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

ELECTION PETITION
Case No. 25/237 SC/ELTP

BETWEEN: NAKOU NATUMAN
Petitioner

AND: REPUBLIC OF VANUATU
First Respondent

AND: SIMIL JOHNSON
Second Respondent

Date of Hearing:	4 April 2025
Before:	Justice M A MacKenzie
Counsel:	Petitioner – Mr S Kalsakau
	First Respondent – Mr L Huri
	Second Respondent – Ms J Kaukare

DECISION

The Election Petition

1. The Vanuatu Parliament was dissolved on 18 November 2024.

2. On 16 January 2025, there was a general election in Vanuatu. Mr Natuman was a candidate in the election for one of the seven seats in the Tanna Island Constituency. On 29 January 2025, the Electoral Commission published the results in the Gazette. Mr Natuman was not elected as he was the eighth highest polling candidate in the Constituency with 1,197 votes.

3. On 19 February 2025 Mr Natuman filed an Election Petition, ("the Petition") together with a sworn statement in support. The Petition was filed within 21 days after the publication in the Gazette of the final results of the election to which the petition relates, as is required by s 90(1) of the Electoral Act No.16 of 2023 ("the Electoral Act").

4. As will be discussed in more detail, Mr Natuman does not give any direct evidence in support of the Petition in his sworn statement. Rather, he relies on various documents which are annexed to his sworn statement. The documents include police reports and complaints, letters, statements, and other documents.

5. In the Petition, Mr Natuman challenges the validity of Mr Simil Johnson's election as a member of Parliament for the Tanna Island Constituency. He seeks an order declaring the election of Mr Johnson to be void. In the event the Court makes such a declaration, he seeks orders that:

   a. Mr Natuman be declared as a duly elected member of Parliament for the Tanna Island Constituency, or alternatively

   b. There be a by-election for the affected seat.

6. Mr Natuman asserts that there was such non-compliance with the provisions of the Electoral Act that it affected the result of the election, because the conduct detailed below meant that Mr Natuman lost votes and Mr Simil gained votes unlawfully[1] The conduct, or omissions relied upon are:

   a. Many of Mr Natuman's voters could not cast their votes at the Tuhu Polling Station because the doors were closed earlier than the 4.30pm official closing time.[2]

   b. Some of the Mr Natuman's voters were denied the right to vote on polling day without any valid reason.

   c. Some of Mr Natuman's voters were unable to vote because they were told they were not registered on the electoral roll, but witnessed other people, not on the roll, casting votes.

   d. Known agents of Mr Johnson were seen on polling day threatening the Presiding Officer of Tuhu Polling Station, facilitating voting of ineligible voters, such as underage and unregistered voters and facilitating the casting of votes despite the doors to the Polling Station being closed, by such actions as scanning ID cards and allowing people to vote without the supervision of the Presiding Officer.

   e. That Mr Johnson himself interfered in the voting by phoning the Presiding Officer of Tuhu Polling Station and threatening him to allow voting by ineligible voters or after the doors of the Polling Station had closed. The interference included calling

[1] *Section 94(1)(a) of the Electoral Act*
[2] *As provided for in s 62 of the Electoral Act*

a police officer in an attempt to have him stop the counting of votes for his voters to vote.

f. That the Presiding Officer of the Leneken Polling Station allowed or did not stop a police officer to accompany persons who required "*assisted voting*" and cast votes for such persons contrary to s 64 of the Electoral Act.

7. There was a first hearing on 4 March 2025. At the hearing, the Honourable Chief Justice determined that the Petition had a foundation, and made directions for a first conference.[3]

8. Prior to the first conference, both the First and Second Respondents filed applications to strike out the Petition, together with submissions in support. I was unable to hear the strike out application at the conference because Mr Kalsakau wanted an opportunity to file a response and submissions.

The strike out applications

9. Both the First and Second Respondents seek that the Election Petition be struck out. The applications are framed slightly differently, but in essence both Respondents contend that Mr Natuman has not filed any admissible evidence in support of his Petition. This is because he sworn statement contains inadmissible hearsay and he filed no other sworn statements in support of the Petition. Both Respondents submit this cannot be rectified because the Petitioner's evidence must be filed within the 21 day time frame provided in the Electoral Act. As such, the Petition is invalid and must be struck out.

10. The First Respondent also submits that the Petition does not comply with rule 4.2(2)(b) of the Civil procedure Rules ("CPR") as it lacks specificity as to details, and so Mr Natuman has failed to properly plead his case.

11. Conversely, Mr Kalsakau submissions included that:

a. The strike out application is premature and misconceived because the Respondents have prematurely presumed that the evidence Mr Natuman will rely on is hearsay evidence. He submitted that the statements annexed to his sworn statement are admissible on the basis that they exist.[4] His submission is that Mr Natuman will need to call the people who have made statements, and that

[3] *See Minute dated 4 March 2025*
[4] *Relying on Subramaniam v Public Prosecutor [1956] UKPC 2*

whether or not the statements are true are not is a matter for trial and not at an interlocutory stage.

b. Mr Kalsakau further submitted that the discretion to strike out a claim must be exercised sparingly and that the Court must approach a strike out on the basis of an assumption that a Claimant can prove its case at trial.[5]

c. At the first hearing, the Court found that there was a foundation for the Petition. That meant there were issues requiring resolution, which cannot be dealt with in a strike out application.

d. That while there is public interest in Election Petitions being determined speedily, there is an equal, if not more important consideration, which is that there is public interest in elections being conducted within the law.

The legislative framework

12. The Electoral Act replaces the Representation of the People Act [CAP 146].[6] It received assent on 29 December 2023, and commenced on 9 August 2024. The Electoral Act then is the applicable legislation for this Election Petition.

13. Part 9, Division 1 of the Electoral Act provides the statutory framework for challenging the validity of an election by Petition brought for that purpose under the Act.

14. Mr Natuman is entitled to bring a Petition because he was a candidate at the general election.[7] A key issue is though whether the Petition is valid or competent which requires consideration of the time prescribed for the filing of a Petition and what a Petition must contain.

15. Section 90 of the Electoral Act prescribes the timeframe for presenting an Election Petition, and says:

> ***90 Time for presentation of petitions***
>
> *(1) Subject to subsection (2), an election must be presented within 21 days after the publication in the Gazette of the final results of the election to which the petition relates.*

[5] *Mr Kalsakau cited Poilapa v Mahe [2024] VUCA 32 at 7*
[6] *The Representation of the People Act was repealed by virtue of s 132 of the Electoral Act*
[7] *Section 88(b) of the Electoral Act*

(2) If a petition alleges a specific payment of money or other reward after an election by or on the amount of a person whose election is disputed, the petition may be presented within 21 days after the alleged payment.

(3) The time limit referred to in subsections (1) and (2) must not be extended.

16. Section 90 of the Electoral Act is virtually identical to s 57 of the Representation of the People Act, which said:

57 Time for presentation of petitions

(1) Subject to subsection (2) an election petition shall be presented within 21 days of the publication in the Gazette of the results of the election to which the petition relates.

(2) If a petition alleges a specific payment of money or other reward after an election by or on the account of a person whose election is disputed, the petition may be presented within 21 days of the alleged payment.

(3) The time limit provided for in this section shall not be extended.

17. The one difference between s 90 of the Electoral Act and s 57 of the Representation of the People Act is the wording used in s 90(3) as compared with s 57(3). Section 90(3) provides that the time limit referred to in subsections (1) and (2) "*must*" not be extended. Section 57(3) says that the time limit provided for in the section "*shall*" not be extended. I consider that the words "*must*" and "*shall*" have the same meaning and effect. They are both mandatory expressions, which convey the absolute nature of the time limits for presenting an Election Petition.

18. The Electoral Act does not address what a Petition must contain. What a Petition must contain is set out in rule 2.3 of the Representation of the People Election Petition Rules 2003 ("EPR").

19. Rule 2.3 EPR says:

2.3 (1) A petition must set out:

(a) whether the person was registered to vote, or claims to have been a candidate, at the election; and

(b) the grounds on which the election is disputed; and

(c) the facts on which the petition is based; and

(d) an application for an order about service of the petition.

(2) The petition must have with it:

(a) a sworn statement by the petitioner in support of the petition, setting out details of the evidence the petitioner relies on; and

(b) any other sworn statements that support the petition.

(3) A sworn statement must be in Form 2.

20. Saliently, a Petition must have with it a sworn statement by the Petitioner setting out details of the evidence the petitioner relies on, and any other sworn statements that support the Petition.

21. While the purpose of the EPR is to set out the procedures to be used about electoral disputes brought under s 54 of the Representation of the People Act [CAP 146], all counsel accept that the EPR apply to Petitions presented under the Electoral Act.

22. Section 92(1) of the Electoral Act provides for the Chief Justice to make rules not inconsistent with the Act concerning the conduct of proceedings in the Supreme Court. No rules have as yet been made under s 92(1). However, by virtue of s 133(4) of the Electoral Act, the EPR continue, until they are repealed or revoked.

23. Section 133 says:

133 Continuation of regulations and other subsidiary legislation

(1) Any Regulation, Order, Code of Conduct, notice or other instrument made under the Representation of the People Act [CAP 146] that was in force immediately before the commencement of this Act, continues with necessary modifications, on and after that commencement, until it is repealed or revoked.

(2) Any Regulation, Order, notice or other instrument made under section 18A of the Decentralization Act [CAP 230] that was in force immediately before the commencement of this Act, continues with

necessary modifications, on or after that commencement, until it is repealed or revoked.

(3) Any Regulation, Order, notice or instrument made under section 7 of the Municipalities Act [CAP 126] that was in force immediately before the commencement of this Act, continues with necessary modifications, on and after the commencement, until it is repealed or revoked.

(4) Any Rules for Election Petitions made under the Representation of the People Act [CAP 146] that were in force immediately before the commencement of this Act, continues with necessary modifications, on and after that commencement, until they are repealed or revoked.

A Preliminary Point

24. Mr Kalsakau places weight on the fact that the Chief Justice determined that there was a foundation for the Petition, and submitted that means there are issues requiring resolution.

25. Rules 2.6(1) EPR required Mr Natuman to satisfy the Court at the first hearing that there is a foundation for the Petition. If the Court is not satisfied, then the Petition must be struck out. If not, then the Court must allocate a first conference. At that conference, the Court may deal with any applications to strike out the Petition: see rule 2.9(1)(a). As Trief J said it addressing this point in *Kalo v Amos [2023] VUSC 13* :[8]

> *".... The EPR therefore envisages that even after the Court has held that there is a foundation for the petition, it may deal with a strike out application."*

26. Therefore, the fact that the Court has determined there is a foundation for a Petition does not preclude the Court entertaining a strike out application, as rule 2.9 clearly provides for such an application to be considered at the first conference.

[8] *at 40*

Does Mr Natuman's sworn statement set out details of the evidence he relies on?

27. The First and Second Respondents submit that Mr Natuman's sworn statement setting out the details at the evidence he relies upon contains inadmissible hearsay. Therefore, the Petition lacks evidence to substantiate it and should be struck out.

28. Mr Natuman's sworn statement contains no direct evidence to support the Petition. The statement consists entirely on statements made by others. The documents annexed to his sworn statement fall into the following categories:

- Copies of police complaints lodged by his voters unable to vote because the doors to the polling station were closed even though it was not yet 4.30pm.
- Police statements made by Mr Natuman's voters.
- A statement signed by Johnsen Kaih who allegedly observed various issues relating to voting.
- A number of police reports[9]
- List of names of people casting votes "*illegally*" and prepared by Mr Natuman's observers at Tulu Poling Station.
- A letter written by Peter Tao.
- A letter signed by the Presiding Officer of Tulu Polling Station.
- Reports received from political observers as to the conduct of a police officer at Lenaken Polling Station.

29. In Vanuatu, the Court of Appeal in *Pakoa and Family v Kai [2021] VUCA* 24 adopted the hearsay rule articulated by the Privy Council in *Subramanian v Public Prosecutor [1956] 1 WLR 965* at 970, as follows: [10]

> *"Evidence of a statement made to a witness by a person who is not himself called as a witness may or may not be hearsay. It is hearsay and inadmissible when the object of the evidence is to establish the truth of what is contained in the statement. It is not hearsay and is*

[9] *refer paragraphs 8, 9, 10, 12,13,15,16,18 of Mr Natuman's sworn statement.*
[10] At paragraph 43

admissible when it is proposed to establish by the evidence, not the truth of the statement, but the fact that it was made".

30. Evidence of a statement made by a person who is not a witness is hearsay and inadmissible when the purpose or object of the evidence is to establish the truth of what is contained in the statement. That is precisely the purpose of the various statements annexed to Mr Natuman's sworn statement. Their purpose is not to establish the fact that the statements were made, but rather their purpose is to establish the truth of what is contained in the various statements and documents. That is because the annexed statements are the factual matters relied on to establish the grounds as set out in the Petition for the election in the Tanna Island Constituency to be declared void. Mr Natuman is asking the Court to accept what is contained in the statements as being the truth.

31. All the statements annexed to Mr Natuman's sworn statement are hearsay because:

    a. The statements are made by persons who were not witnesses as at 19 February 2025 when the Petition was filed;[11] and

    b. The purpose or object of the statements is to establish the truth of what is contained in each statement.

32. Mr Kalsakau's submission that the statements are admissible because they are statements that exist or were made at the relevant time is misconceived, as is his submission that the truth of those statements is a matter to be determined at trial. Whether or not evidence is hearsay is an admissibility issue and depends on the purpose for which the evidence or statement is tendered. As at the date of Mr Natuman's sworn statement, none of the people who have made statements are witnesses because they did not file sworn statements in support of the Petition. The only purpose of the statements is to prove the truth of the facts asserted; that the election in the Tanna Island Constituency was non-compliant in the various ways asserted, and therefore the election of Mr Johnson should be declared void.

33. The effect of the hearsay rule is that the statements annexed to Mr Natuman's sworn statement are inadmissible because the object of the evidence is to establish the truth of what is contained in those statements. Mr Natuman's sworn statement in its entirety then contains inadmissible hearsay.

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[11] *These persons are not witnesses because they did not file sworn statements in accordance with rule 2.3 (2)(b) of the EPR*

34. Therefore, Mr Natuman's sworn statement does not set out details of the evidence he relies on.

Can the Court permit Mr Natuman to file sworn statements, or issue summons after the expiry of the 21 day period for the filing of the Election Petition ?

35. Given that Mr Natuman's sworn statement contains no admissible evidence and he filed no other sworn statements in support of the Petition within the 21 day time limit provided for in s 90(3) of the Electoral Act, the issue is whether the Court can permit Mr Natuman to adduce evidence, by either the issue of summons or filing sworn statements after the expiry of the 21 time limit in s 90(3) of the Electoral Act ?

36. Mr Kalsakau's position is that Mr Natuman is still able to adduce evidence in support of his Petition because rule 2.9(1) provides that that at the first Conference the Court may issue a summons under rule 2.10 and make orders about the filing of sworn statements by the parties and their witnesses. He does not accept the First and Second Respondents' submission that Mr Natuman is precluded from adducing any further evidence because of the strict time limits set out in s 90 of the Electoral Act.

37. Section 90 requires an Election Petition to be presented within 21 days after the publication in the Gazette of the final results of the election to which the petition relates. Pursuant to s90(3), the time limit for presenting a Petition must not be extended. As set out above, a Petition must have with it a sworn statement by the petitioner and ***any other sworn statements that support the Petition.***[12]

38. A Petition includes both the Petition and the Petitioner's sworn statement and any other sworn statements filed in support of the Petition. In *Nalyal v Naling* [2016] VUSC 62, the Chief Justice said:

> *"The Petition as envisaged under section 57 of the Representation of the People Act [CAP 146] is the Petition filed inclusive of the sworn statements by the Petitioner setting out details of the evidence of the evidence the Petitioner relies on and any other sworn statements in support of the Petition".*

39. I respectfully adopt the Chief Justice's reasoning in *Nalyal v Naling*, given the requirement under the EPR that a Petition must have with it a sworn statement by the Petitioner setting out details of the evidence the Petitioner relies on and any other sworn statements in support of the Petition.

[12] *my emphasis added*

40. In the context of whether an Election Petition can be amended, the Court of Appeal in *Jimmy v Rarua* [1998] VUCA 4 said s 57(3) of the Representation of the People Act [CAP 146] was mandatory, and that there was a defined and absolute period for presenting a Petition. I recognize that the wording in s 57(3) is slightly different to s90(3) of the Electoral Act, as s 57(3) uses the word "*shall*' whereas s 90(3) uses the word "*must*". However, as I have already said, I consider that the terms used have the same mandatory meaning and effect so that *Jimmy v Rarua* continues to apply.

41. *Hilton v Wona* [2016] VUSC 92 is relevant, as one of the issues was whether the Court could permit the filing of written statements after the expiry of the 21 day period for the filing of the election petition. I set out below what Geoghegan J said about this issue as it is a critically important in this case:

> *12. Rule 2.3 of the Rules sets out what a petition must contain. It states as follows:-*
>
> *"2.3 What a Petition must contain*
>
> *(1) A petition must set out:*
>
> *(a) Whether the person was registered to vote, or claims to have been a candidate, at the elections: and*
>
> *(b) The grounds on which the election is disputed; and*
>
> *(c) The facts on which the petition is based; and*
>
> *(d) An application for an order about service of the petition.*
>
> *(2) The petition must have with it:*
>
> *(a) A sworn statement by the petitioner in support of the petition, setting out details of the evidence the petitioner relies on; and*
>
> *(b) Any other sworn statements that support the petition."*
>
> *13. The Election Petition Rules also provide for the holding of a first conference, the clear purpose of which is to make directions to enable the matter to proceed to a hearing as soon as possible. That includes the ability of the Court to deal with any applications to strike out the petition, to order that a person may be legally represented and to fix a*

date for a further conference or for a hearing. Rule 2.9 (1) (f) states that the Court may:

"(f) Make orders about:-

(i) Filing and serving sworn statements by the parties and their witnesses;".

14. Accordingly at first blush the rules clearly contemplate the filing of further statements although there appears to be a conflict between rule 2.3 (2) and rule 2.9 (f).

15. The Rules are made pursuant to section 59 (1) of the Representation of the People Act which provides:-

"59. Rules for election disputes

(1). The Chief Justice may make such rules not inconsistent with this Act concerning the conduct of proceedings before the Supreme Court under this Part, the times and places of hearings and adjournment thereof as he shall consider proper.

(2) The proceedings of the Court shall be conducted in English, French or Bislama according to the choice of the petitioner and interpreters shall be provided by the Supreme Court.

(3) The proceedings of the Court shall be recorded in writing.

(4) A summons to a witness shall be in the form contained in Schedule 6.

(5) A person who without sufficient excuse –

(a) disobeys a summons or reasonable direction of the court;

(b) hinders or obstructs the court;

(c) gives false evidence to the court; or

(d) insults the court by word of mouth, writing, radio broadcast or in any other manner,

commits an offence and shall be liable on conviction to a fine not exceeding VT 75,000 or to imprisonment not

exceeding 5 years or to both such fine and imprisonment.

(6) No person appearing before the Court during the hearing of an election petition shall be bound to incriminate himself and all such persons shall be entitled to the privileges accorded to a witness appearing before the Supreme Court when exercising its normal jurisdiction."

16. Mr Godden submits that the very clear purpose behind the restrictive time limit referred to in section 57 (3) is to ensure that issues regarding the election of the country's elected representatives are determined quickly and that it is essential that a respondent in such proceedings be fully aware of all materials or allegations against him or her from the outset. In that regard an election petition can be placed in clear contrast to the usual type of civil proceedings which would enable parties to apply during the course of those proceedings with further and better particulars.

17. The mandatory nature of the time limit set out in section 57 has been repeated time and time again in many cases. In Jimmy v Rarua [1998] VUCA 4 the Court of Appeal referred to the decision of then Chief Justice Cooke in Willie Jimmy – Civil Case 12692 Volume 1 VLR 1980 - 88 where the Chief Justice considered the meaning of section 57 (3). He stated at page 43:

"If this subsection had not been included in the section of the Act the Court may well feel inclined to grant some latitude to the Petitioner but in view of its inclusion, I hold that Parliament considered 21 days adequate to file all the grounds of the Petition. I rule that therefore that the additional grounds of the Petition being out of time cannot be argued by the Petitioner".

18. With reference to that observation the Court of Appeal in Willie Jimmy v Rarua stated at page 7 that :-

"We respectfully adopt and apply the reasoning of these previous cases in Vanuatu to this situation. Courts will normally follow earlier decisions unless there is good and sufficient reason to depart from their approach. In our view they contain an irresistible interpretation which we also adopt".

19. Willie Jimmy dealt with the issue of amending an election petition outside the 21 day period stipulated in section 57 (3). This is not such

a case. Rather this is a situation where further supplementary evidence in respect of the allegations already set out in the election petition is sought to be filed. In that regard some support for the respondent's position could be drawn from the observation of the Court of Appeal in Willie Jimmy v. Rarua at page 8 that:-

> *"Finally it is contended that almost all of what was included in what the Court permitted the Petitioner to amend was only to qualify what was included in the first petition.*
>
> *It may well be that the degree of particularizing or better defining specific allegations already made within the 21 day period is not objectionable".*

20. As against that however, some guidance may be drawn from the Rules. As set out in paragraph [10] herein rule 2.3 sets out what a petition must contain.

21. In support of a restrictive approach to the filing of statements in support of a petition a number of cases have dealt with statements filed outside the 21 day period. In Job Andy v. Electoral Commissioner & Tasso (Electoral Petition Case No. 16/238 SC/ELTP), an electoral petition had been filed with the sworn statement in support of the petition. The Court was advised that other sworn statements supporting the petition would be filed within the statutory time limit for 21 days referred to in section 57 (3). Ultimately those statements were filed outside the statutory time limit. In dismissing the petition the Chief Justice stated:-

> *"In my judgment, the petition filed by the Petitioner although it may have a foundation, it is incomplete and it not validly presented by the petitioner within the mandatory prerequisites under section 57 (1) of the Act and the requirements of rules 2.3 (2) (b) and 2.5 (1) of the Election Petition Rules. The Petition as envisaged under section 57 (1) of the Act [Cap. 146] is the Petition presented (filed) inclusive of the sworn statements that support the petition as provided in the Election Petition Rules.*
>
> *The Election Petition Rules are made consistently with the provision of the Representation of the People Act [Cap. 146] and in particular sections 57, 58 and 59. The Election Petition Rules must be read and applied consistently with the provisions of the Act as those rules provide and require. Election Petitions are serious matters. They challenge the wishes of the majority of*

electors in an election petition. Those who instigate any challenge must comply with the mandatory prerequisites under sections 57 (1)(2) and 58 (1) of the Act [Cap. 146] in the Election Petition Rules. See Jimmy v. Rarua [1998] VUCA 4: Leinevao Tasso v. Ioan Simon Omawa and Others, Election Petition No. 1 of 2008: Election Petition Case No. 16/397 SC/ELTP and others."

22. The authorities examining the legislative provisions and rules regarding the filing of Petitions have emphasized the mandatory nature of section 57 (3) and have traditionally approved the filing of petitions and statements in a way which is consistent with the need to resolve election petitions swiftly and efficiently. This is of course consistent with the need to provide certainty in circumstances where the election of an individual to Parliament is challenged. Although the Chief Justice made timetabling directions for filing further statements I am of the view, with respect, that he was not correct in doing so. Regrettably, this issue was not raised when he was dealing with the matter and it would have been of considerable assistance had the Respondent done so at that time. Notwithstanding that however, I am satisfied that the provisions of the Act taken together with the Election Petition Rules require all statements in support of a petition to be filed within the time period stipulated by section 57 (3).

23. For that reason I rule that all statements filed by the Petitioner after the 21 day period are inadmissible.

42. I respectfully agree with Justice Geoghegan's analysis that statements filed by a Petitioner after the 21 day period are inadmissible. This interpretation is consistent with *Jimmy v Rarua*, even though it dealt with a different issue. As the Court said in *Hilton v Wona*, earlier authorities have emphasized the mandatory nature of 57(3), the predecessor provision to s 90(3), and have approved the filing of petitions and statements in a way which is consistent with the need to resolve Election Petitions swiftly and efficiently.

43. The mandatory nature of the time period in relation to the filing of sworn statements has been emphasized in a number of cases: See for example, *Tasso v Omawa* [2009] VUSC 1, *Job Andy v Electoral Commission* [2016] VUSC 69, *Nalyal v Naling* [2016] VUSC 62, and *Kalo v Amos* [2023] VUSC 27.

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44. In *Job Andy v Electoral Commission*, the Petitioner filed a sworn statement but did not file any other sworn statements within the 21 day time period, and then sought to file other statements. In striking out the Petition, the Chief Justice said:

> *"In my judgment, the petition filed by the Petitioner although it may have a foundation, it is incomplete and is not validly presented by the Petitioner within the mandatory prerequisites under section 57 (1) of the Act and the requirements of Rules 2-3(2) (b) and 2.5 (1) of the Election Petition Rules. The Petition as envisaged under section 57(1) of the Act [Cap 146] is the Petition presented (filed) inclusive of the sworn statements that support the petition as provided in the Election Petition Rules.*
>
> *The Election Petition Rules are made consistently with the provisions of the Representation of the People Act [Cap 146] and in particular ss.57, 58 and 59. The Election Petition rules must be read and applied consistently with the provisions of the Act as those rules provide and require. Election Petitions are serious matters. They challenge the wishes of the majority of electors in an election petition. Those who instigate any challenge must comply with the mandatory pre-requisites under ss.57 (1) (2) and 58 (1) of the Act [Cap 146] and the Election Petition Rules [see Jimmy –v- Rarua [1998] VUCA 4; Leinavao Tasso –v- Ioan Simon Omawa and others, Election Petition No.1 of 2008; Election Petition case No. 16/397 SC/ELTP and others".*

45. In *Kalo v Amos*, Trief J accepted a submission that the Petition was clearly hopeless form the start as it relied almost entirely upon inadmissible hearsay evidence which could not be rectified. Her ladyship also said that a submission that if given notice, Mr Kalo could have rectified his evidence was devoid of merit as a petitioner cannot file any further evidence after the expiry of the 21 day limit in s 57(1) of the Representation of the People Act [CAP 146].[13]

46. Mr Kalsakau does not seek to file any further sworn statements. Prior to the strike out hearing, he filed an application for a summons to issue for 96 people to attend Court and give evidence.[14] He submits that is provided for under rules 2.9 and 2.10 of the EPR. I asked Mr Kalsakau whether he had applied for summons because he accepted that sworn statements could not be filed outside of the 21 day period set out in s 90(3) of the Electoral Act? In response, Mr Kalsakau said he did not accept that sworn statements could not be filed outside the prescribed time limit.

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[13] *In making that observation Trief J referred to Nalyal v Naling and Andy v Electoral Commission.*

[14] *Attached to Mr Natuman's sworn statement filed on 3 April 2025 in support of the application for summons is a two page list of people he proposed to summon to give evidence.*

47. Mr Kalsakau further submitted that the facts of *Job Andy v Electoral Commission* are distinguishable from the present case, because although Mr Andy's Petition was filed in time, his counsel attempted to file sworn statements outside the 21 day time limit. There was no indication in *Andy* that counsel would apply for a summons to issue to any person, which Mr Kalsakau submits is an avenue open to the Petitioner or any other party. I do not accept that *Job Andy v Electoral Commission* is distinguishable from the present case. While Mr Kalsakau does not seek to file other sworn statements, he proposes that a summons be issued for each witness proposed to give evidence at a trial. There is no practical difference, as Mr Kalsakau is seeking to adduce evidence after the mandatory time limit provided for in s 90(3) of the Electoral Act. A summons is simply another vehicle for a witness to attend Court to give evidence.[15]

48. It is at least arguable that the request for a summons to issue for each proposed witness is an attempt to circumvent the well-established principle that a Petitioner cannot file sworn statements after expiry of the prescribed time limit. I accept that rule 2.9 provides for a summons to be issued. However, for the reasons set out below, I consider such an interpretation of the EPR to be inconsistent with:

    a. The fact that a Petition includes a Petitioner's sworn statement and any other sworn statements in support of the Petition: *Nalyal v Naling.*

    b. Rule 2.3 EPR, which provides that a Petition must be filed with sworn statements. Rule 2.3 does not provide anywhere for evidence in support of a Petition to be given orally after utilising the summons process, rather than by sworn statement.

    c. The mandatory time limit in s 90(3) of the Electoral Act. Authorities considering s 57(3) and the EPR have said that the EPR must be read and applied consistently with the provisions of the legislation.[16] As noted, the EPR continue to apply. The EPR cannot be inconsistent with the provisions of the Electoral Act, but rather must be interpreted and applied in a manner consistent with s 90(3). Permitting evidence to be given orally after a summons has issued and outside the 21 day time limit is completely inconsistent with the time limit set out in s 90(3).

    d. Both the need for a Respondent to know that case against them, and for Election Petitions to be dealt with by the Courts expeditiously.

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[15] *Rule 11.3 of the Civil Procedure Rules provides that evidence in chief in the Supreme Court is to be given by sworn statement. Further, rule 2.11 EPR provides that evidence in chief is to be given by sworn statement unless the Court orders otherwise.*

[16] *See for example, Nalyal v Naling and Job Andy v Electoral Commission*

49. For the reasons discussed, I adopt and apply the reasoning of the authorities I have referred to. As was said in *Jimmy v Rarua*, Courts will normally follow earlier decisions unless there is good and sufficient reason to depart from their approach. The fact that Mr Kalsakau seeks to use the summons process, rather than filing sworn statements does not render the established principle that sworn statements in support of a Petition must be filed within the 21 day time limit prescribed by the legislation, moot. A Petition must be accompanied by evidence in the nature of sworn statements, to be valid. I am satisfied that the provisions of the Electoral Act, taken together with the EPR, require both evidence in support of a Petition to be filed by way of sworn statement and within the 21 day time limit set out in s 90(3) of the Electoral Act, given the matters detailed at paragraphs 47 and 48.

50. Mr Natuman's sworn statement consists entirely of inadmissible hearsay, and he did not file any other statements in support of the Petition within the prescribed time limit. There is no evidence to substantiate the grounds set out in the Petition. Mr Natuman cannot rectify the evidential position by filing further sworn statements, or by seeking a summons for each proposed witness, for the reasons already given. Thus, the Petition is invalid or incompetent and must be struck out. Given this, it is unnecessary for me to consider the issue of whether the Petition was properly and sufficiently pleaded.

Result

51. For the reasons set out above, the Election Petition is struck out.

52. The First and Second Respondents are entitled to costs, either as agreed or taxed.

DATED at Port Vila this 10th day of April 2025
BY THE COURT

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Justice M A Mackenzie