

# THE ELECTORAL COMMISSION

## REPUBLIC OF FIJI

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*Ref: Meeting Number 03/22*

*Decision Number 06/22*

*Appeal Number 01/22*

**Appellant: Ms Tupou Draunidalo – HOPE Party Leader**

1. The Electoral Commission, received an appeal from Ms Tupou Draunidalo [**“the Appellant”**] under Section 30 of the Political Parties (Registration, Conduct, Funding and Disclosures) Act 2013 [**“Act”**] appealing the decision of the Registrar of Political Parties [**“Registrar”**] dated 10 February 2022.
2. The Registrar had de-registered Humanity, Opportunity, Prosperity and Equality [**“HOPE”**] as a political party in Fiji following its failure to submit audited financial accounts for the financial year 2020.
3. The particulars of the decision appealed are as follows:
  1. *On 12 April 2021, the Registrar of Political Parties found that HOPE was in breach of section 26(2) of the Political Parties (Registration, Conduct, Funding and Disclosures) Act 2013 [Act]. Consequently, to ensure compliance with the law, the Registrar, in accordance with section 19(1) of the Act, issued the party with a Notice to remedy the breach and in exercise of the discretion under section 19(3), the Registrar suspended the party until it had remedied the breach.*
  2. *In the same notice, in accordance with section 19(2) of the Act, the Registrar clearly outlined the particulars of the breach and then directed that the party remedy the breach within 60 days or show cause why the party should not be de-registered.*
  3. *At the end of the 60 days period and up until today, it is noted that HOPE has not remedied the Breach and neither has it shown cause to the Registrar why it should not be deregistered.*
  4. *On 14 June 2021, the Registrar made enquiries via email with the Registered Officer of the party on the status of the compliance. It was noted in the response that the party was unable to remedy the breach and it needed more time due to COVID-19 restrictions.*

5. *It is noted that as at 10 February 2022, the party has failed to submit the audited accounts for the year 2020 as required under section 26(2) of the Act. Given the above, HOPE has failed to remedy the breach despite being given the requisite time under the law as well as additional time (approximately more than 6 months) in light of COVID-19 limitations.*
  6. *Section 19(5) of the act states:  
"The Registrar shall deregister a political party which has not remedied the breach or contravention or complied with the Act as required by the Registrar under subsection (2)."*
  7. *Noting that as at the date of this letter, the Party has not remedied the breach, and therefore, in exercising section 19(5) of the Act, HOPE is hereby de-registered."*
4. Following receipt of the Appeal, the Electoral Commission conducted a hearing on 25 February 2022 allowing the Appellant and the Registrar to provide submissions on the appeal. At this hearing, the Chairperson, Mr. Mukesh Nand recused himself from the hearing as he noted that his law firm was currently handling another matter involving the Appellant. Thereafter the meeting was chaired by Mr. Jawahar Lal.
  5. The Appellant provided an extensive list of grounds in appeal. The key contentions of the appeal are as follows:
    - a. The Appellant was unable to secure the services of any audit firm despite vigorous efforts by her and therefore the Party could not comply with the law.
    - b. That the Registrar could have used his discretion and instead could have applied section 26 (3) of the Act to get the accounts audited by the Auditor General or another auditor of his choice.
    - c. The Electoral Commission should set aside the Registrar's decision to de-register HOPE.
  6. The Registrar in response submitted as follows:
    - a. The Party admits that it was in breach of the Act and despite being given the usual statutory timeframe to remedy the breach, the Appellant failed to do so for a further 7 months since the expiry of the statutory timeframe.
    - b. The Appellant is required to comply with section 26(2) which it has clearly failed to do so.
    - c. The Registrar, is not required by law to order an audit under section 26(3) of the Act in cases where he has invoked section 19 of the Act. In-fact, the

Registrar is limited by Section 19(5) of the Act where a Party fails to remedy the breach of the Act.

7. During submissions, the Appellant submitted that she contacted auditors and she received email and verbal declines. According to the Appellant only one auditor came close to auditing and that was Ramani & Company who was to audit the single account with a single transaction of a deposit of \$500. However, the said firm declined in June 2021. The Appellant also stated that she approached the auditors who audited her law firm however she has not received a reply from them.
8. The Appellant submitted that after the audit of the law firm, she asked the auditors again in December, 2021 to consider auditing the party's account with one transaction in 2020 but she didn't receive a response. According to the Appellant, at all material times the Registrar had all of the relevant information, the bank name, branch, number and activity which was disclosed to him immediately after the account was set up.
9. The Appellant submitted that the Registrar was informed the unsuccessful efforts to retain an auditor. She also informed that the lack of availability of an auditor is not a matter which the HOPE party can control, and HOPE is without fault in this matter. The Appellant highlighted that the emails and updates to the Registrar of the difficulties in finding the auditor dated 12 April 2021, 15/17 June 2021 and 22 September 2021 clearly showed good cause why the party should not be deregistered in the circumstances which were outside the party's control.
10. The Appellant also submitted that the Registrar was wrong at law to deregister the party as the party has shown cause under Section 19(2) Act as to why the party should not be deregistered.
11. The Registrar submitted that a letter was given to the Appellant regarding the suspension of HOPE. According to the Registrar, the political party was required to submit audited accounts by 31<sup>st</sup> March 2021. The Registrar also highlighted that as per the Appellant's submission, she admits that she failed to meet the deadline established under the law and she also admitted that the party was suspended to rectify the breach as per section 19 of the Act.
12. The Registrar submitted that the law is very specific to say that where a political party contravenes the provision of the Act, the Registrar shall deregister the party. However, before deregistering a political party the Registrar is required to do three things. Firstly, inform the political party in writing of the particulars of the breach or contravention which was done by the Registrar and admitted by the Appellant.

13. Secondly, to inform the party of the intention to de-register the Political party and thirdly to direct the political party to remedy the breach or contravention within 60 days or otherwise show cause why the party should not be deregistered. On 12 April 2021 the Registrar gave the party 60 days to comply and submit the audited accounts.
14. The Registrar explained that he decided to suspend the party so the party can focus entirely on remedying the breach. The party suspension was for 30 days so that the Registrar can monitor compliance and at the end of the 30 days if party had not remedy the breach the party will be again suspended to ensure that the party fully complies. The Registrar submitted that at the end of the 43<sup>rd</sup> day it was found that the party did not remedy the breach and continued the suspension for the remainder of the 30 day period.
15. On 14 June 2021, the Registrar wrote to the party on without prejudice basis where the Registrar reviewed the circumstances because of the travel, movement and partial movement restrictions due to COVID-19. The Registrar sought an update on 14 June 2021 because HOPE failed to give the audited account and 60 days under Section 19 2(c) of the Act was exhausted without any remedy.
16. The Appellant replied to the letter with a comprehensive email in which she outlined that she didn't find an auditor and there was lot of restrictions in place from the Ministry which prevented her from approaching the auditors and getting things done. The Appellant also gave details of the auditors she attempted to engage but was unsuccessful.
17. Furthermore, the Electoral Commission noted that the Appellant gave list that she contacted for auditing however not all the declines were attached to the submission.
18. The Registrar de-registered the Party in February 2022 due to the continued non-compliance.
19. In his submissions, the Registrar submitted that after crossing another financial year being 2021 the matter got more compounded because the second audit now is due under the law and there is continued breach.
20. After hearing from both of the parties, the Electoral Commission has noted that the Party had contravened section 26(2) of the Act and it does not find that the Registrar, having allowed over 7 months to the Party to remedy the breach, had not acted unreasonably.
21. The Commission is further of the view that it is the onus on the party officials to ensure adherence to financial disclosure laws and in this case, critical disclosures were not filed within the time required by law.

22. Therefore, the Electoral Commission dismisses the appeal.

Dated 28<sup>th</sup> February 2022

  
**MARGOT JENKINS**  
*Member of the Electoral Commission*