

PAPUA NEW GUINEA  
[IN THE NATIONAL COURT OF JUSTICE]

**EP NO 33 OF 2017**

BETWEEN:

**SAM AKOITAI**  
*(Petitioner)*

AND:

**FATHER SIMON DUMARINU**  
*(First Respondent)*

AND:

**ELECTORAL COMMISSION**  
*(Second Respondent)*

**WAIGANI: KANGWIA J**

2018: 3 & 13 April

**Cases cited:** *Yama v Yagama* [2013] N5354

**Counsel:**

J. Sirigoi for the Petitioner  
S. Soi for the First Respondent  
A. Kongiri for the Second Respondent

**KANGWIA J:** Father Simon Dumarinu (*First Respondent*) by an amended Notice of Motion dated 29 March 2018 pursuant to s 170 (1) and 171 (1), (2) and (3), Section 212 (1) (g), 212 (3) of the Organic Law on National and Local Level Government Election 1997 (Organic Law hereon) and Rule 22, 23 and section 155 (4) of the Constitution moved the Court for the following orders;

1. That the Petitioner who is to be returned elected was not duly elected.

2. That the Court ordered Judicial Recount completed on Wednesday 14 March 2018 be recounted.

The orders were sought on the basis that the difference in the number of votes (4 in total) polled by the Petitioner has not exceeded 0.25 % from the First Respondent who polled the next highest number of votes. It was also alleged that the Returning Officer (R/O hereon) and his staff committed errors and omissions during the Court Ordered recount.

The undisputed facts from which this application was made are these; The Petitioner filed an election petition in the Court of Disputed Elections alleging that the R/O at the original count of ballot papers failed to grant him his right for a recount as stipulated under s170 (1) of the Organic Law.

The Court upheld the Petition and ordered a recount of the votes and a report to be furnished to the Court on 23 March 2018 for verification.

On 21 March 2018 upon hearing that the results of the recount had favoured the Petitioner by a difference of 4 votes, the First Respondent filed a Notice of Motion which was later amended to seek the orders referred to.

On 23 March 2018 when the Court reconvened to verify the results of the recount the Court's attention was drawn to the pending motion to be dealt with prior to any verification. The main relief sought in the amended Notice of Motion was a recount.

I then raised the point as to whether the First Respondent was entitled to a recount after a recount.

The First Respondent submitted that he was entitled to a recount as the results of the recount showed that the winning margin was below .25% as stipulated under s170 (1) of the Organic Law.

The Second Respondent and the Petitioner did not oppose this point but stated that the law was silent on this issue.

There was no further argument on this issue. I adjourned the question and directed parties to file and serve affidavits sought to be relied on in the substantive issue.

Before the main issue is considered it is my view that the issue of whether the First Respondent was entitled to a recount after a recount, be determined on the initial arguments by counsel.

This will hopefully put to rest doubts as to whether the First Respondent was entitled to a recount. If he was entitled to a recount it would pave the way for the motion to be determined.

If on the other hand he was not entitled to a recount that would be the end of the matter.

### **1. Is the First Respondent entitled to a recount after a recount?**

The Law governing Election Petitions and related matters is the Organic Law on National and Local-Level Government Elections (Organic Law hereon). Section 170 of the Organic Law makes provision for a re-count. The relevant parts are set out as follows;

#### **170. Re-Count**

- (1) Subject to sub-section (4) and (5) where on the final count, the margin of votes between the candidate who polled the highest number of votes and the candidate who polled the next highest number of votes does not exceed 0,25 % of the number of votes polled by the candidate who polled the highest number of votes, the candidate who polled the next highest number of votes may at any time before the declaration of the result of the election, request the returning officer to re-count the ballot-papers contained in a parcel.*
- (2) On receipt of a request under subsection (1) the Returning Officer shall re-count the ballot papers contained in the parcel.*
- (3) The officer conducting a re-count has the same powers as if the re-count were the scrutiny, and may reverse any decision in relation to the scrutiny as to the allowance and admission or disallowance and rejection of any ballot-paper.*

The Organic Law is silent on whether a second recount can be conducted after the return of the first recount. There is no provision which specifically states that a recount after a recount was available to an aggrieved party before a Court verifies and makes a declaration.

In the case of *Yama v Yagama* [2013] N5354 the Court in a similar case ruled that it was not bound to accept without further inquiry the results of a recount. It was further ruled that a party to a petition may move the Court for acceptance or rejection of the result of a recount and the Court may conduct a hearing and hear evidence to determine whether the result should be accepted or rejected.

Although I agree in principle with the view of the Court I am of the further view that s 170 (1) should not be construed as applying to an application made to a Court by an aggrieved party for a second recount. A pre-requisite to a recount under s 170 (1) of the Organic law is that the candidate who was runner-up in the polling requests the R/O to conduct a re-count before a declaration of the winner. In my view s 170 applies to a recount from a final count after polling. In the present case the First Respondent is not the runner-up from a polling. In my view he would be deemed as a runner – up from a recount. The present case was a Court ordered recount and not a final count after polling.

I am also of the view that a request to a Returning Officer for a recount is not available in circumstances where a second recount is sought from a Court Ordered recount.

The Organic Law under section 212 confers powers on the National Court to make various determinations. Relevant parts are reproduced as follows;

## **212. Powers of Court**

*(1) In relation to any matter under this part the National Court shall sit as an open Court and may among other things-*

*(a)*

*(b)*

*(d) Order a recount of ballot papers in an electorate; and*

*(e) Examine witnesses on oath*

*(f) Declare a person who was returned as elected was not duly elected; and*

*(g) Declare a candidate duly elected who was not returned as elected; and*

*(2) ...*

*(3) The Court may exercise all or any of its powers under this section on such grounds as the Court in its discretion thinks just and sufficient.*

From that provision it would be safe to hold that s 212 (d) refers to a recount from a count after polling. It is unclear whether s 212 (d) includes a recount of ballot papers after a recount. In such a situation it is my view that where the Law is silent or not specific about an issue the power given to the Court by s 212 (3) of the Organic Law would apply. That provision specifically confers wide powers on the Court to exercise its discretion as it thinks just and sufficient. That power in my view extends to some situations where the law is silent as in the present case.

In light of the above views I concur with the view in the case of Yama v Yagama (supra) that an application to a Court to accept or reject the results of the recount is the option open to an aggrieved party from a court ordered recount.

Based on the foregoing views I am of the further view that the First Respondent was not precluded by Law from a recount. However, that was subject to an Application to the Court and the Court being satisfied that a recount was warranted. In my view the First Respondent was entitled to seek a further recount from a recount.

In line with the above views it is open now for the hearing of the motion filed by the First Respondent.

The First Respondent raised four main allegations of errors and omissions against the R/O during the recount. They are as follows;

1. The engagement of the former wife of the Petitioner during the recount.
2. Allegation of errors committed by the R/O during the recount of the ballot papers.
3. Allegation of omission of Constitutional duty imposed on the R/O by s 171 of the Organic Law.
4. Allegation of error by the R/O when he did not reconcile the total number of ballot papers counted in 2017 and the recount in 2018.

At the hearing all parties relied on affidavits filed without any objections.

1. The main issue for determination is whether the alleged errors and omissions affected the results of the Court Ordered recount.

The issue involves a determination of the law and a determination of the allegations of error and omissions committed by the R/O and other persons involved in the recount.

It is a principle of law that the onus rests on the person or party who alleges to prove the allegation made. In the present case the onus rests with the First Respondent as the person who raised the allegations, to prove them.

It is apparent from the provisions under s 212 (3) of the Organic Law that the Court has a wide discretion to make various determinations and that would include a determination on an application for a recount on or from a recount.

In the present case the exercise of the Court's discretion must be based on the evidence before it. That requires a scrutiny of the evidence to determine whether the alleged errors and omissions affected the results of the recount.

The First Respondent relied on the two affidavits of Father Simon Dumarinu dated 21 March and 29 March 2018 and the affidavits of Robert Duku, Gipson Polo, James Tronasi and Silas Amiranu all dated 21 March 2018. Their statements will be considered in line with the allegations of errors and omissions raised by the First Respondent.

**a. Allegation 1**

**1. Engagement of the Petitioner's former wife.**

The evidence relied on by the First Respondent under this allegation are as follows;

In the second affidavit of Father Simon Dumarinu he referred to admissions by the R/O of employing the Petitioner's former wife. He also referred to the affidavit of the Petitioner as affirming the allegations raised by his witnesses of the Petitioner's wife being employed at the recount.

In the affidavits of Robert Duku and Silas Amiranu they stated that Margaret Akoitai, the Petitioner's wife was engaged to work as a machinist in the counting centre. They also stated of seeing her writing her husband's name in count No 33 on ballot paper with serial number 3894508.

Silas Amiranu further stated that he protested the presence of the Petitioner's wife to the R/O but he ignored his protest.

The Second Respondent relied on the affidavit of the Returning officer.

In his affidavit the R/O stated that there was no Counting Official with the name Margaret Akoitai; that they recruited a Margaret Maneo as a counting official.

He further stated that on the complaint of a scrutineer at the start of the count for the First Respondent's box that Margaret Maneo was the Petitioner's wife, he asked Margaret Maneo who told him that she was the former wife of the Petitioner; that she was divorced 35 years ago and that she had remarried and got her own children and the petitioner was also remarried. He then moved her away from station one and stationed her with the recorders.

On the allegation that she typed in "Sam Akoitai" at count 33, the R/O stated that it cannot be possible for the reason that she was not a DPO and the physical ballot papers when scanned can show no names but only numbers in the candidates' boxes.

The Petitioner in his affidavit stated that Margaret Maneo was his former wife 35 years ago.

It was submitted for the First Respondent that the Returning Officer committed an error when he engaged Margaret Akoitai, the wife of the Petitioner to work in the recount. By the employment of the Petitioner's wife, impartiality in the recount was not present. There was present the likelihood of bias.

On behalf of the Second Respondent it was submitted that it was not possible for entry of a name onto a ballot paper at the recount as the screening of the ballot papers were done in public and in the presence of all scrutineers.

For the Petitioner while agreeing with the Second Respondent's submission it was submitted that Margaret was a former wife of the Petitioner 35 years ago and a scandalous allegation was made by the witness for the First respondent. The allegations contained misconceptions and there was no nexus between the woman's employments to the allegations raised.

I accept the evidence that Margaret was no longer the wife of the Petitioner as alleged in the affidavits of the First Respondent's witnesses. She was the Petitioner's former wife after separating with the petitioner 35 years ago.

It is difficult to comprehend how the employment of Margaret at the recount would infer bias or create a conflict of interest situation where the current relationship of Margaret with the Petitioner was not in evidence and unclear apart from her being a former wife. The evidence offered has not established any nexus between Margaret and the Petitioner that affected or likely to affect the recount. There is also no nexus established between the Petitioner and Margaret's employment. The existence of an apprehension of bias or likelihood of bias or conflict of interest situation must be based on strong evidence. In the present case such evidence is completely lacking.

It is also obvious from the evidence that the R/O did not know the former status of Margaret. Under this scenario I am unable to comprehend how the R/O and Margaret could have colluded to be impartial or biased in favour or against a certain candidate. I find no error committed by the R/O in the employment of Margaret that would go to affect the results of the recount.

I also accept the R/O's statement that typing of a name on the ballot paper was not possible in circumstances where the papers when scanned can show only numbers. There is no evidence from the records or from witnesses to affirm the allegation that the name which Margaret typed in the ballot paper appeared on the screen during counting. This allegation has not been made out.

There is no evidence that the employment of Margaret in the recount affected or was likely to affect the results of the recount. This allegation has no basis.

## **Allegations 2.**

### **2. Errors committed by the R/O during the recount of the ballot papers.**

Allegations 2 relates to alleged errors and omissions committed by the R/O during the recount. The First Respondent relied on the affidavits of Father Simon Dimarinu, Robert Duku, Gipson Polo, James Troansi and Silas Amiranu who stated of observing many serious errors committed by the Returning Officer during the recount.

In the affidavit of Father Simon Dumarinu dated 21 March 2018 he stated that he was aware of the results in the recount which showed that the Petitioner received 7,257 votes while his was 7253 votes.

He stated that from what scrutineers told him he believed that human errors were committed by the R/O and those engaged in the recount and sought a recount.

In his second affidavit he further relied on the affidavit of the R/O as admitting to committing the alleged errors and omissions and by those engaged by the Second Respondent which concurred with the statements of his witnesses. He alleged that impartiality was not present and it breached his right to be elected to a public office by the breach of public duties imposed on the Returning Officer.

The affidavits of Robert Duku, Gipson Polo, James Troansi and Silas Amiranu alleged the following errors;

- A. They alleged that the Returning Officer was indecisive in declaring ballot papers informal or give to another candidate. He was influenced by scrutineers, police and the public whom he handpicked to decide for him and he declared the ballot papers informal. They referred to the following ballot papers as being affected by the errors committed by the Returning Officer ;



1. In count 31 ballot paper with serial number 3906355, on a query on the figure 19 which was the ballot number for the First Respondent the R/O declared it informal.
2. In count 37 ballot paper with serial number 3906461, upon a query on number 19 the query was rejected and the ballot paper declared informal.
3. In count 39 ballot papers with serial numbers 3882354, 3883728, 3882353 and 3896240 upon a query that the number 19 looked like 14 the R/O rejected the query and declared all of them informal.
4. In count 41 with serial numbers 3896324 and in count 29 with serial number 3906018 upon a query on the number 19 not written properly the R/O declared both ballot papers informal.
5. In count 30 ballot paper with serial number 3912545, upon a query on the figure 23 the R/O declared the ballot paper as informal.

They alleged that the R/O's engagement of outsiders to decide on the ballot papers under query led to a number of ballot papers for the First Respondent not admitted to be counted. Witness Gipson Polo referred to 8 ballot papers while witness Robert Duku referred to 13 ballot papers as affected or rejected. Witness Robert Duku and Silas Amiranu stated that from more than 39 ballot papers rejected by the R/O most of them were for the First Respondent.

The R/O in his affidavit stated that every query on a ballot paper was recorded with the action taken which were tendered as annexure B through his affidavit. Annexure B contained 9 pages of details on the queried ballot papers.

He stated that he did on three or four occasions sought the views of three persons to verify unclear numbers on the ballot papers by giving blank papers for them to write the number that was under query. After receiving the results he decided whether the ballot paper was informal or belonged to a candidate. The decision on the ballot papers under query were made by him and no one else.

It was submitted for the First Respondent that the R/O admitted committing the errors and omissions alleged by their witnesses. Therefore a recount was justified on account of the admissions by the R/O and the various errors committed by the R/O and other officials employed in the recount as referred to by the witnesses for the First Respondent.

The Second Respondent while relying on the two affidavits of the R/O submitted that the R/O had clearly explained in detail what transpired and what action he took. It was submitted that the Returning Officer in his affidavit clearly explained that all the queried ballot papers were recorded with comments which he tendered as annexure B of his affidavit.

In the counting room all ballot papers were screened for everyone present to see. The process employed were itemised under item 8 of the R/O's affidavit.

It was submitted that the R/O admitted seeking views when numbers were confusing. Due to shouting and demands a written affirmation from others was necessary to identify the ballot paper under query. It was not a necessity to refer ballot papers to the Electoral Commission.

It was also submitted that only one ballot paper in count 37 that was identified by the witnesses was dealt with as recorded at page 7 of 9 of annexure B in the affidavit of the R/O. The other ballot papers identified by the witnesses do not appear in the R/O's list of queried ballot papers.

It was conceded that the margin was less than .25% (4 votes) from the winning total. However it was submitted that the required process was applied correctly and the results were before the Court.

For the Petitioner the submission by the Second Respondent was adopted and submitted that the First Respondent's witnesses have an interest in the outcome of the result. There was no evidence of foul play in the recount. It was also submitted that there were many discrepancies in the evidence of the witnesses. He referred to the allegation by witness Gipson Polo who stated that ballot paper with serial number 3906461 was declared informal but the R/O's records showed that it was formal and was given to the First Respondent. There was no evidence of the other ballot papers referred to in the allegations.

It was further submitted for the Petitioner that the recount was Court Ordered and the remedy of a further recount was not available to the First Respondent. Therefore the results of the recount should be verified.

The provision of law guiding a recount is under s 170 of the Organic Law. Under s170 (3) power is conferred on a R/O to exercise during a recount in the following manner;

#### 170. RE-COUNT

(1)....

(2)....

(3) *The officer conducting a re-count has the same powers as if the re-count were the scrutiny, and may reverse any decision in relation to the scrutiny as to the allowance and admission or disallowance and rejection of any ballot paper.*

In my view the powers conferred on a R/O are wide and also confers discretion in the conduct of a recount. That power includes rejection of a ballot paper as informal or acceptance as formal. It also includes how he reaches a conclusion as to the status of a ballot paper under query.

The allegations that the R/O committed errors during the recount are listed above in this judgement. Most witnesses stated that the R/O declared a lot of ballot papers belonging to the First Respondent as informal from choices made by outsiders whom he selected and not by him as the mandated officer.

The R/O in his affidavit referred to a document attached as annexure B containing 9 pages of queried ballot papers with comments. The document recorded the Serial Number, the Count Number, the First Preference, Second Preference and Third Preference, the Date Recorded, the Comments and the decision made on each ballot paper.

Upon a perusal of the ballot papers referred to by the witnesses for the First Respondent against the record referred to by the R/O only one ballot paper seemed to correspond.

In the affidavit of Gipson Polo he stated that in Count 37, in ballot paper with serial number 3906461, a query was raised on figure 19 which was the candidate number for the First Respondent. He stated that he opposed the query but after consulting others the R/O declared the ballot paper as informal. However, the record by the R/O contradicts the allegation. The record shows that the ballot paper referred to was formal and was given to the First Respondent.

I conclude from the contradiction that witness Gipson Polo was not truthful and reject his affidavit.

In the affidavit of the witnesses for the First Respondent it was stated that the R/O erred when he picked a policeman, a member of the public and a scrutineer to decide on the status of a ballot paper under query.

The R/O explained that he did refer the queried ballot papers to three others for their views to help him decide the fate of the queried ballot paper. He explained that he gave those people blank papers to write down what they thought was the number under query. He further stated that he alone made the decision to accept or reject the queried ballot paper.

I have no doubt in accepting as credible his explanation that only he and no one else made the decision to accept or reject the queried ballot papers.

It was in my view a convenient and transparent way of reaching a proper conclusion on a queried ballot paper.

The law under s 170 (3) stands clear. The R/O had a wide discretion and that in my view included seeking views on a queried ballot paper from anyone he preferred. Given the discretion that he had by operation of law I am of the view that he did not commit an error when he selected three persons in the counting room to assist him identify the queried ballot papers.

I can see no reason or basis to agree with the view of the First Respondent that the R/O admitted committing the errors alleged by his witnesses. What the R/O did was deliberate and within his discretion and he also gave a reasonable and satisfactory explanation for doing it. I am unable to conclude that the engagement of others to confirm a ballot paper affected the results of the recount.

There is also a mismatch in the rest of the ballot papers referred to by the witnesses for the First Respondent with the record of queried ballot papers produced by the R/O. All the other ballot papers alleged by the witnesses for the First Respondent did not correspond with the ballot papers on the list produced by the R/O.

This may be attributed to a number of reasons. It may be because the witnesses referred to the wrong count and serial number or the R/O referred to wrong count and serial numbers. It may also be that the ballot papers referred to by the witnesses were never queried and went through the counting process unhindered.

Whatever the reason may be for the mismatch the important aspect of an allegation is that it is established or proved. An allegation is only an allegation unless and or until proven.

In the present case the allegations relating to the ballot papers remain allegations only. Only one ballot paper referred to by witness Gipson Polo was proved to have been queried and decided in favour of the First Respondent.

Apart from that there is no evidence from which the Court can safely conclude that the rest of the ballot papers were the subject of the alleged errors. I cannot find anything in evidence that established or proved the allegations made. The alleged errors cannot stand as proved. This ground has no merit.

### **Allegation 3.**

#### **Omission of Constitutional duty imposed on the R/O by s 171 of the Organic Law.**

This allegation also comes under the overall allegation of errors and omissions that were allegedly committed by the R/O.

The allegation arose out of alleged failure by the R/O to comply with the provisions of s 171 of the Organic Law which provided for the reservation of certain ballot papers under query for the electoral Commission to determine.

Section 171 of the Organic Law is in the following terms;

#### **171. Reservation of disputed Ballot Papers**

- (1) The officer conducting a re-count may and at the request of a scrutineer shall, reserve any ballot paper for the Electoral Commission.*
- (2) The Electoral Commission shall decide whether a ballot paper reserved for its decision under this section is to be allowed and admitted or disallowed and rejected.*
- (3) In the event of the validity of the election being disputed the National Court may consider any ballot-paper which were reserved for the decision of the Electoral Commission, but shall not order a further recount of the whole or part of the ballot papers in connection with the election unless it is satisfied that the recount is justified.*

The Officer under this provision in my view includes the R/O since he/she is the Principal Officer who conducts a recount.

It was submitted for the First Respondent that the errors alleged included indecisiveness of the R/O and his engagement of people not qualified to decide on ballot papers he was unsure of. This amounted to a breach of the Constitutional duty imposed on him under s 171 (1) & (2) of the Organic Law when he failed to reserve ballot papers for the Electoral Commission.

For the Second Respondent it was submitted that in respect of queried ballot papers s 171 (1) provided that the requirement to reserve ballot papers for the Electoral Commission was not mandatory with the use of the word "may". A prerequisite to reserving ballot papers for the Electoral Commission was at request of a scrutineer. There is no evidence that that happened.

For the Petitioner on the issue of seeking enforcement of Constitutional rights, it was submitted that it was not relevant since the Organic Law governs elections and not the Constitution.

The provision is not in mandatory terms and clearly gives the Officer conducting a recount a wide discretion to decide whether or not to reserve a ballot paper for the Electoral Commission. The enabling word "may" under s171 (1) confers on the R/O an option to either reserve or not reserve a ballot paper for the Electoral Commission.

The only precondition required is that the Officer could only reserve a ballot paper at the request of a scrutineer. In my view however he still has discretion to reserve or not to reserve a ballot paper for the Electoral Commission even after a request by a scrutineer.

In the present case there is no evidence that a scrutineer requested the R/O to reserve any of the alleged ballot papers alleged by the First Respondent's witnesses or any other ballot paper.

That left open the option for the R/O to decide on the ballot papers queried. There is no provision under the Organic Law which prevents the R/O from making a decision on a ballot paper. It was his duty and prerogative to decide the fate of a queried ballot paper.

The manner of arriving at a conclusion on a ballot paper rests with him as the Officer conducting the recount. In that vein I am further of the view that the R/O was not prevented by law from seeking the assistance of others in a counting room to arrive at a conclusion on a ballot paper under query.

I am further of the view that he did not commit any error or breach a mandatory duty imposed on him by s 171 of the Organic Law when he did not reserve any of the ballot papers then under query. There is no evidence that he breached a law in the manner he decided on the queried ballot papers. This allegation has no basis.

#### **Allegation 4.**

**R/O erred when he did not reconcile the total number of ballot papers counted in 2017 and the recount in 2018.**

The First Respondent's evidence for this allegation is contained in the affidavit of Fr Simon Dumarinu where he stated that the R/O failed to verify the differences in the total number of ballot papers.

Ballot papers counted in 2017 was 24,621 while the number counted in the recount was 24,610 which were 11 ballot papers less. The allegation was also raised in the affidavit of Gibson Polo and James Troansi.

In the affidavit of the R/O he admitted that 11 ballot papers were unaccounted for from the total counted in 2017 and the total counted in the recount. He stated that in the 2017 count there were 24,621 ballot papers but in the recount he counted 24,610 ballot papers. He offered no explanation on the unaccounted 11 ballot papers.

It was submitted for the First respondent that the R/O erred when he did not provide any evidence on the difference of the total number of ballot papers in 2017 count and the 2018 recount which revealed a difference of 11 ballot papers unaccounted for.

For the Second Respondent it was submitted that 11 ballot papers were unaccounted for. However the R/O counted all the ballot papers that were in the boxes. There was no evidence of the R/O's involvement in the 11 ballot papers not accounted for, hence it did not reflect any error by the R/O in the recount.

The basis of this allegation is unclear. The R/O did in his affidavit reveal that 11 ballot papers were unaccounted for. He was in no position to avoid it. He had counted all the ballot papers in the boxes and total numbers were recorded. There is no evidence that the R/O had a part to play in the whereabouts of the 11 ballot papers and therefore he cannot be expected to explain what happened to them.

There is no evidence to suggest that the unaccounted ballot papers belonged to either one candidate or to each candidate from which a conclusion or an inference can be drawn as to whether the results of the recount was affected or likely to be affected. Where it was known as to whose ballot papers were unaccounted for maybe an explanation by the R/O would be expected and wanting.

As stated earlier the law under s 170 (3) of the Organic Law gives the R/O wide power in the conduct of a recount. That include a decision on whether he should reconcile ballot papers after a recount. He was in my view entitled to give no explanation on the 11 unaccounted ballot papers.

Under the circumstances of this case case I am of the view that the R/O did not err when he did not give any explanation on the 11 unaccounted ballot papers.

In my view it would be a witch hunt for the R/O to find an answer for the unaccounted ballot papers that he had nothing to do with. This allegation bears no good basis for a recount.

I have found that all four allegations have no basis. This leads me to the conclusion that the results of the recount were not affected by the allegations raised. Therefore the orders sought in the Amended Notice of Motion are refused.

The following orders are made;

1. The results of the recount for the Central Bougainville electorate filed in Court on 20 March 2018 are formally ratified as correct and valid.
2. Pursuant to s 212 of the Organic Law on National and Local Level Government Elections it is declared that Sam Akoitai was duly elected. ~~It is declared that Sam Akoitai was duly elected.~~
3. Costs of the application shall be borne by the First Respondent.

For the Petitioner: *Sirigoi Lawyers*

For the First Respondent: *Soi & Associates Lawyers*

For the Second Respondent: *Kongri Lawyers*