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IN THE SEYCHELLES COURT OF APPEAL

SEYCHELLES BROADCASTING CORPORATION 1ST APPELLANT
OGILVY BERLOUIS 2ND APPELLANT

V.

BERNADETTE BARRADO RESPONDENT

Civil Appeal Nos. 9/94 & 10/94

Before Goburdhun, P., Silungwe & Ayoola, JJS.

Mr. K.B. Shah for the first appellant
Mrs. M. Twomey for the second appellant
Mr. F. Bonte for the respondent

Judgment of Silungwe, J.A.

On June 22, 1992, the first appellant transmitted by radio and television a "Party Political Broadcast" made by the second appellant in his capacity as leader of the Seychelles Liberal Party. Consequently, the respondent, a civil servant who was at all material times employed as Personal Secretary of the President of Seychelles, brought an action in defamation against the first and second appellants individually. In her plaint, the respondent, then plaintiff, averred that during the course of the broadcast, the second appellant had falsely and maliciously published, and the first appellant had caused to be published, the following words, in creole, which had been calculated to disparage the plaintiff in the office she held, and gravely affected her character, credit and reputation as the Personal Secretary of the President, and lowered her in the estimation of right thinking members of the society:

> "We understand that Mrs. Bernadette Barrado, Mr. Rene's Secretary has the following properties: this house at Bel Ombre; this petrol station at Baie Lazare, this house close to the said petrol station at Baie Lazare; this 'boutique' in the Plantation Club Hotel; Silversands Car Hire.

> We would also like to know what the President's Office has to do with this building at Mont Fleuri where 'Cafe Moutia' is located? This is because when the said building was tendered out for lease the notice calling for tender stated that tender should be submitted to the Office of the President. Cheques for rent of this building are drawn in the name of Mrs. Bernadette Barrado.
>
> The Government's 'Public Service Order' states that before a civil servant engages into any business Government's permission must be sought. Therefore, as her boss, Mr. Rene is supposed to know that Mrs. Barrado has all these businesses. The people of Seychelles would like to know from where a secretary in the Government does obtain money to buy all these businesses.
>
> I would like to make it clear that I am not interfering in anybody's private affairs, but like in all democratic countries I am asking questions on the activities of Government employees who are paid with our money. We are also asking questions on the people's properties that are being shared about left and right."

The respondent's averment continued in the Plaint:

> "By the said images, gestures and words in their natural meaning and/or by way of innuendo the Defendant's meant and were understood to mean that the plaintiff was involved with the President whom the said television programme had depicted as a dishonest, untrustworthy and corrupt politician to enrich herself in a corrupt manner with people's or state's property which is being shared about left and right."

The second appellant had allegedly made the said statement and also displayed the houses and buildings referred to by visual images in a video cassette used in that broadcast which was later produced at the trial as an exhibit.

The respondent testified in the Supreme Court that she had suffered mentally and physically; and that she had been treated in June 1992 for depression, nervousness and insomnia after the broadcast. She got anonymous telephone calls

insulting her and people made comments wherever she went. She began to lose concentration in her work and became irritable. She received treatment for her condition in Seychelles; got specialised treatment in India; and had medical consultations in Australia.

The first appellant admitted publication but pleaded fair comment and justification. On the other hand, the second appellant denied that he had defamed the respondent and pleaded fair comment.

The learned trial judge heard the case and entered judgment in favour of the respondent and award her R.250,000.00 damages against the first appellant and R.300,000.00 against the second appellant.

It is appropriate to deal first with a ground raised by Mrs. Twomey, learned counsel for the second appellant. She submitted that the learned trial judge had been wrong to hold that no translation was necessary of the creole words used in the instant case. She contended that failure by the respondent to call an interpreter to testify as to the correctness of the translation of the creole words in the plaint was fatal. She cites Gatley on Libel and Slander, 8th edition, where the following is to be found at page 1297:

> "Where the words complained of are in a foreign language, the plaintiff must prove the actual words published. He must also prove by an interpreter sworn as a witness that the translation given in the statement of claim is correct, unless this fact has been admitted...."

Further, she referred to the Constitution (Use of Official Language) Regulations, 1976, wherein regulation 2 provides:

> "2. English shall be the official language for the transaction of Government business (including the business of the Courts) same as provided in regulation 3."

Regulation 3 merely relates to the use of French in certain specified matters.

This ground was the subject of a joint submission by learned counsel for the appellants in the court below. In dealing with this issue, the learned trial judge said, inter alia,

> "In the instant case, both defendants admitted the accuracy of the creole statements published, as appearing in paragraph 3 of the plaint. The 1st defendant (i.e. second appellant based his request for further and better particulars on the creole words and the English translation. Further, the examination in chief and the cross-examination of the 1st defendant were based on the creole statements and the English translations as given in the plaint, with no objections as to accuracy. Hence there was no necessity for the plaintiff to call a sworn interpreter to testify as to the correctness of the translation in the plaint as there was no ambiguity in the translation and the 1st defendant had accepted it as a translation."

It seems to me that the second paragraph of the second appellant's defence has an important bearing on the issue under consideration. The paragraph reads:

> "Save that it is admitted that the 1st defendant did publish the words as set out in paragraph 3 of the Plaint, paragraph 3 of the plaint is not admitted. The 1st defendant denies that he spoke and published the words in the manner alleged in paragraph 3 of the plaint or was understood to refer to the plaintiff in the way of her profession or calling as alleged or at all."

My reading of the third paragraph of the second appellant's defence in general, and of the first sentence of the paragraph in particular, is that, as the third paragraph of the respondent's plaint depicts the alleged defamatory words in creole and the English translation of the said words, what the second appellant admitted in his defence was that the words in both creole and the English translation thereof had been uttered by him but that he denied that they

were defamatory as alleged. This should be so otherwise the statement: "save that it is admitted that the 1st defendant did publish the words as set out in paragraph 3 of the plaint, paragraph 3 of the plaint is not admitted", would be nonsense.

In any event, even the record of proceedings during the tendering of the respondent is testimony and the trial court's observations then tend to confirm that the English translation of the offending words in creole was accepted.

From what has been said above, the learned trial judge's funding that the sworn evidence of an interpreter was unnecessary cannot be impugned in this case.

Both Mr. Shah and Mrs. Twomey contended that the learned trial judge had been wrong to hold that the statements complained of were defamatory.

Here, I have no hesitation in upholding the learned trial judge's finding, reached after a careful review of the evidence adduced and the application of the law applicable thereto, that defamation had been proved. However, this proof was, in my opinion, confined to the alleged receipts by the respondent of cheques in respect of rent. Learned counsel for the appellants have not been able to persuade me that the defences of privilege or fair comment were available to the first and the second appellants. In the circumstances, I am satisfied that the entry of judgment by Perera, J.S., against each one of the appellants, was fair and proper. I would, therefore, dismiss the appeal on the question of the appellants' liability individually and severally.

The issue that now falls to be considered is one of damages.

Mr. Shah argued on behalf of the first appellant that, although the delict of defamation is governed by English law by virtue of paragraph 3 of Article 1383 of the Civil Code of Seychelles, damages are to be assessed in the case of all delicts, including defamation, in accordance with the principles contained in Article 1149 of that Code; and that the trial judge was wrong to have allowed exemplary damages as no punitive damages for delict are allowable under the Civil Code of Seychelles.

It seems to me that Mr. Shah's submission cannot be correct because, in the absence of any provision to the contrary and notwithstanding the principles contained in Article 1149 of the Civil Code, the legislature must be presumed to have intended that the civil law of defamation in Seychelles was to be governed by English law, not only in relation to liability but also as regards damages.

The next ground was that as there was only one delict alleged to have been committed and both defendants were joint tortfeasors, the trial judge was wrong to have allowed a separate set of damages against them.

This point was well taken since there was one delict only in this case, and the appellants (then defendants) were, therefore, joint tortfeasors.

It was further argued by both counsel for the appellants that the damages were manifestly excessive.

As the learned trial judge erred by awarding one lump sum and as I agree that the awards made were manifestly excessive I allow the appeal against damages. The damages in respect of both appellants are hereby set aside. I now make a single award of R.100,000.00 out of which the first appellant's share will be R.25,000.00 and that of the second appellant will be R.75,000.00.

As the appeals have been partially successful, I would make no order as to costs.

Dated this 9 day of December 1994.

Annel M. Silungwe
JUSTICE OF APPEAL

Read and delivered by me.

Judge
9-12-94