

IN THE COURT OF APPEAL OF SEYCHELLES

CIVIL APPEAL NO. 9 OF 1989

Hans Couck

Appellant

v.

Guy Sinon

Respondent

Shah for Appellant  
Juliette for Respondent

JUDGMENT OF MUSTAFA P.

The Appellant was the Defendant in the Supreme Court where he was sued by the Respondent on an action for defamation. The Appellant was alleged to have uttered and published the following words to the son of the Respondent in the presence of other persons:

"Your father has since the last time I saw him at the Yacht Club been very insolent and what more very stupid and ignorant about the letter he sent to the President about the complaint. I've seen the letter to the President it shows his stupidity and his character does not fit Rita, and what more guys like Guy who I heard has done a lot for this country should be shot."

In his plaint in the Supreme Court the Respondent had stated that he was an ex-Minister in the Government of Seychelles. He alleged that the above quoted words in their natural and ordinary meaning meant and were understood to mean that:

- (a) The Respondent is a person of low standing.
- (b) That he is incompetent and stupid and a hypocrite
- (c) That he is not a fit person to be received in society.

As a result of the words uttered and published the Respondent claimed that he had been injured in his credit, character and reputation and brought into public ridicule, hatred and contempt. He asked for damages which he assessed at Rs. 50,000.

In his defence the Appellant admitted that the Respondent was an ex-Minister of the Government of Seychelles and denied each and every other allegation in the plaint.

It will be seen at once that the action was based on slander and that only general damages had been claimed. There was no averment or allegation or proof of any special damage.

Seaton C.J. tried the case. He found that the Appellant did utter and publish the words complained of. He found that the Respondent did not allege or prove any special damage and could not recover on that score. He held that:

"the Plaintiff is an elder statesman, frequently consulted for his political advice and enjoying the confidence of the highest official in the country. He has not renounced a political calling or career and is willing to resume such more actively as soon as his health permits and the people desire. Although I find the natural and ordinary meaning of the words are not all that which is alleged in the plaint, nevertheless, I find that in what reasonable men would understand as their ordinary and natural meaning, they are defamatory. To say of a man who has been a holder of high office and maintains an active interest and continues to play the role he does in public life such words is to impute want of integrity or dishonest conduct. That seems to me to be defamatory per se."

Seaton C.J. found for the Respondent and awarded him Rs. 20,000 as general damages. From that decision the Appellant is appealing.

In an action based on slander, a Plaintiff must show that it is either actionable per se or that he has suffered special damage. I need not concern myself with the issue of special damages in this appeal, as the Chief Justice had found that there was no special damage and there has been no cross-appeal from that finding. For spoken words to be actionable per se they must come under one of four heads. They briefly are:

- (1) words imputing a crime earning physical suffering by way of punishment
- (2) words imputing a contagious disease
- (3) words calculated to disparage a plaintiff in some office, profession, calling, trade or business held or carried on by him at the time of publication
- (4) words imputing adultery or unchastity to a female.

This, as both counsel have agreed, is the position of the law of slander in England, and by virtue of The Civil Code of Seychelles 1975, is also the law in Seychelles.

Mr. Shah, who appeared for the Appellant in this appeal submitted as follows. He contended that if the spoken words were actionable per se, they must fall under one of the four categories above mentioned. The only category under which the Respondent could possibly succeed would be under head (3), ie. words calculated to disparage a person in his office, profession, etc. Mr. Shah submitted that the Respondent, at the time the words were uttered, was holding no office, profession or calling. The Respondent had been an ex-Minister of the Government of Seychelles; he was not, at the material time, a Minister or any other Government or Party official. He was, in fact, a retired politician, a private citizen, perhaps a highly respected and privileged private citizen, but nevertheless was holding no paid or honorary office of any kind. In any event the spoken words did not allege nor did the Respondent contend that they alleged unfitness, incompetence, incapacity or dishonest or disgraceful conduct such as would render him incapable of holding such office. Mr. Shah's argument was that Seaton C.J. erred in concluding that the Respondent was in effect holding a phantom office when he was not, and further erred in holding that the spoken words complained of "impute want of integrity or dishonest conduct." In the plaint the meaning of such words was set out and such meaning did not refer to want of integrity or dishonest conduct.

Mr. Juliette who appeared for the Respondent attempted to support the finding of the Chief Justice. He contended that the Chief Justice was entitled to ascribe to the spoken words the meaning he did, even if such was not averred in the plaint nor alleged in evidence by the Respondent. He stated that the Respondent was interested in politics although he had retired from office. He submitted that the Chief Justice was entitled to conclude that the Respondent was holding some sort of office, however nebulous the office might be. That, he contended, was a finding of fact by a trial judge.

I am satisfied that at the time the Appellant uttered and published the words complained of, the Respondent was holding no office of any kind, either an office of profit or an honorary office. That was perfectly clear from the evidence adduced at the trial. He was a highly respected private citizen, an ex-Minister of the Government and had the privilege of access to the highest reaches of officialdom. The words uttered were objectionable and in bad taste, a case of vulgar abuse, and they could not bear the meaning ascribed to them by the Chief Justice. They did not allege any want of integrity or dishonest conduct. That finding by the Chief Justice was ultra petita. I believe

that the Chief Justice erred in holding that those spoken words were actionable per se, as they could not possibly have been calculated to disparage the Respondent in his office, profession, etc. as the Respondent was not holding any at the material time.

I would allow the appeal, set aside the order of the Supreme Court and substitute therefor an order that the claim be dismissed. I would award costs to the Appellant both here and below.

Dated at Victoria this 5<sup>th</sup> day of April 1990.

*A. Mustafa*  
A. Mustafa  
President

IN THE COURT OF APPEAL OF SEYCHELLES

Hans Couck

Appellant

v

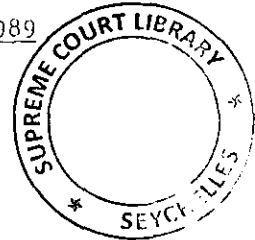
Guy Sinon

Respondent

Civil Appeal 9 of 1989

Shay for Appellant

Juliette for Respondent



Judgment of Goburdhun J.A.

The respondent is an ex-Minister in the Government of Seychelles. The appellant is an employee of the Seychelles Marketing Board working as Manager.

On the 17th October 1987, at the Katiolo Night Club, Mahe, the appellant was alleged to have said the following words to the son of the respondent:

"Your father has since, the last time I saw him at the Yacht Club, been very insolent and what more very stupid and ignorant about the letter he sent to the President about the complaint. I've seen the letter to the President and it shows his stupidity and his character does not fit Rita, and what more guys like Guy who I heard has done a lot for this Country should be shot."

The respondent considering the alleged words to be defamatory of him instituted proceedings against the appellant before the Supreme Court. In his plaint he stated that the "words refer to and are understood to refer" to him and were defamatory. He complained that by the publication of these words "he has been severely injured in his credit, character and reputation and has been brought into public ridicule, hatred and contempt". He assessed the damages suffered by him in the sum of R 50,000 which amount he claimed from the appellant.

Apart from admitting that the respondent was an ex-Minister, the appellant denied all the allegations made in the plaint. The Learned Chief Justice who heard the case found that the respondent said the words as alleged. He also found that the words were defamatory and actionable per se and the respondent "has suffered in his credit, character and reputation" and "has been brought into public ridicule, hatred and contempt". He granted respondent R 20,000 as general damages.

The appellant is challenging the judgment of the Learned Chief Justice on several grounds. I only need consider ground 1 which reads as follows: In the circumstances, the words complained of were not actionable in the absence of proof of special damages.

Under the English Law, which is the law applicable to defamation in the Seychelles, an action for slander will lie without proof of special damage only where the spoken words can be brought under four heads, one of which being "words calculated to disparage a plaintiff in some office, profession, calling, trade or business held or carried on by him at the time of the publication". This being the only head relevant to this case I need not reproduce the other three categories.

When the spoken words do not fall under one of the four heads, the plaintiff can only maintain an action of slander, if he has suffered special damage. And this is so however disgraceful the slanderous imputation may be and however certain it is that it will injure the reputation of the plaintiff. *Jones v Jones* (1916) 1 K.B. 351. In such cases the actual damage alone is the very gist of the action and must be proved specially and with certainty. (Gatley, Libel & Slander 8th edition - para 202).

It is clear from the evidence that at the relevant time the respondent was holding no office and had no profession or calling. It is true he is an "elder statesman" who has not renounced politics and is available for consultation in political matters - but this would not bring him under the category mentioned above.

As the respondent failed (1) to bring his case under one of the four heads and (2) to prove special damage, I am of the view that his claim for damages should have been dismissed.

I would accordingly allow the appeal, quash the order of the Supreme Court and substitute one dismissing the respondent's claim.

I would order the respondent to pay the costs of this appeal and of the court below.

Dated at ..... *Victoria* ..... this ..... *5<sup>th</sup>* ..... day of  
..... *April* ..... 1990.

*H. Goburdhun*

H. Goburdhun

(Justice of Appeal)

IN THE SEYCHELLES COURT OF APPEAL

Hans Couck  
v.  
Guy Sinon

Appellant  
Respondent

Civil No.9 of 1989

Mr. Shah for Appellant  
Mr. Juliette for Respondent



Judgment of d'Arifat J.

The Respondent, (Plaintiff in the Supreme Court) claimed from the Appellant (Defendant in the Supreme Court) damages in the sum of Rs 50,000 for that the Plaintiff who describes himself as an ex-Minister in the Government of Seychelles avers that on the 17th October 1987 at the Katiolo Night Club, Anse Faure, Mahe, Seychelles, the Defendant said the following words to and in the presence of Edward Sinon and Denis Gemmel. "Your father has since, the last time I saw him at the Yacht Club, been very insolent and what more very stupid and ignorant about the letter he sent to the President about the complaint. I've seen the letter to the President and it shows his stupidity and his character does not fit Rita, and what more guys like Guy who I heard has done a lot for this Country should be shot".

The Defence was a general denial.

The case was heard by Seaton C.J. (as he then was). Judgment was delivered on the 12th June 1989. The Appellant was ordered to pay to the Respondent the sum of Rs 20,000 damages plus costs.

The Appellant is now appealing to this Court on the following grounds :-

1. In the circumstances, the words complained of were not actionable in the absence of proof of special damage.
2. It was not pleaded in the statement of claim that the words complained of were calculated to disparage the Respondent in his office profession, calling, trade or business.



3. The statement of claim did not allege what office the Respondent held or what profession, calling, trade or business was carried on by him at the time when the words complained of were published.

4. Even if it is accepted that as an ex-Minister, the Respondent, at the time when the words complained of were published, held the honorary office or calling of an elder statesman, such words cannot be held to impute some want of integrity or some corrupt or dishonest conduct on the part of the Respondent, generally and more specifically, in the discharge of such office or calling, and consequently would not be actionable per se.

5. In the circumstances of the publication, the damages awarded for the slander are manifestly excessive.

The findings of fact are not in dispute. The Appellant's submissions are that on those findings of fact he is not legally liable to pay damages to the Respondent.

Counsels for the Appellant and the Respondent are agreed that the issues raised are issues of law; that at the time when the Appellant spoke the words alleged to be actionable the law applicable in Seychelles was the same as the law of England in the year 1975; and that the English law of 1975 is the same as the present law of England.

Counsel for the Appellant addressed us on grounds 2 and 3 of the Memorandum of Appeal.

..../....

In his submission these two grounds taken together raise the following questions :

- (i) Does the statement of claim allege what "office the Respondent held at the time when the words complained of were published ?
- (ii) Does the statement of claim allege that the words complained of were calculated to disparage the Respondent "in his office"?

The Respondent did not aver nor did he prove that he had suffered any special damage as a result of the words spoken by the Appellant. Therefore in order to succeed in his action against Appellant Counsel for the Appellant submitted that the Respondent had to show that the words spoken by the Appellant were actionable per se and were calculated to disparage the Respondent in the office he was holding at the time the words were spoken.

In his judgment the learned Chief Justice found as follows :

"I would, with respect, agree with counsel for the Defendant, that there was in the Plaint no allegation that special damages were suffered as a direct and natural result of the words spoken. The Plaintiff cannot therefore recover for any business loss".

It, therefore became necessary to ascertain :

- (1) what office if any the Respondent held at the time the words were spoken, and
- (2) whether the words complained of were calculated to disparage the Respondent in his office.

...../.....

With great respect the learned Chief Justice has not applied his mind to those questions.

The Plaintiff avers that the Respondent is an "ex-Minister" (para. 1) that the publication of the words has severely injured his credit, character and reputation (para.8) but does not aver that the said words were calculated to disparage the Respondent in his office.

The learned Chief Justice found that reasonable men would understand the words complained of as meaning that the Plaintiff is incompetent and unfit to hold the office which he claims to hold (sic). He then proceeds to ascertain what is that office which the Plaintiff would be holding and he writes : "what if any office is the Plaintiff's"? It would appear that the learned Chief Justice inferred that because the Respondent is an "elderly statesman frequently consulted for his political advice and enjoying the confidence of the highest official in the country", because "he has not renounced a political calling or career or the holding of high office in the party and is willing to resume such more actively as soon as his health permits and the people desire", he is the holder of an office, and therefore that the words used were calculated to disparage the Respondent in that office.

In the course of his address counsel for the Appellant agreed that the Respondent was an ex-Minister but submitted that he was not holding an office not even an honorary one. He also agreed, that Respondent took an active interest in politics and was engaged in trade. But submitted that Respondent could not identify the office in relation to which the words used could be said to have disparaged him in that office.

On the evidence adduced at the trial I would find that at the time the words were spoken the Respondent was not occupying an office and that consequently the words used cannot be said to have been calculated to disparage the Respondent in an office which he was not occupying.

In the absence of special damage which was neither alleged or proved the words complained of are not actionable per se, as they do not fall under one of the four heads which are actionable without proof of special damage.

I must therefore with respect find that the Appellant must succeed on grounds 1, 2 and 3 taken together.

I would allow the appeal and find that the judgment of the learned Chief Justice should be quashed. Respondent to pay the costs of the Appeal.

8<sup>th</sup> January 1990.

*C. d'Arifat.*

C. d'Arifat  
Justice of Appeal

Delivered at Victoria this 5th day of April, 1990.