

Vanuatu: Supreme Court decides two important cases with implications for government stability

by Tess Newton Cain

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The government of Vanuatu was able to enjoy the recent celebrations of the 33rd anniversary of Independence safe in the knowledge that two legal challenges had been defeated in their favour.

The case of *Kalsakau v Principal Electoral Officer & others* was keenly watched as Ishmael Kalsakau, the Attorney-General (and unsuccessful candidate in last year's general election), challenged the results of the Port Vila election on two grounds. They were failure to conduct the election properly by the principal electoral officer and corrupt practice by other (successful) candidates during the campaign and election periods. The respondents included the prime minister and three of his ministers (although one was joined to the proceedings by virtue of the first ground of complaint only).

The petition was dismissed on both grounds although a number of significant issues arise from the judgment. Most significant is the effect of **recent changes** to the relevant **legislation**. They create an extra test to overturn an election result – the relevant non-compliance or misconduct affected the result. In relation to the conduct of the election, the court found that there were 'minor imperfections' but these had not affected the results. Whilst there was evidence of bribery and/or treating on the part of one of the respondents, these 'corrupt electoral practices' had not been sufficient as to affect the outcome of the ballot.

Whilst criminal proceedings may follow, further to the 2012 amendments, a subsequent conviction for an offence under the Act will not void the result of the election of itself, only if it is found to have affected the original outcome.

The second case was a challenge by the Opposition to the Speaker's ruling that their motion of no confidence was not in order. There is a well worn track between Parliament House and the Supreme Court in Port Vila with numerous cases of this type having been heard before and involving some quite bizarre circumstances including MPs regaining entry to the chamber via a ladder and an open window and the legislature being convened on Good Friday. In this instance, Vincent Lunabek CJ upheld almost all of the Speaker's objections to the motion, most notably the forgery of four of the signatures.

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The government is managing to hold strong, despite some ministerial reshuffles and constant rumours on social media and elsewhere that the opposition has or will have sufficient numbers to effect a change. In his speech to the nation at the Independence celebrations the PM claimed that more than half of the initiatives in his '100 day plan' had been activated. Since the determination of the election petition case, the Attorney-General has resigned.

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