - vii) Member – Santo – Kalvau Moli;
  - viii) National Coordinator – Georgio Calo;
  - ix) Vice-National Coordinator – Tom Lorry;
  - x) Member – Port Vila President – Johnson Kapi; and
  - xi) Member – Port Vila Vice-President – Olivier Etul.
99. I will so declare.
100. On 21 May 2022, Mr Vohor suspended the National Coordinator Mr Calo pending the decision of the Disciplinary Committee on allegations of wrongful interference in matters of the UMP Port Vila Region. Was that suspension valid? [Issue 4].
101. The President of the Party has the power to suspend any member or officer of the Party pursuant to article 138A(a) of the UMP Constitution. The suspension is subject to the decision of the Disciplinary Committee: article 138A. Accordingly, Mr Vohor's suspension of Mr Calo was valid.
102. Declaration will be made to that effect.
103. On 23 May 2022, the NEC purported to 'reinstate' Mr Calo. After that, he participated in that NEC meeting. The next issue then is whether or not the NEC's reinstatement of Mr Calo was valid? [Issue 5]
104. Once a member or officer of the Party has been suspended, article 138A provides that the President must inform the Disciplinary Committee within 7 days, the Disciplinary Committee must 'afford the suspended member due process' (presumably give him or



her an opportunity to be heard) within 7 days and then make the Committee make its decision within 14 days after that. If no disciplinary action is found (presumably that no disciplinary offence was committed), the Disciplinary Committee shall reinstate the member.

105. Articles 139-144 of the UMP Constitution (which appear in "Part VIII – Chapter 37 – Disciplinary Committee") provide as follows:

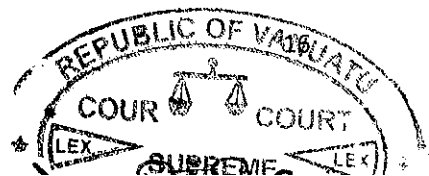
139. *The Disciplinary Committee shall receive all complaints from the Regions and authorities of the Party at national level, and all appeals made by members against disciplinary sanctions taken by the Region and shall determine such cases, as necessary, after consulting with the National Council.*
140. *The Disciplinary Committee shall pronounce the exclusion of any parliamentarian who leave the Party without resigning on the electoral mandate that he detains in the name of the Party.*
141. *Offences may include: breach of these Articles, non-compliance with Party decisions, non-compliance with Party policies and ideologies, and any offence that the Regional Committee, the Disciplinary Committee or the National Committee considers to be contrary to Party interests.*
142. *Sanctions that may be taken by the Disciplinary Committee against members, Areas and Regions are as follows:*
  - i) *Warning with duty to make reparation*
  - ii) *Second warning*
  - iii) *Temporary suspension from the post*
  - iv) *Temporary expulsion*
  - v) *Permanent expulsion.*

*The sanctions of suspension and expulsion shall be validated by the next National Congress. Only permanent expulsions shall be made public and notified to all Regions by the Secretary General.*

143. *A member excluded from the Party shall be readmitted after a period of 2 years. The decision of reinstatement is taken by the National Congress, after consultation with the Region and the Area of which he was a member before his expulsion.*
144. *The temporary expulsion and suspension may be pronounced for violation of the principles and rules of the Party, for violation of engaged commitments, for actions or conduct that will seriously affect the Party.*

106. Articles 155 and 156 of the UMP Constitution provide as follows:

155. *The members of UMP in Parliament shall accept all decisions of the Party and shall conform to its tactic. In all circumstances, they shall respect the rule of the unity of vote and of their group. The Disciplinary Committee may apply the provisions of Art. 156 hereunder in the event of non-compliance.*
156. *In the event of non-compliance, each Member as parliamentarian and the entire group are subject to the Disciplinary Committee and to the National Congress. The parliamentarians who are not disciplined are recalled for the respect of the decisions of the Party by the Disciplinary Committee and it may report them to the National Congress. It must do it if the violation continues.*





*The National Congress, after hearing the interested persons, the Regions where they belonged and the President of the Group in Parliament, may pronounce one of the sanctions provided under Art. 142 of these Articles.*

107. The UMP Constitution as a whole must be looked to for the functions and powers of the NEC and the Disciplinary Committee.
108. The NEC is vested generally with the broadest powers, within the Party's goals and means of action (which are provided under Chapters 2 and 3 of the Articles) and within the resolutions approved by the National and Extraordinary National Congresses and the National Council: article 118. The NEC is responsible for administering the general business of the Party: article 115.
109. However, it is the Disciplinary Committee which is charged with hearing and determining disciplinary matters pursuant to articles 138A, 139-144, 155 and 156 of the UMP Constitution. Re-instatement of a suspended member is expressly provided and is to occur by the Disciplinary Committee where it has found that no disciplinary offence was committed (article 138A(d)). Where a member was expelled from the Party, after a period of 2 years, it is the National Congress, in consultation with the Region and the Area where that expelled member was from, which may decide to readmit that member (article 143).
110. Given the provisions of the UMP Constitution and that on 23 May 2022, there was a Disciplinary Committee chaired by Mr Kalo, the NEC usurped the functions of the Disciplinary Committee when it revoked Mr Calo's suspension and reinstated him.
111. For the reasons given, the NEC's reinstatement of Mr Calo on 23 May 2022 was not valid. The Disciplinary Committee remains seized with Mr Calo's matter and must forthwith consider that matter in accordance with article 138A of the UMP Constitution.
112. A declaration and order will be made.
113. The next issue I consider is whether or not the NEC's suspension of Mr Vohor was valid? **[Issue 6]**
114. Articles 25 and 26 of the UMP Constitution, relevantly, provide as follows:

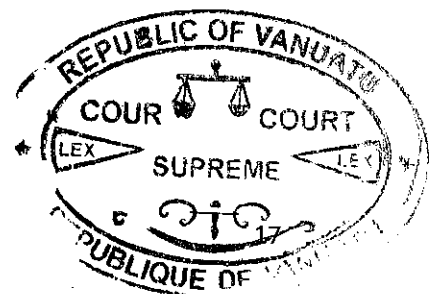
25. *The administration of the Party shall be under the responsibility of the following national authorities:*

- a) *the Annual National Congress*
- b) *the Extraordinary National Congress*
- c) *the National Council*
- d) *the President of the Party*
- e) *the National Executive Committee*

26. *The Party is structured as follows:*

26.1 ...

26.2 *at national level:*



- a) *National Executive Committee*
- b) *National Council of Wise Men*
- c) *National Council*
- d) *Presidential Council*
- e) *National Congress*

115. Articles 120-123 of the UMP Constitution provide as follows:

120. *The National Executive Committee shall meet every three months and each time a meeting is called by the President.*

*The quorum required for the meeting of the National Executive Committee shall be a majority of members present.*

*Decisions shall be taken by a majority of members present. In the event of a tie, the President shall have a casting vote.*

*All decisions of the National Executive Committee shall be minuted and minutes signed by the President and the Secretary General.*

121. *The President is the official leader of the Party (or President of the Party). He is the spokesman and represents the Party at national level.*

122. *The President chairs the meetings of the National Council and the National Executive Committee and ensures their decisions are implemented. He shall present to the Annual National Congress the moral and political report of the Party.*

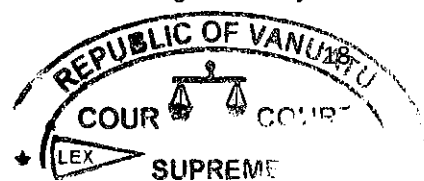
123. *In the absence of the President the Vice President shall act on his behalf.*

116. The President of the Party may suspend any member or officer of the Party pursuant to article 138A(a) of the UMP Constitution. However, there is no express provision in the UMP Constitution in relation to the suspension of the President of the Party. I must therefore look at the UMP Constitution as a whole to determine this issue.

117. The Party's objectives include to act as the custodian of constitutional parliamentary democracy (article 2.9), to promote the progress of democracy (article 2.10) and to promote cooperation amongst international organizations which contribute to the furtherance of democratic society (article 2.12). In accordance with those objectives and the principles of democracy, it could not be suggested that the President of the Party was above the law and could not be suspended, if circumstances warranted, similar to any other member or officer of the Party.

118. The NEC suspended Mr Vohor. Does the NEC have the power to suspend the President of the Party? Mr Leo submitted that it does not. Mr Kalsakau submitted the reverse.

119. As already noted, the NEC is vested generally with the broadest powers, within the Party's goals and means of action (as set out in Chapters 2 and 3 of the Articles) and within the resolutions approved by the National and Extraordinary National Congresses and the National Council: article 118. It is responsible for administering the general business of the Party: article 115. The NEC is one of the bodies named as a "national authority" in article 25, charged with the responsibility of administering the Party. In



article 26, it is the first-named body in the structure of the Party 'at national level'. In both articles 25 and 26, the annual National Congress is the body named at the other end of the hierarchy such that any decision of the NEC is ultimately to be confirmed or disapproved by decision of the National Congress.

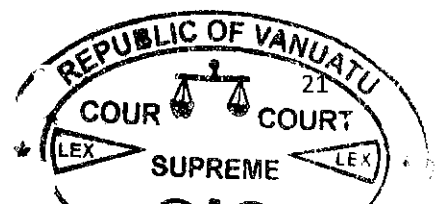
120. Given the structure of the Party at national level as set out in articles 25 and 26 of the UMP Constitution, that the NEC is responsible for administering the general business of the Party (article 115) and that it has been vested generally with the broadest powers in which to do so (article 118), I consider that the NEC does have power to suspend the President of the Party where it is alleged that he has committed a disciplinary offence (see article 141).
121. I am fortified in that article 139 of the UMP Constitution makes reference to the Disciplinary Committee receiving "all" complaints from the Regions and "authorities of the Party at national level". This wording encompasses the situation where if the NEC, which is an authority of the Party at national level, had a complaint against the President of the Party, it must be forwarded to the Disciplinary Committee who is required under article 139 to "receive all complaints" from the authorities of the Party at national level. Thereafter, the Disciplinary Committee must apply the process in article 138A of the UMP Constitution just as it would for any other member or officer of the Party.
122. For the reasons given, I consider that the NEC has power to suspend the President of the Party pending the decision of the Disciplinary Committee.
123. Mr Leo also submitted that the NEC's suspension of Mr Vohor on 23 May 2022 was invalid as the meeting lacked the required quorum.
124. The quorum required for a NEC meeting prescribed in article 120 of the UMP Constitution is "a majority of members present". Similar wording is used for the making of decisions that, "Decisions shall be taken by a majority of members present." Given there are 11 members of the NEC, I interpret the quorum requirement to be a minimum of 6 members that must be present for a meeting to be quorate. Then of the members present at the meeting, decisions shall be taken by a majority of the members who are present voting in support of the decision.
125. On 23 May 2022, Mr Calo was suspended and his reinstatement by the NEC was invalid, therefore the members of the NEC had been reduced to a total of 10 so the required quorum was that 6 of them had to be present for that NEC meeting to be quorate.
126. Mr A.I. Kalsakau, Mr Kapapa and Mr Harry were present at the meeting and Mr Ulas voted by proxy in favour of suspending Mr Vohor.
127. Articles 84 and 85 of the UMP Constitution provide as follows:
  84. *All decisions of the National Congress shall be taken by a majority of votes of office bearers present in person or by proxy. In the event of a tie, the President of the National Congress shall have a casting vote. All votes shall be taken by a show of hands. However, votes in respect of persons shall be taken by secret ballot. To amend the Articles, the National Congress shall take its decisions at a two-third majority of the Mandates present.*
  85. *Where an office bearer is unable to attend a meeting of the National Congress, he may give a proxy to another representative, also entitled to vote. The Mandate giving a proxy*

*shall advise the General Secretary thereof in writing. No one person can hold more than two proxies.*

128. Those provisions relate to voting by proxy at a National Congress or Extraordinary National Congress and appear in Chapter 13, titled "Joint Provisions for the Holding of National Congresses". Other chapters of the Constitution relate to meetings of the Committee of Mandates (chapter 26), of the National Council of the Wise Men (chapter 27), of the National Council (chapter 28), of the Presidential Council (chapter 29) and of the NEC (chapter 30) yet none of these other chapters nor the articles within them make provision for voting by proxy. My conclusion is that voting by proxy is permitted only for meetings of the National Congresses but not in the meetings of the other Party bodies.
129. For the reasons given, Mr Ulas' vote by proxy was invalid.
130. If I am wrong on that, I consider article 120 of the UMP Constitution which provides that the quorum required shall be a majority of members present. I interpret that as requiring that a majority of the NEC members must be present at the meeting. Then for a decision to be taken, it must be made by the majority of the members present at the meeting. Accordingly, I conclude that the majority of the members must be physically present at a meeting of the NEC.
131. Mr Kapapa adduced into evidence the minutes of the NEC meeting on 23 May 2022 [**Annexure "TRK7", Exhibit D13**]. I note that Mr Ulas was recorded in those minutes as "Absent". In any event, it is accepted that Mr Ulas was not physically present at the meeting.
132. In the circumstances, Mr Ulas cannot be counted amongst those making up the required quorum for the meeting.
133. The minutes of the 23 May 2022 NEC meeting record that the NEC members present were Mr A.I. Kalsakau, Mr Harry, Mr Kapapa and Mr Lorry. This fell short of the required quorum of 6 members to be present at the meeting.
134. For completeness, I now deal with the remaining aspect of the challenge to Mr Vohor's suspension namely that he was not absent therefore the meeting was invalidly called.
135. Article 123 of the UMP Constitution provides that, "In the absence of the President the Vice President shall act on his behalf."
136. Mr Leo submitted that given Mr Vohor's return to Vanuatu from overseas on 5 May 2022, Mr Vohor was not absent in terms of article 123 of the UMP Constitution and therefore the 23 May 2022 NEC meeting was invalidly called and chaired by the Vice President Mr A.I. Kalsakau. Mr Kalsakau submitted on the other hand that Mr A.I. Kalsakau had been Acting President for months with numerous NEC meetings held and Mr Vohor had not yet performed a custom ceremony to Mr A.I. Kalsakau to take back the duties of President of the Party.
137. Despite the evidence of several witnesses as to custom ceremonies involving Mr Vohor and Mr A.I. Kalsakau, significantly, there is no provision in the UMP Constitution that in so doing, one office bearer may hand over responsibilities to another office bearer. Further, it is accepted that Mr Vohor is still the Party President and has not been removed from that position. Finally, Mr A.I. Kalsakau, Mr Calo and Mr Harry accepted

in cross-examination that on 5 May 2022, Mr Vohor returned to Vanuatu from overseas. Mr Kapapa accepted in cross-examination that Mr Vohor returned to Vanuatu on or about 5 May 2022.

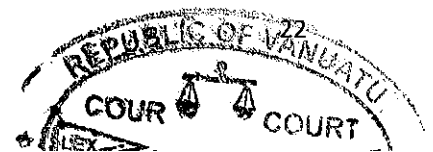
138. I find that Mr Vohor's absence due to attendance overseas for medical treatment ceased on his return to Vanuatu on 5 May 2022.
139. Mr Vohor deposed that after his return to Vanuatu, he asked Mr Kapapa (Acting Secretary General) on 9 May 2022 at the Golden Port Restaurant and again at his "welcome kakai" on 12 May 2022 to send the notice for a NEC meeting [**Exhibit C2**]. When that did not happen, he sent Mr Kapapa a letter dated 21 May 2022 requesting that Mr Kapapa come to see him so that they could formulate the agenda for a NEC meeting to be held as soon as possible [**Annexure "SV2", Exhibit C2**]. Mr Vohor's evidence is uncontroverted; Mr Kapapa's evidence [**Exhibit D13**] did not respond to any of this evidence from Mr Vohor.
140. Accordingly, I find that Mr Vohor was present and had made several requests to Mr Kapapa in relation to calling a NEC meeting.
141. In the circumstances, Mr A.I. Kalsakau was no longer entitled to act on Mr Vohor's behalf to call and chair a meeting of the NEC on 23 May 2022.
142. I find therefore that Mr Vohor's suspension by the NEC meeting on 23 May 2022 was invalid as that meeting was inquorate and had been invalidly called and chaired by Mr A.I. Kalsakau as the Acting President when Mr Vohor was not absent in terms of article 123 of the UMP Constitution.
143. For the reasons given, a declaration will be made that Mr Vohor's suspension was invalid and of no effect.
144. In the period 23-31 May 2022, Mr Vohor suspended Mr A.I. Kalsakau, Mr Kapapa, Mr Harry, Mr Seule and Mr Kalo pending the decision of the Disciplinary Committee. Subsequently, Mr Kalo was reinstated. Accordingly, the next issue I consider is whether or not Mr Vohor's suspensions of Mr A.I. Kalsakau, Mr Kapapa, Mr Harry and Mr Seule were valid? [**Issue 7**]
145. As already stated, the President of the Party has the power to suspend any member or officer of the Party pending the decision of the Disciplinary Committee. Mr Vohor is the President of the Party. His purported suspension by the NEC on 23 May 2022 was invalid. In the circumstances, Mr Vohor's suspensions of Mr A.I. Kalsakau, Mr Kapapa, Mr Harry and Mr Seule are valid.
146. The Disciplinary Committee remains seized with Mr A.I. Kalsakau, Mr Kapapa, Mr Harry and Mr Seule's matters and must forthwith consider them in accordance with article 138A of the UMP Constitution.
147. A declaration and order will be made.
148. The next issue I consider is whether or not Mr Vohor's termination of the Disciplinary Committee chaired by Mr Kalo and his appointment of a new Disciplinary Committee chaired by Mr Bae were valid? [**Issue 8**]



149. Section 21 of the *Interpretation Act* [CAP. 132] provides as follows:

21. *Where an Act of Parliament confers a power on any authority to make any appointment that authority shall also have power (subject only to any express limitations or qualifications contained in that Act) to remove, suspend, reappoint or reinstate any person appointed in the exercise of the power.*

150. The National Council is the body charged with electing a Disciplinary Committee: article 138A of the UMP Constitution. In accordance with section 21 of the *Interpretation Act*, the National Council also has the power to remove the Disciplinary Committee. However, there is no provision anywhere in the UMP Constitution conferring power on the President of the Party to terminate the Disciplinary Committee.
151. Mr Vohor deposed that Mr Kalo had attended both the NEC meeting on 23 May 2022 as well as the National Council meeting on 3-4 June 2022 therefore he had compromised his position as Chair of the Disciplinary Committee, so a new Disciplinary Committee was needed **[Exhibit C1]**. Even if that were so, Mr Vohor did not have the power to terminate Mr Kalo's appointment as Chair of the Disciplinary Committee and any such factual circumstances could not confer power on Mr Vohor to terminate Mr Kalo's appointment.
152. For the reasons given, Mr Vohor's termination of the Disciplinary Committee chaired by Mr Kalo was invalid.
153. The only provision for the appointment of the Disciplinary Committee is in article 138 of the UMP Constitution. There is no provision anywhere in the UMP Constitution conferring power on the President of the Party to appoint the Disciplinary Committee. Accordingly, Mr Vohor does not have the power to appoint the Disciplinary Committee and his appointment of a new Disciplinary Committee chaired by Mr Bae was invalid.
154. Declarations will be made.
155. On 3 June 2022, the new Disciplinary Committee terminated Mr A.I. Kalsakau, Mr Kapapa, Mr Harry and Mr Seule pending the decision of the National Congress. Was that decision of the new Disciplinary Committee valid? **[Issue 9]**
156. Given the new Disciplinary Committee was not validly appointed, its decision cannot stand. The new Disciplinary Committee's termination of Mr A.I. Kalsakau, Mr Kapapa, Mr Harry and Mr Seule was invalid and I will so declare.
157. Given my consideration of Issue 9, I need not consider whether or not the Disciplinary Committee provided Mr A.I. Kalsakau, Mr Kapapa, Mr Harry and Mr Seule an adequate opportunity to be heard **[Issue 10]**.
158. On 3 June 2022, Mr Vohor appointed Marcellino Pipite, Saby Natonga, Noel Lango, Vincent Kapalu, Luo Jesse, Gaston Rory and Jean Kaisipai as "interim" members of the NEC. The next issue I consider therefore is whether or not Mr Vohor's appointment of the "interim" members of the NEC was valid? **[Issue 11]**
159. As already stated, the members of the NEC are elected by the National Congress. The next election of the NEC is to take place at the next National Congress of the Party. There is no provision anywhere in the UMP Constitution conferring power on the



President of the Party to appoint "interim" or indeed any members of the NEC. For the reasons given, Mr Vohor's appointment of the "interim" members of the NEC was invalid. A declaration will be made to that effect.

160. On 5 June 2022, the "interim" NEC members met and resolved that the UMP hold its National Congress at Mele Village on Efate from 24 June to 2 July 2022. I now consider therefore whether or not the calling of the National Congress at Mele Village was valid? **[Issue 12]**

161. The "interim" members of the NEC were not validly appointed. Accordingly, their decisions cannot stand. The decision by the "interim" members of the NEC to call the National Congress at Mele Village was invalid. I will so declare.

162. The next issue I consider is whether or not to make a declaration that the National Congress of the Party be held on Tanna island as decided by resolutions of the 26<sup>th</sup> National Congress in 2019 and of the National Council on 3-4 June 2022? **[Issue 13]**

163. Articles 80 and 81 of the UMP Constitution provide as follows:

80. *A meeting of the National Congress shall be called by the President of the Party on the decision of the majority of the members of the National Council or at the request of two-thirds of the Representatives.*

81. *The Notice of Meeting must indicate the venue of the meeting and the proposed agenda set by the National Executive Committee.*

164. Article 94 of the UMP Constitution provides as follows:

94. *The Annual National Congress approves the venue for the next annual meeting on the recommendation of the National Council, the date of which is set by the National Executive Committee in consultation with the Region in which the meeting is due to be held.*

165. Article 107 of the UMP Constitution provides as follows:

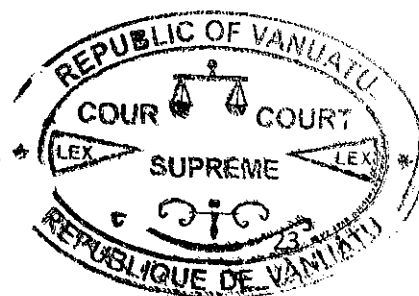
107. *In compliance with the directions set down by the National Congress and the Extraordinary National Congress, the National Council shall act as the steering and coordinating body of the Party.*

*It shall make all necessary rules for a good management of the party and shall ensure these Articles are implemented.*

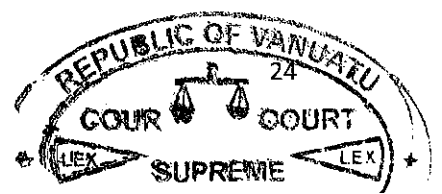
166. Article 110 of the UMP Constitution provides as follows:

110. *The National Council includes:*

- a) *all Members of Parliament from the UNION OF MODERATE PARTIS;*
- b) *all Regional Council Presidents;*
- c) *all members of the National Executive Council;*
- d) *all Statutory Committee Presidents;*
- e) *The President of the National Council of Wise Men.*



167. I assume the reference to "Council" in article 110(c) correctly to be to the National Executive "Committee".
168. Article 112 of the UMP Constitution provides as follows:
112. *The National Council shall meet at least twice a year and where a meeting is called by the President or at the request of a quarter of its members. The quorum required at any meeting of the National Council shall be a simple majority of its members. Decisions taken by absolute majority of votes; in the event of a tie, President shall have a casting vote.*
169. It is accepted that the 26<sup>th</sup> National Congress resolved that the next National Congress would be held on Tanna island in accordance with article 94 of the UMP Constitution.
170. The President of the Party does not have the power to call a meeting of the National Congress on his own. He can only call such meeting "on the decision of the majority of the members of the National Council" or "at the request of two-thirds of the Representatives".
171. There is no evidence of any request by two-thirds of the Representatives.
172. The National Council is one of the bodies named as a "national authority" in article 25 of the UMP Constitution, it is also a body within the structure of the Party "at national level" (article 26) and it is charged with the function of acting as the steering and coordinating body of the Party (article 107).
173. Mr Kalsakau submitted that the required decision of the majority of the members of the National Council was made at the National Council meeting on 3-4 June 2022 which decided that the National Congress be held on Tanna island during the August 2022 school holidays.
174. That meeting was called and chaired by Mr A.I. Kalsakau and attended by Mr Kapapa, Mr Harry and Mr Calo even though they are currently suspended. That said, there were 25 other attendees at the meeting [minutes attached as **Annexure "TRK5", Exhibit D13**]. I will assume therefore that that meeting was made at the request of at least a quarter of the National Council's members.
175. The minutes of the 3-4 June 2022 meeting of the National Council record that the resolution to move the date of the UMP National Congress to the August 2022 school holidays was unanimously supported. Even putting to one side the votes of Mr A.I. Kalsakau, Mr Kapapa, Mr Harry and Mr Calo supporting that resolution, the other votes cast fulfilled the requirement in article 112 of the UMP Constitution that the decision be taken by absolute majority of votes. Accordingly, the decision of the majority of the members of the National Council has been made in accordance with article 80 of the UMP Constitution.
176. Even if I am wrong on that and the decision of the National Council was invalid due to Mr A.I. Kalsakau calling and chairing the National Council meeting, it is undisputed that the 26<sup>th</sup> National Congress resolved that the next National Congress be held on Tanna.
177. It is now incumbent on all the parties to arrange forthwith the holding of the National Congress of the Party to resolve the current discord within the Party by:





- i) First, for the National Executive Committee in consultation with the Tanna Region to set the exact date for the National Congress meeting as required by article 94; and
  - ii) Secondly, for the President of the Party to call the meeting of the National Congress as required by article 80.
178. Finally, the Claimants in CC 22/1527 sought by way of relief that the *ex parte* Orders be made permanent or at least until after the National Congress. I now consider whether or not to do so **[Issue 14]**.
179. The *ex parte* Orders were made on 24 June 2022. On 30 June 2022, they were confirmed and varied after an *inter partes* hearing. Given the result, it is not appropriate that the restraining orders continue any longer as it includes orders preventing the parties from organising the next National Congress. Those orders will be discharged.

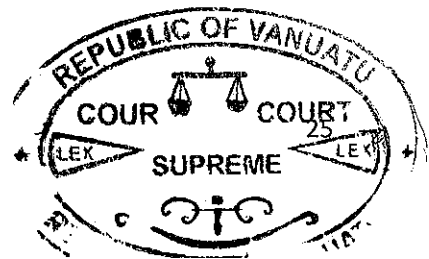
#### G. Costs

180. Even though Mr Vohor lacked standing to bring the Claim in CC 22/1509 and that Claim is dismissed, his purported suspension by the NEC has been declared invalid. The Claimants Mr Vohor and Mr Etul did not succeed in having the terminations of Mr A.I. Kalsakau, Mr Kapapa, Mr Harry, Mr Seule and Mr Calo upheld.
181. As to the Claim in CC 22/1527, those Claimants obtained a declaration that the NEC has the power to suspend the President of the Party but did not succeed in having Mr Vohor's suspension upheld. Those Claimants were also successful in obtaining declarations that the appointment of the Second Defendants as interim members of the National Executive Committee was invalid and that the National Congress be held on Tanna.
182. Given the result where the parties have had mixed success, costs are to lie where they fall.

#### H. Result and Decision

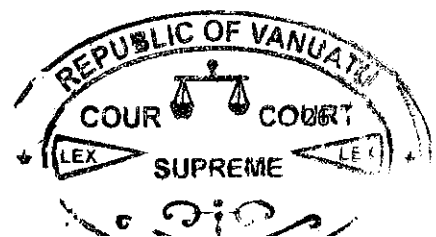
183. Declaration that Mr Rialuth Serge Vohor lacked standing to bring the Claim in CC 22/1509 on behalf of the UMP Committee (Inc.).
184. Declaration that both the UMP Committee (Inc.) and the National Executive Committee of the UMP may sue and be sued on behalf of the Party, subject to the qualification that if the UMP Committee (Inc.) is named as a claimant or defendant, that it is the National Executive Committee which provides instructions on its behalf.
185. Declaration that Mr Noel Lango and Mr Keasipai Song (also known as Jean Kasipai) are not members of the National Executive Committee of the UMP.
186. Declaration that the 11 members of the National Executive Committee of the UMP are the following (noting too that Mr A.I. Kalsakau, Mr Kapapa, Mr Harry and Mr Calo are currently suspended):

- i) National President – Rialuth Serge Vohor;



- ii) First Vice President – Alatoi Ishmael Kalsakau;
- iii) Second Vice President – Sabi Natonga;
- iv) Assistant Secretary General – Robin Kapapa;
- v) National Treasurer – Anthony Harry Iauko;
- vi) Member – Luganville – Charley Ulas;
- vii) Member – Santo – Kalvau Moli;
- viii) National Coordinator – Georgio Calo;
- ix) Vice-National Coordinator – Tom Lorry;
- x) Member – Port Vila President – Johnson Kapi; and
- xi) Member – Port Vila Vice-President – Olivier Etul.

- 187. Declaration that Mr Vohor's suspension of Mr Georgio Calo was valid.
- 188. Declaration that the reinstatement of Mr Calo by the National Executive Committee of the UMP on 23 May 2022 was invalid and of no effect.
- 189. Order that the Disciplinary Committee chaired by Mr Willie Daniel Kalo is to forthwith consider Mr Calo's matter in accordance with article 138A of the UMP Constitution.
- 190. Declaration that the National Executive Committee of the UMP has power to suspend the President of the Party pending the decision of the Disciplinary Committee.
- 191. Declaration that the suspension of Mr Rialuth Serge Vohor on 23 May 2022 by the National Executive Committee of the UMP was invalid and of no effect.
- 192. Declaration that Mr Vohor's suspensions of Mr Alatoi Ishmael Kalsakau, Mr Tom Robin Kapapa, Mr Anthony Iarish Harry and Mr David Seule were valid.
- 193. Order that the Disciplinary Committee chaired by Mr Willie Daniel Kalo is to forthwith consider Mr A.I. Kalsakau, Mr Kapapa, Mr Harry and Mr Seule's matters in accordance with article 138A of the UMP Constitution.
- 194. Declaration that the President of the Party does not have the power to appoint or terminate the Disciplinary Committee.
- 195. Declaration that Mr Vohor's termination of the Disciplinary Committee chaired by Mr Willie Daniel Kalo was invalid and of no effect.
- 196. Declaration that Mr Vohor's appointment of a new Disciplinary Committee chaired by Mr Arthur Bae was invalid and of no effect.
- 197. Declaration that the termination of Mr Alatoi Ishmael Kalsakau, Mr Tom Robin Kapapa, Mr Anthony Iarish Harry and Mr David Seule by the Disciplinary Committee chaired by Mr Bae was invalid and of no effect.



198. Declaration that Mr Vohor's appointment of Mr Marcellino Pipite, Mr Saby Natonga, Mr Noel Lango, Mr Vincent Kapalu, Mr Luo Jesse, Mr Gaston Rory and Mr Jean Kaisipai (also known as Keasipai Song) as "interim" members of the National Executive Committee of the UMP was invalid and of no effect.
199. Declaration that the decision by the "interim" members of the National Executive Committee of the UMP to hold the National Congress at Mele Village on Efate from 24 June to 2 July 2022 was invalid and of no effect.
200. Declaration that the National Congress of the Party be held on Tanna as decided by the 26th National Congress in 2019.
201. It is incumbent on all the parties to arrange forthwith the holding of the National Congress of the Party.
202. The *ex parte* Orders dated 24 June 2022, which were confirmed and varied on 30 June 2022 after an *inter partes* hearing, are discharged.
203. Given the result where the parties have had mixed success, costs are to lie where they fall.

**DATED at Port Vila this 5<sup>th</sup> day of August 2022  
BY THE COURT**

  
Justice Viran Molisa Trief

