

**IN THE HIGH COURT OF FIJI**  
**AT SUVA**  
**CIVIL JURISDICTION**

**Civil Action No. HBC 296 of 2019**

**IN THE MATTER** of the Social Democratic Liberal Party (**SODELPA**) Constitution, Political Parties (Registration, Conduct, Funding and Disclosures) Act 2013, and the Constitution of the Republic of Fiji  
**AND IN THE MATTER** of the calling and conduct of the annual General Assembly (**AGM**) of **SODELPA** and business transacted at Savusavu held on 28<sup>th</sup> June 2019.

**BETWEEN:** **WATISONI TABAKI NATA** of a Ambala Street, Centrepont, Nasinu, Businessman; **KESAIA MAKITA** of Lot 1, Kauvula Road, Delainavesi, Suva, Community Leader; **ASINACA SORO RAVULO** of Qaui Settlement, Lami, Youth Leader and Community Worker; **ROGOWALE SENIVIAVIA** of Valenicina Settlement, Lami, Youth leader and Community Worker; **DR. MERE TUISALALO SAMISONI (DBA)** of 3 Qeleya Road, Lami, Managing Director; **EMELE SIMA DUITUTURAGA** of 26 Godfrey Road, Nasinu, Human Rights Consultant; **JOPE KOROISAVOU** of 5 Matu Street, Nepani, Trainee Manager; **SILIVENUSI WAQAUSA** of Nagigi Village, Savusavu, Community Leader; **MALAKAI VUETIBAU** of Kalabu Village, Nasinu, Driver.

**PLAINTIFFS**

**AND:** **SOCIAL DEMOCRATIC LIBERAL PARTY** a body corporate duly registered pursuant to the Political Parties (Registration, Conduct, Funding and Disclosures) Act 2013 having its registered office at 66 McGregor Road, Suva.

**FIRST DEFENDANT**

**AND:** **RO FILIPE TUISAWAU** of Rewa, Member of Parliament.

**SECOND DEFENDANT**

**AND:** **ANARE JALE** of 26 Godfrey Road, Nasinu, Member of Parliament.

**THIRD DEFENDANT**

**AND:** **ADI LITIA QIONIBARAVI** of 3 Gardiner Road, Nasese, Suva, Member of Parliament.

**FOURTH DEFENDANT**

**AND:** **USAIA WAQATAIREWA** of Cautata, Bau, Tailevu, occupation unknown to the Plaintiffs.

**FIFTH DEFENDANT**

**BEFORE:** Justice Vishwa Datt Sharma

**COUNSELS:** Mr. A.K. Narayan with Mr. Victor Sharma - for the Plaintiffs  
Mr. Filimoni Vosarogo - for the Defendants

**DATE OF DECISION:** 23<sup>rd</sup> April, 2020 @ 9.30 am

## JUDGMENT

### INTRODUCTION

1. On the outset, the counsels representing the parties to these proceedings sought Court's indulgence to accommodate an early hearing date in this matter due to the nature of the case.
2. This Court being satisfied that this was a public interest case, accordingly acceded to the counsel's Application.
3. The current application before Court is the Plaintiffs Originating Summons coupled with the Affidavit in Support and sought for the determination of the following questions and grant of Orders accordingly:-

#### **A. The questions to be determined:**

- Q1. *Whether the Plaintiffs are entitled to seek judicial determination of the following questions and consequential relief? And accordingly;*
- Q2. *Whether the Defendants breached Section 12.5(a) and (b) of the SODELPA Constitution when the 4<sup>th</sup> Defendant failed to "communicate formally to all Constituencies inviting motions for consideration at the General Assembly" to at least four months prior to the Annual General Assembly (AGM) convened at Savusavu on 28<sup>th</sup> June 2019?*
- Q3. *Whether the Third Defendant in his capacity as the Acting President and Chairperson at the AGM convened at Savusavu on 28<sup>th</sup> June 2019 compromised the anonymity of the members' votes in contravention of Section 12.9 of SODELPA Constitution which mandated that the election of Office Bearers "shall be by secret ballot"?*
- Q4. *Whether, by virtue of (1) and/or (2) above, the Defendants breached the Political Parties (Registration, Conduct, Funding and Disclosures) Act 2013 (Act) and/or the Code of Conduct prescribed in Schedule 1 to the Act?*
- Q5. *Whether the Defendants breached Section 13.8.1 of the SODELPA Constitution in permitting the 4<sup>th</sup> Defendant to become a candidate in the election of office bearers while she was at the material time occupying the office of the General Secretary of the 1<sup>st</sup> Defendant and, therefore, disqualified from membership by virtue of her employment "under some arrangement of remuneration and/or allowance"?*
- Q6. *Whether, by virtue of the acts and/or omissions referred to in (2), (3) and (4) above, any of the Defendants contravened the Plaintiffs rights enshrined under Section 23(1)(b) of the Constitution.*

#### **B. The Orders sought by the Plaintiff:**

1. *A declaration that the AGM of the 1<sup>st</sup> Defendant convened and conducted on 28<sup>th</sup> June 2019 breached the SODELPA Constitution, the Act and the Constitution;*

2. *A declaration that the decisions, resolutions and outcomes of the AGM of the first Defendant held at Savusavu on 28<sup>th</sup> June 2019 are invalid;*
3. *A declaration that the election of the 2<sup>nd</sup> Defendant as President and the 4<sup>th</sup> Defendant as Vice President of the 1<sup>st</sup> Defendant at the AGM held at Savusavu on 28<sup>th</sup> June 2019 was invalid;*
4. *A declaration that all subsequent actions, meetings, resolutions, decisions, directives and outcomes of the Management Board following the AGM of the 1<sup>st</sup> Defendant held at Savusavu on 28<sup>th</sup> June 2019, including the acceptance of the 4<sup>th</sup> Defendants retrospective resignation and the appointment of the 5<sup>th</sup> Defendant as the General Secretary of the 1<sup>st</sup> Defendant are unlawful, invalid and ineffective;*
5. *A declaration that the 4<sup>th</sup> Defendant has ceased to be a member of the Management Board by virtue of Section 13.8.1 and 13.8.3 of the SODELPA Constitution;*
6. *An Order that the offices held by the 2<sup>nd</sup> Defendant (President), 4<sup>th</sup> Defendant (Vice President) and 5<sup>th</sup> Defendant (General Secretary) be vacated with immediate effect;*
7. *An Order that the remaining members of the Management Board of the 1<sup>st</sup> Defendant appoint and fill the casual vacancies created by the removal of 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants until the next AGM or Special General Assembly pursuant to Section 13.8.4 (e) of the SODELPA Constitution;*
8. *Costs of this action be paid by the Defendants on solicitor and own client indemnity basis;*
9. *Such further or other relief as seems just and equitable to this Honourable Court.*
10. **The Plaintiffs Originating Summons is supported by an Affidavit of the 1<sup>st</sup> Plaintiff Watisoni Tabaki Nata deposited on 4<sup>th</sup> September 2019.**
11. **The Defendants opposed the Originating Summons and the Relief sought therein and filed an Affidavit in Opposition deposited by the 4<sup>th</sup> Defendant Adi Litia Qionibaravi on 12<sup>th</sup> November 2019.**
12. **Following documents and affidavits were filed by the parties to this proceedings:**
  - [i]. **Originating Summons filed 4<sup>th</sup> September 2019;**
  - [ii]. **Affidavit of Watisoni Tabaki Nata in Support of Originating Summons sworn on 4<sup>th</sup> September 2019 ("the Plaintiffs affidavit");**
  - [iii]. **Affidavit of Adi Litia Qionibaravi sworn on 12<sup>th</sup> November 2019 ("the Defendants' affidavit");**  
**and**
  - [iv]. **Affidavit of Watisoni Tabaki Nata in Response sworn on 4<sup>th</sup> December 2019 ("the Plaintiffs' affidavit in reply").**
13. **Both parties to the proceedings also furnished Court with their written submissions together with case authorities and argued their cases respectively.**
14. **It will be noted that the Plaintiff did not proceed with the Preliminary issues dealing with locus and Constitutional Redress contained in the Plaintiffs Supplementary submissions.**

**C. The Plaintiffs Case**

15. SODELPA's Constitution provides for a General, Financial and/or Overseas membership. Eligibility to attend and vote at all meetings of SODELPA is restricted to those members who have paid their annual membership fee: currently being \$2.00.
16. Pursuant to the Political Parties Act, the 1<sup>st</sup> Defendant formulated and registered its Constitution which was last amended by a resolution passed at a Special Meeting of the General Assembly held on 1st September, 2018.
17. Under the SODELPA Constitution, the Management Board of the 1<sup>st</sup> Defendant has, inter alia, the obligation to fulfil its fiduciary responsibilities to the members and is responsible for conducting the business, administrative and organisational affairs of the 1<sup>st</sup> Defendant.
18. By way of a Management Board meeting held on 17<sup>th</sup> May, 2019, it was resolved that the General Assembly meeting ("AGM") would be held at Yaroi Village, Savusavu on 28<sup>th</sup> June, 2019. The Notice of the AGM was published in the local newspaper (Fiji Times) on 7<sup>th</sup> June, 2019 and subsequently through social media (Facebook) on 10<sup>th</sup> June, 2019.
19. The 1<sup>st</sup> named Plaintiff, in his capacity as the President of the Suva Constituency of the 1<sup>st</sup> Defendant, delivered to the 3<sup>rd</sup> Defendant (who was the Chairperson and Acting President at the time) a motion calling for amendments to the SODELPA Constitution on 6<sup>th</sup> June, 2019.
20. The 3<sup>rd</sup> Defendant as chairperson approved the Motion via email dated 7<sup>th</sup> June, 2019 and directed the 1<sup>st</sup> named Plaintiff to speak on the Motion at a Management Board meeting scheduled for 22<sup>nd</sup> June, 2019 (and which was actually later deferred to 27<sup>th</sup> June, 2019). At the Management Board meeting held on 27<sup>th</sup> June, 2019, the 1<sup>st</sup> named Plaintiff was advised by the 3<sup>rd</sup> and 4<sup>th</sup> Defendants (the latter of whom was the General Secretary at the time) that the Motion could not be included in the agenda of the AGM which was scheduled for the next day.
21. As alluded to above, the AGM was convened and conducted on 28<sup>th</sup> June, 2019. As part of the agenda, the nomination and election of the positions of President and Vice-President of the 1<sup>st</sup> Defendant was conducted. At the time of receiving the relevant ballot papers, it was brought to the attention of the 3<sup>rd</sup> and 4<sup>th</sup> Defendants that the anonymity of the voters was compromised as the ballot papers had endorsed on the back of it, the receipt numbers of the financial members clearly linking the voter to the ballot paper.
22. Despite bringing the issue of the endorsement of receipt numbers on the ballot papers, the elections continued and the 2<sup>nd</sup> Defendant was nominated and elected the President of the 1<sup>st</sup> Defendant. The 4<sup>th</sup> Defendant (who was the General Secretary at the time) was nominated and elected as the Vice-President of the 1<sup>st</sup> Defendant.
23. On 12<sup>th</sup> August, 2019, the 5<sup>th</sup> Defendant was appointed the General Secretary of the Management Board filling the position made vacant by the 4<sup>th</sup> Defendant.

24. The Defendants have clearly ignored the Plaintiffs' references to and protests concerning the flagrant breaches of the SODELPA Constitution, the Act and the Constitution of the Republic of Fiji. The unfair election held has affected the rights of the Plaintiffs' to participate in the affairs of SODELPA.
25. Being aggrieved by the manner in which the AGM meeting was conducted (including the prior and subsequent actions taken by the Management Board), the Plaintiffs instituted these proceedings and now seek the Judicial determination of the Questions and consequential remedies as enumerated in their Originating Summons.

**D. The Defendants Case**

26. The SODELPA Management Board at its meeting held on 17<sup>th</sup> May 2019 resolved that the Annual General Meeting be held in Yaroi, Savusavu on 28<sup>th</sup> June 2019.
27. The notice of AGM in accordance with Section 12.7 of the Party Constitution was issued 21 days before the meeting on 6<sup>th</sup> June 2019 and was published in the Fiji Times on 7<sup>th</sup> June 2019.
28. The 3<sup>rd</sup> Defendant sent an email at 3.16 pm on 6<sup>th</sup> June 2019, to the First Plaintiff. The email was in response to an email sent by the First Plaintiff at 2.45 pm to the 3<sup>rd</sup> Defendant and referred to an attachment relating to the Suva City Constituency Special Resolution. The original email sent at 2.45 pm was not sent to the 4<sup>th</sup> Defendant. The "Proposed Special Resolution" was not part of the 3<sup>rd</sup> Defendants email to the 4<sup>th</sup> Defendant which was sent at 3.16 pm.
29. The email sent by the 3<sup>rd</sup> Defendant at 3.16 pm on Thursday 6<sup>th</sup> June to the First Plaintiff and copied to the General Secretary and referred to at 32 above, requested the General Secretary to provide advice to the 3<sup>rd</sup> Defendant on the process required to enable the proposed resolution from the First Plaintiff to be included in the Agenda of the Party's AGM on 28<sup>th</sup> June, 2019;
30. All motions for a General Assembly Meeting are tabled to the Management Board or Working Committee, however this procedure could not be followed for the Suva Constituency Special Motion, because the Motion proposed by the Deponent was not read by the 4<sup>th</sup> Defendant until 10<sup>th</sup> June, 2019, well after the Notice of Meeting had already been delivered to the Fiji Times Office in order to meet their deadline for publication on 7<sup>th</sup> June 2019.
31. At the meeting of the SODELPA Management Board held on 27<sup>th</sup> June 2019, the 1<sup>st</sup> Plaintiff inquired about the motion he submitted by email on the afternoon of 6<sup>th</sup> June 2019. The 1<sup>st</sup> Plaintiff was informed on the nature of the Motion he had submitted tantamounted to a Special Resolution proposing number of amendments to the Party Constitution and it should comply with section 12.8 of the Party Constitution.
32. The Constituencies wishing to amend the Constitution via Special Motion need not wait for the Management Board to seek Motions via the General Secretary and cannot use that as an excuse for the late submission of their Motion to the Party Office.
33. Further, the 1<sup>st</sup> Plaintiff was also told that the Party Constitution enables the Constituency Councils to submit motions to the Management Board at least two months prior to the date of

the General Assembly and also provides flexibility to allow Motions to be tabled at the General Assembly on the approval of the Chairperson only for urgent unforeseen matters. The 1<sup>st</sup> Plaintiffs Motion proposing Constitutional Amendments could not be tabled on the floor of the AGM given that the Party Constitution required particular Notice to be given because it is a Special and not an Ordinary Motion.

34. At the election of the President and the Vice President, the 4<sup>th</sup> Defendant in her capacity as the General Secretary, approved the endorsement of the receipt number for each Member issued a Ballot Paper, on the back of their ballot paper, to ensure that only financial members of the Party cast a ballot. This measure did not defeat the secret ballot requirement in the Constitution.
35. The secret ballot requirement was not defeated by the endorsement of each member's receipt number on their ballot paper during the election of President and Vice President.
36. The 2<sup>nd</sup> Defendant was validly elected as the President of SODELPA at the AGM held on 28<sup>th</sup> June 2019 in Yaroi, Savusavu.
37. The 3<sup>rd</sup> Defendant is the current Vice President of SODELPA and was Acting President of the Party until the 2<sup>nd</sup> Defendant was elected at the 2019 Annual General Meeting (AGM) held 28<sup>th</sup> June 2019.
38. The 4<sup>th</sup> Defendant was elected as Vice President at the 2019 Annual General Meeting of SODELPA and did not assume her role as Vice President until 1<sup>st</sup> November 2019 because the 5<sup>th</sup> Defendant, the newly approved General Secretary did not take up the appointment until 14<sup>th</sup> October 2019, and from 15<sup>th</sup> October, 2019 to 31<sup>st</sup> October, 2019, the 4<sup>th</sup> Defendant provided a mentoring role including the handing over of the responsibilities of the General Secretary as well as the Registered Officer of the Party to the newly appointed General Secretary who is now the Registered and Authorized Officer of the Party.
39. The 5<sup>th</sup> Defendant is the new SODELPA General Secretary and Registered Officer after the Management Board which met on 12<sup>th</sup> August 2019 agreed to his appointment.
40. The 4<sup>th</sup> Defendant appointed as the General Secretary and Registered Officer of SODELPA on 18<sup>th</sup> April 2016 and elected a Member of Parliament in the 2018 General Elections, informed the Management Board of her intention to resign from the General Secretary position to enable the Board and the Party to begin the process of recruiting and appointing a new General Secretary. The 4<sup>th</sup> Defendant had not assumed the position and responsibilities of a Vice President since being elected on 28<sup>th</sup> June 2019.
41. The Defendants deny each of the assertions by the First Plaintiff and put him to strict proof thereof. Further, the Defendants say that the Plaintiffs wish to participate in SODELPA only on their terms and being unhappy with the results of the 2019 AGM election of office bearers, now make wild claims of illegality to bring the party into disrepute.

**ANALYSIS AND DETERMINATION**

42. This Court is now tasked with, inter alia, to determine the issues whether the conduct, Acts and/or omissions on the part of the Defendants have breached the SODELPA Constitution and the Political Parties (Registration, Conduct, Funding and Disclosures) Act 2013?
43. This Court is further tasked with, inter alia, to determine the issues whether the Plaintiffs Rights have been contravened in respect of their Rights to participate in the activities of a political party? This would involve, inter alia, the interpretation of Section 23 of the 2013 Constitution of the Republic of Fiji.
44. The current matter before the Court is between the two factions of the Social Democratic Liberal Party (SODELPA).
45. Each member of the SODELPA Party is bound by its Constitution and they are obliged to respect the Party's' Constitution.
46. The 1<sup>st</sup> Defendant was registered as a political party on or about 2<sup>nd</sup> May, 2013 by virtue of the Political Parties (Registration, Conduct, Funding and Disclosures) Act 2013 which became operative on 18<sup>th</sup> January, 2013 and sets out various requirements to be complied with by a political party.
47. Pursuant to the Act, the 1<sup>st</sup> Defendant formulated and registered its Constitution which was last amended by a resolution passed at a Special Meeting of the General Assembly held on 1<sup>st</sup> September 2018.
48. The SODELPA General Assembly is the supreme decision making body of the Party and whereas the Management Board is the governing body of the Party.
49. At all material times the Plaintiffs and Defendants (2<sup>nd</sup> to 5<sup>th</sup>) were, inter alia, the financial members of the 1<sup>st</sup> Defendant.
50. Having borne above in mind, I will now proceed to determine the following questions as sought by the Plaintiff in his Originating Summons and as enumerated at paragraph 1A of this Judgment hereinabove:  
  
**Q1 - Whether the Plaintiffs are entitled to seek judicial determination of the following questions and consequential relief?**
51. The Plaintiff argues that they are entitled to seek Judicial determination of the questions and consequential relief as enumerated at paragraph 3A and 3B of my Judgment hereinabove respectively.
52. The Plaintiff further argues that the nature of the breaches alleged by the Plaintiffs are clearly provided under the heading [The Questions to be Determined] in the Originating Summons. The Questions requiring determination refer to the alleged breaches of the SODELPA Constitution, the Political Parties Act and the Constitution of the Republic of Fiji (Section 23).

53. At paragraph 31(b) of the Defendants Affidavit, the deponent has advanced that the SODELPA Constitution "requires that members' grievances be to the Chairman of the Management Board or if it is a complaint against a member accused of misconduct which has brought or likely to bring disrepute, it should be made in writing, signed and sent through registered mail to the Chairperson of the Management Board".
54. The grievance procedure and disciplinary procedures are provided at Clause 25 and 26 of the SODELPA Constitution. On the review of the above procedures, the Management Board, the Chairperson and the General Secretary are an integral part of the disciplinary procedure. The Defendants in this action are the very persons who comprise the Management Board and acted as the General Secretary. It would be ridiculous and impracticable to rely on, and exhaust, the alternative remedy when the investigation and determination of the grievance is to be conducted by the very persons who are alleged to have contravened the SODELPA Constitution. The Plaintiffs allegations as to the unfair/unlawful elections at the SODELPA AGM and the invalid appointments and/or steps were orchestrated by the Management Board.
55. According to the Defendants, the question raised is whether the Courts have the power to review the Internal Affairs of a Political Party? In this case the SODELPA Party.
56. The Defendants research did not assist them with any local cases at hand where the above question has been answered and the Defendants further submitted that there had not been any body of Jurisprudence accumulated in the past years since independence in 1970 on this subject.
57. The Defendants have, since filing this action, appeared in court and filed necessary affidavits and taken a hearing date on the Originating Summons for hearing and determination of the issues raised accordingly. No objections were raised by the Defendants leading up to the hearing on the issue of exhausting the alternative remedy (being the appointment of an arbitrator), instead the Defendants proceeded with the substantive hearing of the Orders sought in the Plaintiffs Originating Summons.
58. Section 100 of the 2013 Constitution of the Republic of Fiji empowers the Courts as follows:
- "(3) The High Court has unlimited original jurisdiction to hear and determine any civil or criminal proceedings under any law and such other original; jurisdiction as is conferred on it under this Constitution or any written law.
- (4) The High Court also has original jurisdiction in any matter arising under this Constitution or involving its interpretation."
59. 2013 Constitution of the Republic of Fiji defines law as including all written law. Written law has been defined to mean an act, decree, promulgation and subordinate law made under those acts, decrees or promulgation.



60. This action falls within the ambits and Jurisdiction of the High Court in terms of the High Court's powers provided for in Sections 100(3) and (4) of the 2013 Constitution of the Republic of Fiji since it includes a determination of the alleged breaches of the SODELPA Constitution registered pursuant to the Political Parties (Registration, Conduct, Funding and Disclosures) Act 2013 and the Interpretation of the Provisions of the 2013 Constitution of the Republic of Fiji.
61. Since the Plaintiffs allege that the Defendants conduct of the SODELPA AGM and the Election of the Office Bearers positions were against the SODELPA Constitution and the 2013 Constitution of the Republic of Fiji, prima facie, the Plaintiffs are therefore entitled to seek legal remedy against the Defendants alleged violation of the respective Constitutions.
62. Therefore, I find that the Plaintiffs are entitled to seek Judicial Determination of the questions and consequential relief hereunder and as sought for in the Plaintiffs Originating Summons filed herein accordingly.

**Q2 - Whether the Defendants breached Section 12.5(a) and 12.5(b) of the SODELPA Constitution when the 4<sup>th</sup> Defendant failed to "communicate formally to all Constituencies inviting motions for consideration at the General Assembly" to at least four months prior to the Annual General Assembly (AGM) convened at Savusavu on 28<sup>th</sup> June 2019?**

63. The issue that needs to be determined in this matter is whether the Defendants were in breach of the provisions of Sections 12.5(a) and 12.5(b) of the SODELPA Constitution by not giving sufficient time as required by the SODELPA Constitution therein, to the members to lodge any Motions to be taken up at the party's Annual General Meeting held on 28<sup>th</sup> June 2019?

Further, the issue of the failure by the Management Board to include the Plaintiffs Suva Constituency Council's Motion proposing amendments to the SODELPA Constitution in the SODELPA AGM Agenda of 28<sup>th</sup> June 2019 after the 1<sup>st</sup> Named Plaintiff upon invitation was heard on his Motion at the Management Board Meeting held on 27<sup>th</sup> June 2019 prior to the SODELPA AGM scheduled on 28<sup>th</sup> June 2019.

64. I reproduce Sections 12.5(a) and 12.5(b) of the SODELPA Constitution hereunder-

"Section 12.5(a) provides at least 4 months prior to each General Assembly, the General Secretary under the direction of the Management Board shall communicate formally to all Constituencies inviting Motions for consideration at the General Assembly."

"Section 12.5(b) provides that all Motions shall be received by the Management Board at least two (2) months prior to the date of the General Assembly. Where appropriate, Motions shall have supporting arguments attached."

65. The provisions of Section 12.5(a) of the SODELPA Constitution is mandatory as well as very clear and the Management Board and the General Secretary are required to carry out the requirements to communicate formally to all Constituencies inviting Motions four (4) months prior to the SODELPA General Assembly for consideration.

66. Once the requirements of Section 12.5(a) of the SODELPA Constitution was complied with, then this would have allowed the Constituencies to submit and furnish Motions (if any) at least two (2) months prior to the date of the General Assembly.
67. The fact of the matter herein is that any Motion to be taken up at the AGM has to be filed two (2) months prior to the AGM as provided for in Section 12.5(b) of the SODELPA Constitution.
68. Hence, it is implied by the provisions of the SODELPA Constitution that there must be at least FOUR (4) months interval between the day on which the Management Board decides to aver the AGM and the date on which the AGM was held.
69. In the current case, the Management Board held the meeting on 17<sup>th</sup> May 2019 and resolved that the AGM will be held on 28<sup>th</sup> June 2019 at Yaroi in Savusavu without realising that the provisions of Section 12.5(a) of the SODELPA Constitution required the 4<sup>th</sup> Defendant (General Secretary) under the direction of the Management Board to communicate formally to all Constituencies inviting Motions for consideration at the General Assembly at least four (4) months prior to each General Assembly.
70. It will be noted that the decision made by the Management Board on 17<sup>th</sup> May 2019 scheduling the SODELPA AGM on 28<sup>th</sup> June 2019 had an interval of timeframe of six (6) weeks. This timeline of six (6) weeks was not consistent with the timeline of four (4) months provided for within the provisions of Sections 12.5(a) for formal communication to all Constituencies inviting Motion by the General Secretary and two (2) months within the provisions of Section 12.5(b) of the SODELPA Constitution for submissions of Motion for consideration at the SODELPA AGM on 28<sup>th</sup> June 2019. The invitation of Motions ought to have been carried out by the 4<sup>th</sup> Defendant in her capacity as the General Secretary well prior to the timeframe stipulated at Section 12.5(a) and 12.5(b) respectively.
71. The Plaintiffs contention is that the Defendants breached the provisions of Sections 12.5(a) and 12.5(b) of the SODELPA Constitution when the 4<sup>th</sup> Defendant failed to formally communicate to all Constituencies inviting Motions for consideration at the SODELPA General Assembly scheduled for 28<sup>th</sup> June 2019.
72. However, according to the Defendants, Section 12.5(a) of the SODELPA Constitution can only be breached if the Management Board had directed the General Secretary to invite Motions from the Constituencies and that the General Secretary did not comply with such direction and that there is no evidence produced to the contrary or in defiance of a directive by the Management Board.
73. The Defendants further submitted that the Plaintiffs Summons have not raised the issue that the Management Board failed to direct the General Secretary to call for Motions four (4) months prior to the AGM as required by the provisions of Section 12.5(a) of the SODELPA Constitution.
74. It is not in dispute that the SODELPA Management Board Meeting was held on 17<sup>th</sup> May 2019 and the Annual General Meeting was scheduled for 28<sup>th</sup> June 2019. The Notice of the AGM was published in the local newspaper (Fiji Times) on 7<sup>th</sup> June 2019.

75. The Plaintiffs Motion proposing amendments to the SODELPA Constitution was received by the 3<sup>rd</sup> Defendant (who was the Chairperson and Acting Vice-President at that time) via Plaintiffs email on 6<sup>th</sup> June 2019 although there was no prior four (4) months' formal communication done by the 4<sup>th</sup> Defendant in her capacity as the General Secretary to all the Constituencies inviting Motions for consideration at the General Assembly scheduled to be held on 28<sup>th</sup> June 2019.
76. The 3<sup>rd</sup> Defendant as Chairperson approved the Motion via email dated 7<sup>th</sup> June 2019 and directed the 1<sup>st</sup> Named Plaintiff to speak on the Motion at the Management Board Meeting scheduled for 22<sup>nd</sup> June 2019 and later deferred to 27<sup>th</sup> June 2019.
77. At the Management Board Meeting held on 27<sup>th</sup> June 2019, the 1<sup>st</sup> Named Plaintiff was only advised by the 3<sup>rd</sup> and 4<sup>th</sup> Defendants (the latter being the General Secretary at that time) that the Plaintiffs Motion could not be included in the Agenda of the Annual General Meeting which was scheduled on 28<sup>th</sup> June 2019 (Annexure marked B within the 4<sup>th</sup> Defendants Affidavit filed on 13<sup>th</sup> November 2019 refers).
78. The 1<sup>st</sup> named Plaintiff enquired with the 4<sup>th</sup> Defendant who at the time held the position of the General Secretary an explanation for the omission of his Motion from the Agenda of the SODELPA AGM.
79. The explanation given by the 4<sup>th</sup> Defendant to the 1<sup>st</sup> named Plaintiff was his failure to submit his Motion on time as required under the SODELPA Constitution.
80. It can also be noted from the Annexure marked "WTN-9" within the Affidavit of Watisoni Tabaki Nata (1<sup>st</sup> named Plaintiff) that the reason given by the Party President (2<sup>nd</sup> Defendant) for not including the Suva Special Resolution in the meeting agenda was that the Plaintiffs Motion was a Special Resolution because it proposed amendments of the SODELPA Party Constitution pursuant to Section 27 of the Constitution. As a Special Resolution, Section 12.8 of the Party Constitution requires that it be published at least 21 days before the date fixed for the holding of the General Assembly Meeting (reference is made to Annexure marked "WTN-9" within the Affidavit of Watisoni Tabaki Nata).
81. The 1<sup>st</sup> named Plaintiff explained to the 4<sup>th</sup> Defendant that it was impossible to comply with this requirement due to the failure on her part to formally communicate to all Constituencies, four months prior, inviting Motions for consideration at the AGM. The Plaintiff pointed out to the General Secretary that this was a requirement under the SODELPA's Constitution.
82. According to the 1<sup>st</sup> Plaintiff, the 4<sup>th</sup> Defendant did not deny her non-compliance. The Plaintiff further told the 4<sup>th</sup> Defendant that as the General Secretary, she could have sought approval of the Chairperson to have the Motion tabled at the AGM notwithstanding the fact of her non-compliance. She obviously dismissed and/or ignored the Plaintiffs proposal as the 4<sup>th</sup> Defendant gave the Plaintiff no response.
83. It is also evident and as can be ascertained from the Annexure Marked "WTN-8" within the 1<sup>st</sup> named Plaintiffs Affidavit that the two Management Board Meetings held on 17<sup>th</sup> May 2019 and 27<sup>th</sup> June 2019 did not table the 1<sup>st</sup> named Plaintiffs Motion.

84. The 1<sup>st</sup> named Plaintiff further reiterated at Annexure marked "WTN-8" that at the AGM, the General Secretary (4<sup>th</sup> Defendant) said that she did not receive any Motions and therefore none was tabled at the General Assembly except for the SODELPA USA Motion which later was disqualified.
85. According to the Defendants, the Plaintiffs Motion seeking proposed amendments to the SODELPA Constitution was a Special Resolution. Section 27 of the Constitution dealt with the provisions to amend the Constitution. The Section provides the power to the General Assembly to amend, revoke or add to the provisions of the Constitution only on the basis that all the requirements of a Special Resolution is complied by and such amendment are tabled and passed at the AGM and/or Special General Assembly with two-third majority of those eligible to vote and present at a meeting called to consider the Resolution.
86. However, the Defendants submitted that for a Special Resolution for amendment of the SODELPA Constitution had to be tabled at an AGM, the 21 days rule in terms of Section 12.8 of the SODELPA Constitution must be met which deals with Notice of Special Resolution. There is a need for notification or calling of Motion pursuant Section 12.5 as alleged by the Plaintiff. One does not need to be invited four (4) months before an AGM to submit a Motion for Constitutional Amendment proposed.
87. The assertion by the 4<sup>th</sup> Defendant that the Suva Constituency Council Special Motion was received on 6<sup>th</sup> June 2019 and it was not possible to organise a working committee meeting to consider the proposed amendments for inclusion in the General Assembly Meeting Notice that was published on 7<sup>th</sup> June 2019 is rather misconceived. Section 12.8 clearly stipulates that if the nature of the business proposed requires a Special Resolution, the General Secretary must cause the publication of a Public Notice 21 days prior to date fixed for the AGM. Again, this is a direct breach of Section 12.5(a).
88. After all, the Acting President had accepted the Plaintiffs Motion on 6<sup>th</sup> of June 2019 and forwarded it to the 4<sup>th</sup> Defendant. The 3<sup>rd</sup> Defendant as Chairperson approved the Plaintiffs Motion received via email on 6<sup>th</sup> of June 2019 and directed the 1<sup>st</sup> named Plaintiff to speak on the Motion at a Management Board Meeting scheduled for 22<sup>nd</sup> June 2019 and later deferred to 27<sup>th</sup> June 2019. At the deferred Management Board Meeting held on 27<sup>th</sup> June 2019, the 1<sup>st</sup> named Plaintiff was advised by the 3<sup>rd</sup> and 4<sup>th</sup> Defendants that the Motion could not be included in the Agenda of the AGM scheduled for 28<sup>th</sup> June 2019. The AGM was convened and conducted on 28<sup>th</sup> June 2019.
89. On 7<sup>th</sup> June 2019, the 3<sup>rd</sup> Defendant in his capacity as Chairperson (Annexure B of the Defendants Affidavit refers) advised:

"I have considered the relevant provision of the SODELPA Constitution and have decided to include Suva Constituency Special Resolution in the Agenda of the Management Board Meeting scheduled for Saturday 22<sup>nd</sup> June 2019. You should be ready to speak on your Resolution when it comes up for discussion."

90. The Defendants breached the provisions of the SODELPA Constitution by accepting the Motion under Section 12.5(d) but then asking the 1<sup>st</sup> named Plaintiff to speak on the Motion at the Management Board Meeting on 22<sup>nd</sup> June 2019 (which was rescheduled to 27<sup>th</sup> June 2019). This was a fundamental breach and error on the part of the 3<sup>rd</sup> Defendant as once the Motion was accepted or included, it ought to have been tabled at the SODELPA AGM on 28<sup>th</sup> June 2019. There was no requirement under the SODELPA Constitution for the 1<sup>st</sup> Plaintiff to speak on the Resolution at a Management Board Meeting.
91. As a result of the above conduct, the 1<sup>st</sup> named Plaintiffs Motion was not tabled at the AGM. The rights of the Plaintiffs to participate in the activities of the 1<sup>st</sup> Defendant were infringed.
92. The only excuse advanced by the Defendants (in particular the 4<sup>th</sup> Defendant) in their Affidavit is that once the Motion was included, they did not have time to comply with Section 12.8 of the SODELPA Constitution.
93. The excuse advanced by the 4<sup>th</sup> Defendant in respect of her non-compliance with Section 12.5(a) of the SODELPA Constitution appears at paragraph 22 of the Defendants Affidavit which provides as follows-
- "The Constitutional provision on Special Motions is self-explanatory and Constituencies who wish to amend the Constitution via Special Motion need not wait for the Management Board to seek Motions via the General Secretary and cannot use that as an excuse for the late submission of their Motion to the Party Office".
94. It is obvious that there is no sufficient timeframe of four (4) months given to all Constituencies with regards to the formal communication and invitation of Motions prior to the scheduled SODELPA AGM of 28<sup>th</sup> June 2019 as required by the Constitution for any of the Constituencies including the Suva Constituency to file any Motion to be taken up at the AGM since there is non-compliance by the Management Board and the General Secretary of the four (4) months' prior timeframe prescribed by Section 12.5(a) of the SODELPA Constitution.
95. Further, the failure to communicate formally to all Constituencies inviting Motions for consideration at the General Assembly four (4) months prior to the AGM also led to the fact that the Constituencies were not in a position to submit and furnish their intended Motions (if any) within the prescribed timeframe of 2 months as provided for and required by Section 12.5(b) of the SODELPA Constitution. The reason being that there was a lack of or no formal communication made to the Constituencies at least four (4) months prior timeframe from the scheduled SODELPA AGM. To be more particular, this conduct on the part of the Management Board and the 4<sup>th</sup> Defendant in her capacity as the General Secretary defeated the purposes provided for in the provisions of Sections 12.5(a) and 12.5(b) of the SODELPA Constitution accordingly.
96. The Defendants argument is that Section 12.5(a) of the SODELPA Constitution can only be breached if the Management Board had directed the General Secretary to invite Motions from the Constituencies and that the General Secretary did not comply with such direction and that there is no evidence produced to the contrary or in defiance of a directive by the Management Board.

However, there is admission on the part of the 4<sup>th</sup> Defendant at paragraph 22 of the Defendants Affidavit advancing the excuse in respect of her non-compliance with Section 12.5(a) of the SODELPA Constitution whereby she stated "*The Constitutional provision on Special Motions is self-explanatory and Constituencies who wish to amend the Constitution via Special Motion need not wait for the Management Board to seek Motions via the General Secretary and cannot use that as an excuse for the late submission of their Motion to the Party Office*".

97. The fact of the matter is, that the Management Board Meeting of 17<sup>th</sup> May 2019 fast tracked its Agenda and the decisions to schedule the SODELPA AGM on 28<sup>th</sup> June 2019. This in fact categorically defeated the purposes of Section 12.5(a) and further led to defeat the purposes of Section 12.5(b) of the SODELPA Constitution. The reason for fast tracking the Agenda and the decisions scheduling the SODELPA AGM only six (6) weeks away from the Management Board Meeting is best known to the Management Board and the 4<sup>th</sup> Defendant accordingly.
98. In absence of any such non-compliance only resulted in the failure by the Management Board and the 4<sup>th</sup> Defendant in her capacity as the General Secretary of the Party to formally communicate to all Constituencies inviting Motions for consideration at the General Assembly. This failure further led to the contravention and breach of the provisions of Section 12.5(a) and 12.5(b) of the SODELPA Constitution accordingly.
99. For the reasons stated hereinabove I find that the 4<sup>th</sup> Defendant failed to communicate formally to all Constituencies inviting Motions for consideration at the General Assembly four (4) months prior to the scheduled date of General Assembly which resulted in the breach of Section 12.5(a) and Section 12.5(b) of the SODELPA Constitution.

**Q3 - Whether the Third Defendant in his capacity as the Acting President and Chairperson at the AGM convened at Savusavu on 28<sup>th</sup> June 2019 compromised the anonymity of the members' votes in contravention of Section 12.9 of SODELPA Constitution which mandated that the election of Office Bearers "shall be by secret ballot"?**

100. The issue here is that at the SODELPA AGM Election of the Office bearers of the President and the Vice President, the 3<sup>rd</sup> Defendant in his capacity as the Acting President and Chairperson compromised the anonymity of the members' votes in contravention of Section 12.9 of the SODELPA Constitution where he failed to carry out the election of office bearers by secret ballot.
101. The provisions of Section 12.9 of the SODELPA Constitution clearly sets out the mandatory requirement that the election of office bearers at the General Assembly of the SODELPA Party is to be held and determined by secret ballot.
102. Section 12.9 deals with the decision making by the General Assembly and provides as follows-

*"A question arising at a General Assembly of the Party is to be determined on a show of hands except for the election of office bearers which shall be by secret ballot."*

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103. Secret ballot is a ballot in which votes are cast in secret. It can also be extended to say that it is a voting method in which a voter's choice in an election or a referendum are anonymous.
104. According to the Plaintiffs Submission the election of the two office bearers of the President and the Vice President were held at the SODELPA AGM on 28<sup>th</sup> of June 2019.
105. The Plaintiffs complaint is that each ballot paper had a receipt number endorsed on the back of it which clearly linked the ballot paper to the voter. The Plaintiff referred Court to Annexure marked "WTN-7" within the plaintiffs Affidavit which illustrates the clear link between a voter and her ballot paper. The 6<sup>th</sup> named Plaintiff has enclosed her membership for the 1<sup>st</sup> Defendant. The receipt clearly gives her name and residential address. It identifies her receipt number. The receipt number is then reflected at the back of the ballot paper.
106. The receipt number would easily identify the Plaintiffs and others with the vote cast for a candidate and defeated the requirement of a secret ballot in terms of Section 12.9 of the SODELPA Constitution.
107. The Plaintiffs contention is that he raised his concerns with regards to the appearance and endorsement of the receipt numbers at the back of each ballot paper and the failure on the part of the Defendants to adhere to the requirements of a secret ballot. The Plaintiffs concern raised were ignored by the Executives 3<sup>rd</sup> and 4<sup>th</sup> Defendants chairing the AGM.
108. However, the 4<sup>th</sup> Defendants explanation in relation to the conduct of the election and the reason why the receipt numbers were placed at the back of the ballot papers was for verification of a paying member and not for the purposes of an actual identity.
109. The Defendants further contention was that the method of recording the receipt numbers to the ballot was to protect the sanctity of the vote; it was done to ensure that no one gets to cast a ballot without proper verification of his or her status as a paying member of the Party, eligible to vote at an AGM; the Plaintiffs have not shown proof of anyone being flabbergasted by the exercise and methodology of vote, except his own assertion; further assertion that others were affected or likely to be affected without proof of such assertion leaves much to be desired of such allegation by the Plaintiffs; and all Motions for a General Assembly Meeting are tabled to the Management Board or Working Committee, however this procedure could not be followed for the Suva Constituency Special Motion, because the Motion proposed by the 1<sup>st</sup> named Plaintiff was not read by the General Secretary (4<sup>th</sup> Defendant) until 10<sup>th</sup> June 2019 well after the Notice of Meeting had already been delivered to the Fiji Times Office in order to meet their deadline for publication on 7<sup>th</sup> June 2019.
110. The Defendants submitted that there was no proof of the election process being compromised, no further proof of the election result suffering the same fate has been pleaded, after the election results were announced, there was no matters raised in relation to the election and if there was any suggestion of election impropriety as far as the results are concerned.
111. The allegation of the endorsement of the receipt numbers of each financial member of the 1<sup>st</sup> Defendant to their respective ballot paper is not denied by the Defendants and reference is made to paragraph 25(b) of the 4<sup>th</sup> Defendants Affidavit stating-

*"As the General Secretary, I approved the endorsement of the receipt number for each member issued a ballot paper, on the back of their ballot paper, to ensure that only financial members of the Party cast a ballot".*

112. The explanation by the 4<sup>th</sup> Defendant in relation to the conduct of the election and the reason why the receipt numbers were placed or endorsed at the back of the ballot papers was for the verification of a paying member and not for the purposes of an identity.
113. The General Secretary's conduct and action in admitting the endorsement of the receipt numbers at the back of each ballot paper for election purposes tent amounted to the tempering of the ballot papers and the voters votes at the SODELPA AGM Election for the respective Office Bearers.
114. However, the purpose for placing and/or endorsing the receipt numbers at the back of the ballot papers may have been for verification of the paying member of the SODELPA Party and not for the purpose of an actual identity.
115. The actual identity of the SODELPA Member can be verified by anyone who has access to the ballot papers and hence it cannot be said that it was a secret ballot instead.
116. The vote by secret ballot was mandatory in terms of Section 12.9 of the SODELPA Constitution and on the failure on the part on the 3<sup>rd</sup> Defendant in his capacity as the Acting President and Chairperson at the AGM to conduct the Elections of the two Office Bearers by way of secret ballot have breached the provisions of Section 12.9 of the SODELPA Constitution accordingly.
117. Therefore, I find that the 3<sup>rd</sup> Defendant in his capacity as the Acting President and Chairperson at the AGM convened at Savusavu on 28<sup>th</sup> June 2019 compromised the anonymity of the members' votes in contravention of Section 12.9 of SODELPA Constitution which mandated that the election of Office Bearers "shall be by secret ballot".

**Q4 - Whether, by virtue of (1) and/or (2) above, the Defendants breached the Political Parties (Registration, Conduct, Funding and Disclosures) Act 2013 (Act) and/or the Code of Conduct prescribed in Schedule 1 to the Act?**

118. The issue is whether the Defendant breached the Political Parties' (Registration, Conduct, Funding and Disclosures) Act 2013 and/or the code of conduct prescribed in Schedule 1 to the Act.
119. Section 6(1) of the Political Parties (Registration, Conduct, Funding and Disclosures) Act 2013 states-

6(1) - "an association of persons or an organisation applying to be registered as a political party shall apply to the Registrar for registration".

(3)(f) - "an application for registration shall include an undertaking by all the applicants who have signed the application, to be bound by this Decree and the Code of Conduct set out in Schedule 1".



120. The 1<sup>st</sup> Defendant was registered as a Political Party on or about 2<sup>nd</sup> May 2013 by virtue of the Political Parties (Registration, Conduct, Funding and Disclosures) Act 2013.
121. Pursuant to the Political Parties (Registration, Conduct, Funding and Disclosures) Act 2013, the 1<sup>st</sup> Defendant formulated and registered its Constitution which was last amended by a Resolution passed at a Special Meeting of the General Assembly held on 1<sup>st</sup> September 2018.
122. The Plaintiffs in the current case are all, inter alia, financial members (in terms of Section 8.2 of the SODELPA Constitution) of the 1<sup>st</sup> Defendant and therefore bound to each other through the SODELPA Constitution.
123. Section 12 and Schedule 2 of the Political Parties (Registration, Conduct, Funding and Disclosures) Act 2013 provides for the matters that needs to be included in any Party Constitution.
124. SODELPA Constitution was formulated and passed democratically by its members as the governing rules of the Party. The SODELPA Constitution purports to embrace the vision and preamble of the Political Parties (Registration, Conduct, Funding and Disclosures) Act 2013 and the Constitution of the Republic of Fiji.
125. The 1<sup>st</sup> Plaintiff in his capacity as the President of the Suva Constituency of the 1<sup>st</sup> Defendant, delivered a Motion on 6<sup>th</sup> June 2019 via email to the 3<sup>rd</sup> Defendant who was the Chairperson and the Acting President at the current time calling for certain amendments to the SODELPA Constitution.
126. The 3<sup>rd</sup> Defendant as Chairperson approved the Motion via email and directed the 1<sup>st</sup> Plaintiff to speak on the Motion at a Management Board Meeting which was deferred to 27<sup>th</sup> June 2019.
127. At the Management Board Meeting of 27<sup>th</sup> June 2019, the 1<sup>st</sup> named Plaintiff was advised by the 3<sup>rd</sup> and 4<sup>th</sup> Defendant (4<sup>th</sup> Defendant as the General Secretary at that time) that the Motion could not be included in the Agenda of the AGM of 28<sup>th</sup> June 2019.
128. The SODELPA AGM was convened and conducted on 28<sup>th</sup> June 2019. The Nomination and Election of the office bearers for the positions of President and Vice-President of the 1<sup>st</sup> Defendant was conducted.
129. Section 12.5(a) and (b) of the SODELPA Constitution required the 4<sup>th</sup> Defendant (the General Secretary) to communicate formally to all Constituencies inviting Motions for consideration at the General Assembly at least 4 months prior to the Annual General Assembly (AGM).
130. The 4<sup>th</sup> Defendant failed to comply with the mandatory provisions of Section 12.5(a) of the SODELPA Constitution which required to invite Motions from the Constituencies at least 4 months prior to the AGM.
131. The failure on the part of the 4<sup>th</sup> Defendant in her capacity as the General Secretary of the 1<sup>st</sup> Defendant to invite Motions within the stipulated timeframe of 4 months prior to the AGM gave rise to the following contraventions -

- i. The 1<sup>st</sup> named Plaintiffs Motion not being tabled at the SODELPA AGM held on 28<sup>th</sup> June 2019;
  - ii. The 1<sup>st</sup> named Plaintiffs Right was infringed as he could not have his Motion heard and voted on before the members of the 1<sup>st</sup> Defendant at the AGM.
  - iii. The Plaintiffs Right to participate in the activities of the 1<sup>st</sup> Defendant was infringed; and
  - iv. The remaining Plaintiffs Rights to hear and vote on the Motion was denied, which conduct had infringed their Rights to participate in the activities of the 1<sup>st</sup> Defendant.
132. Further, Section 12(d) of the SODELPA Constitution required the 4<sup>th</sup> Defendant (General Secretary) to invite Motions 4 months prior to the AGM, Section 12(d) of the SODELPA Constitution allowed Motions to still be tabled at the General Assembly Meeting on the approval of the Chairperson only for urgent unforeseen matters.
133. The 1<sup>st</sup> named Plaintiff had submitted his Motion to the 3<sup>rd</sup> Defendant (Chairperson and Acting President) via email on 6<sup>th</sup> June 2019 and on 7<sup>th</sup> June 2019, the 3<sup>rd</sup> Defendant advised the 1<sup>st</sup> named Plaintiff in his capacity as Chairperson that he has considered the relevant provisions of the SODELPA Constitution and have decided to include Suva Constituency Special Resolution in the Agenda of the Management Board Meeting Scheduled on 22<sup>nd</sup> June 2019 and that he should be ready to speak on his Resolution when it comes up for discussion. (Annexure "B" of the Defendants Affidavit refers)
134. The Provisions of the SODELPA Constitution in terms of Section 12.5(d) was in fact breached by the Defendants when accepting the 1<sup>st</sup> named Plaintiffs Motion for proposed amendments to the SODELPA Constitution and then asking him to speak on his Motion a the Management Board Resolution Meeting of 27<sup>th</sup> June 2019.
135. Once the Motion was accepted, it should have been tabled at the Annual General Assembly held on 28<sup>th</sup> June 2019. The failure to do so, on the part of the 3<sup>rd</sup> Defendant, although excuses and explanations have been provided for which is unacceptable to this Court only tent amounts to a fundamental breach of the SODELPA Constitution.
136. The rights of the Plaintiffs to participate in the activities of the 1<sup>st</sup> Defendant were also infringed.
137. Further, the 1<sup>st</sup> Defendant and the remaining Defendants must always comply with the Coded of Conduct in terms of Schedule 1 of the Political Parties Act 2013 which deals with the Code of Conduct for Political Parties.
- In particular, the Defendants ought to have complied with the Code of Conduct dealing with Rights of all persons to participate in the political process and uphold the SODELPA Constitution.
138. The Plaintiffs submitted that the numerous breaches and errors by the Defendants led to the Plaintiffs right to participate in the activities of the 1<sup>st</sup> Defendant to be breached. In summary, the breach of the Plaintiffs rights to participate in the activities of the 1<sup>st</sup> Defendant are in contravention of the SODELPA Constitution (Section 12.5(a) and (d)), the Political Parties Act (Code of Conduct and Schedule 1) and Section 23(b) of the Constitution of Fiji.

139. However, political parties are separate bodies which are recognised by law. The internal affairs of the party are governed by the Parties' Constitution. In the current case before this Court it is the SODELPA Constitution. Any breach of the Parties' Constitution does not fall within the purview of the Political Parties (Registration, Conduct, Funding and Disclosures) Act 2013.
140. For the above reasons, the breach of the SODELPA Parties' Constitution cannot be considered as a breach of the Political Parties (Registration, Conduct, Funding and Disclosures) Act 2013.
141. Therefore, I find that the Defendants did not breach the Political Parties (Registration, Conduct, Funding and Disclosures) Act 2013 and/or the Code of Conduct prescribed in Schedule 1 to the Act.
- Q5 - Whether the Defendants breached Section 13.8.1 of the SODELPA Constitution in permitting the 4th Defendant to become a candidate in the election of office bearers while she was at the material time occupying the office of the General Secretary of the 1<sup>st</sup> Defendant and, therefore, disqualified from membership by virtue of her employment "under some arrangement of remuneration and/or allowance"?**
142. The breach raised by the Plaintiffs herein is in respect of Section 13.8.1 of the SODEPA Constitution.
143. The Plaintiffs contention is that the 4<sup>th</sup> Defendant was not entitled to stand and be elected the Vice President of the 1<sup>st</sup> Defendant at the SODELPA AGM held on 28<sup>th</sup> June 2019 as she still occupied the office of the General Secretary of the 1<sup>st</sup> Defendant. By virtue of Section 13.8.1(a) (i), the 4<sup>th</sup> Defendant was disqualified from membership by virtue of her employment under some arrangement of remuneration and/or allowance.
144. However, the Defendants do not deny that the 4<sup>th</sup> Defendant was the General Secretary of the SODELPA Party and that she was nominated and elected the Vice-President of the 1<sup>st</sup> Defendant on 28<sup>th</sup> June 2019 whilst she held the former position of the General Secretary.
145. The fact of the matter is that the 4<sup>th</sup> Defendant admits holding the position of the General Secretary until at least as late as 31<sup>st</sup> October 2019 when she formally handed over the affairs of the General Secretary position to the 5<sup>th</sup> Defendant who was then appointed as the new General Secretary on 12<sup>th</sup> August 2019 (reference is made to paragraph 30(g) and (j) of the Defendants Affidavit filed herein).
146. The 4<sup>th</sup> Defendant instead argues that after her election as the Vice-President of the Party that she did not assume her role as the Vice-President.
147. The Plaintiffs Affidavit at paragraph 30 deposes that the 4<sup>th</sup> Defendant at all material times held the position of the General Secretary of the Management Board. The position of General Secretary is a remunerated position and that the Plaintiff was aware that the 4<sup>th</sup> Defendant at the material time held a remunerated employment contract for the position as General Secretary. Therefore, the Plaintiff says that his understanding of the SODELPA Constitution

was that the 4<sup>th</sup> Defendant was not a qualified member and was ineligible to stand for the position of the Vice-President.

148. Bearing in mind the above, the Defendants do not deny that the position of the General Secretary of SODELPA Party is one that is remunerated.
149. Reference is made to Annexure 'E' of the Defendants Affidavit at page 5.8 where it was resolved by the Working Committee on 29<sup>th</sup> May 2019 that the General Secretary's remuneration at the current was \$30,000 to \$40,000 per annum. However, the members recommended and resolved that the salary range of the General Secretary be increased from \$40,000 to \$50,000 per annum.
150. From above it can be now ascertained that the 4<sup>th</sup> Defendant was employed in her capacity as the General Secretary of the SODELPA Party and in terms of her role, the 4<sup>th</sup> Defendant was under some arrangement of remuneration and/or allowance as can be ascertained from Annexure 'E' of the Defendants Affidavit.
151. However, it is common ground that the time the 4<sup>th</sup> Defendant was elected as the Vice President of SODELPA Party, she was still functioning as the General Secretary of SODELPA Party and she was paid remuneration of \$30,000 to \$40,000 per annum.
152. It can be ascertained from the Defendants case from paragraph 30 of the Defendants Affidavit that the Defendants do not deny that the 4<sup>th</sup> Defendant was the General Secretary of the SODELPA Party and that she was nominated and elected the Vice-President of the 1<sup>st</sup> Defendant whilst she held the former position of the General Secretary. The fact of the matter is that the 4<sup>th</sup> Defendant admits holding the position of the General Secretary at least as late as 31<sup>st</sup> October 2019 where she formally handed over the affairs to the 5<sup>th</sup> Defendant who was appointed as the new General Secretary of the SODELPA Party on 12<sup>th</sup> August 2019. However, the 4<sup>th</sup> Defendant instead argues that after her election as Vice-President she did not assume her role in that position.
153. Section 13.8.1 and Section 13.8.3 of the SODELPA Constitution provides as follows:

**"13.8.1 - Disqualification of Management Board Membership**

**a. No person shall be qualified as a member if he or she:**

- (i) is employed by the party or the Parliamentary Office of the Party, and include those who are employed under some arrangement of remuneration and or allowance."**

**"13.8.3 Procedure for disqualification from the Management Board**

- (a) A member who becomes disqualified under clause 13.8.1 and 13.8.2 during his or her term of office shall cease to be a member from the date any of the circumstances leading to his or her disqualification takes place and the General Secretary shall inform the member in writing of his or her disqualification."**

154. The 4<sup>th</sup> Defendants Election as Vice-President of the 1<sup>st</sup> Defendant whilst being an employee and obtaining remuneration for her services as a General Secretary of the SODELPA Party at the

material time of the election of the office bearers is in breach of Section 13.8.1 of the SODELPA Constitution.

155. Taking into consideration, the abovementioned provisions of the SODELPA Constitution, the appointment of the 4<sup>th</sup> Defendant as the Vice-President of the SODELPA Party was void ab initio since Section 13.8.1 of the SODELPA Constitution prohibits such an appointment.
156. Since the appointment is void ab initio, subsequent giving up of the post and/or position of the General Secretary of the SODELPA Party she was holding does not validate her appointment her appointment as the Vice-President of the SODELPA Party.
157. I find for the aforesaid rationale that the Defendants breached Section 13.8.1 of the SODELPA Constitution in permitting the 4<sup>th</sup> Defendant to become a candidate in the election of the office bearers while she was at the material time occupying the office of the General Secretary of the 1<sup>st</sup> Defendant and, therefore, disqualified from membership by virtue of her employment under some arrangement of remuneration and allowance.

**Q6 - Whether, by virtue of the acts and/or omissions referred to in (2), (3) and (4) above, any of the Defendants contravened the Plaintiffs rights enshrined under Section 23(1)(b) of the Constitution.**

158. The Plaintiffs Motion was received via email by the 3<sup>rd</sup> Defendant in his capacity as the Vice President of the SODELPA Party on 6<sup>th</sup> of June 2019, and the 1<sup>st</sup> Defendant was given the opportunity to speak on his Motion at the Management Board Meeting on 27<sup>th</sup> June 2019, one day prior to the AGM scheduled for 28<sup>th</sup> June 2019.

Subsequently, it came to the knowledge of the 1<sup>st</sup> named Defendant that his Motion proposing amendments to the SODELPA Constitution was not included in the Agenda of the SODELPA AGM scheduled for 28<sup>th</sup> June 2019.

159. Section 12.5(a) and (b) of the SODELPA Constitution required the 4<sup>th</sup> Defendant to communicate formally to all Constituencies inviting Motions for consideration at the General Assembly at least 4 months prior to the Annual General Assembly (AGM). The obligation herein was mandatory.
160. The 4<sup>th</sup> Defendant failed to comply with Section 12.5(a) of the SODELPA Constitution which required Motions may still be tabled at the General Assembly Meetings on the approval of the Chairperson only for urgent unforeseen matters.
161. The requirement to invite Motions in terms of Section 12.5(a) at least 4 months prior to the AGM was not complied with.
162. The failure to invite Motions from the Constituencies within the stipulated timeframe resulted in the 1<sup>st</sup> named Plaintiffs Motion proposing amendments to the SODELPA Constitution was not tabled at the Annual General Meeting of the 1<sup>st</sup> Defendant held on 28<sup>th</sup> June 2019.
  - i. The 1<sup>st</sup> named Plaintiffs Motion was not tabled at the SODELPA AGM held on 28<sup>th</sup> June 2019;

- ii. The 1<sup>st</sup> named Plaintiffs Right was infringed as he could not have his Motion heard and voted on before the members of the 1<sup>st</sup> Defendant at the AGM.
  - iii. The Plaintiffs Right to participate in the activities of the 1<sup>st</sup> Defendant was therefore infringed; and
  - iv. The remaining Plaintiffs Rights to hear and vote on the Motion was denied, which conduct had infringed their Rights to participate in the activities of the 1<sup>st</sup> Defendant.
163. Further, Section 12.5(d) of the SODELPA Constitution allowed Motions to still be tabled at the General Assembly meetings on the approval of the Chairperson only for urgent unforeseen matters.
164. The 3<sup>rd</sup> Defendant in his capacity as Chairperson advised the 1<sup>st</sup> named Defendant on 7<sup>th</sup> June 2019 via email inviting him that he had decided to include Suva Constituency Special Resolution in the Agenda of the Management Board Meeting later deferred to 27<sup>th</sup> June 2019 and that he should be ready to speak on his Resolution when it comes for discussion.
165. By accepting the Motion of the 1<sup>st</sup> named Defendant in terms of Section 12.5(d) of the SODELPA Constitution and subsequently asking him to speak on his Motion at the Management Board Meeting of 27<sup>th</sup> June 2019 tantamounted to the fundamental breach of the SODELPA Constitution by the Defendants and on the part of the 3<sup>rd</sup> Defendant since the Motion included in the Suva Constituency Special Resolution should have been tabled at the SODELPA AGM scheduled on 28<sup>th</sup> June 2019.
166. As a result of the conduct on the part of the Defendants accepting the Motion under Section 12.5(d) and not tabling the Motion at the AGM resulted in infringing the Rights of the Plaintiffs to participate in the activities of the 1<sup>st</sup> Defendant. Further, the failure on the part of the Defendants to conduct the Elections of the two (2) office bearers by way of secret ballot at the SODELPA Annual General Meeting of 28<sup>th</sup> June 2019 not only breached Section 12.9 of the SODELPA Constitution but the conduct complained of by the Plaintiffs also breached the Plaintiffs rights in terms of Section 23(1)(b) of the 2013 Constitution of the Republic of Fiji.
167. Further, the 3<sup>rd</sup> Defendant in his capacity as the Acting President and Chairperson at the SODELPA AGM convened at Savusavu compromised the anonymity of the members' votes. By failing to conduct the elections of the 2 office bearers of the President and the Vice-President by way of secret ballot in adherence to the mandatory provisions of Section 12.9, the Defendants breached Section 12.9 of the SODELPA Constitution and Section 23(3)(b) of the Constitution of the Republic of Fiji.
168. In terms of Section 23(1)(b) every citizen has the freedom to make political choices, and the right to participate in the activities of, or recruit members for, a political party and Section 23(3)(b) guarantees every citizen who has reached the age of 18 years has the right to vote by secret ballot in any election or referendum under this Constitution.
169. As discussed hereinabove, the Plaintiffs Rights guaranteed by Section 23(1)(b) and Section 23(3)(b) of the Constitution of the Republic of Fiji has been accordingly violated and contravened accordingly by the Defendants herein.

170. This matter proceeded to hearing and therefore it is only appropriate that this Court grants a summarily assessed costs against the Defendants in the sum of \$2,000 to be paid to the Plaintiffs within fourteen (14) days' timeframe.

171. The mere fact that the Defendants have acted in breach as referred to hereinabove in my judgment does not mean that 2<sup>nd</sup> to 5<sup>th</sup> Defendants are not entitled to hold office in their respective capacity as President, Vice President and General Secretary.

It is a matter for the Financial Members of the SODELPA Party to elect or remove office bearers of the SODELPA Party and further it is not a matter for the Court to do so.

Therefore, orders sought by the Plaintiff at No. 6 and 7 of their Originating Summons are liable to be refused.

172. Having determined the questions hereinabove and within the Originating Summons of the Plaintiffs, I make the following Orders-

#### **FINAL ORDERS**

1. **The Court declares that the Annual General Meeting of the 1<sup>st</sup> Defendant convened and conducted on 28<sup>th</sup> June, 2019 breached Sections 12.5(a), 12.5(b), 12.9, 13.8.1 of the SODELPA Constitution and Section 23(1)(b) of the 2013 Constitution of the Republic of Fiji;**
2. **The Court declares that the decisions, resolutions and outcomes of the Annual General Meeting of the 1<sup>st</sup> Defendant held at Savusavu on 28<sup>th</sup> June, 2019 are invalid;**
3. **The Court declares that the election of the 2<sup>nd</sup> Defendant as President and the 4<sup>th</sup> Defendant as Vice President of the 1<sup>st</sup> Defendant at the Annual General Meeting held at Savusavu on 28<sup>th</sup> June, 2019 was invalid;**
4. **The Court declares that all subsequent actions, meetings, resolutions, decisions, directives and outcomes of the Management Board following the AGM of the 1<sup>st</sup> Defendant held at Savusavu on 28<sup>th</sup> June, 2019, including the acceptance of the 4<sup>th</sup> Defendants retrospective resignation and the appointment of the 5<sup>th</sup> Defendant as the General Secretary of the 1<sup>st</sup> Defendant are unlawful, invalid and ineffective;**
5. **The Court further declares that the 4<sup>th</sup> Defendant has ceased to be a member of the Management Board by virtue of Section 13.8.1 and 13.8.3 of the SODELPA Constitution;**
6. **The orders sought by the Plaintiff in his Originating Summons at paragraphs 6 and 7 are accordingly refused for the reasons cited at paragraph 171 of my Judgment hereinabove.**

7. The Defendants are hereby ordered to pay the Plaintiffs a summarily assessed costs of \$2,000 within fourteen (14) days' timeframe
8. Orders accordingly.

Dated at Suva this 23<sup>rd</sup> Day of April, 2020



Vishwa Datt Sharma  
Judge

cc. A. K. Lawyers, Ba.  
Vosarogo Lawyers, Suva.