IN THE SEYCHELLFS COURT OF APPEAL

1. INNOVATIVE PUBLICATIONS (PTY) LTD	1ST APPELLANT
2. PERCY AH-MANE	2ND APPELLANT
3. CONRAD BERLOUIS	3RD APPELLANT
AND	
4. STATIONERY PRINTING AND COMPUTER EQUIPMENT LTD	4TH APPELLANT
VERSUS	
FRANCE BONTE	RESPONDENT

CIVIL APPEAL NO. 22 OF 1995

(Before Silungwe, Ayoola & Venchard, JJA)

Mr. P. Pardiwalla for the 1st, 2nd and 3rd Appellants
Mr. K. Shah for the 4th Appellant
Mr. J. Renaud for the Respondent

JUDGEMENT OF THE COURT

By a Plaint filed on October 8, 1993, the respondent brought an action against the appellants for invasion of his privacy and breach of confidentiality of conversations and instructions between him as a legal practitioner and his clients arising from an article published in a newspaper called "The Seychelles Independent" which had carried verbatim telephone conversations between him

(the respondent) and his clients. The action succeeded and the Supreme Court (Bwana, J.S) awarded him damages in the sum of R551,000.00.

The respondent is a Barrister-at-Law, an Attorney and a Notary Public; and has at all material times been practicing as such in the Republic of Seychelles. Besides, he is Chairman of the Constitutional Appointments Authority (CAA) and a member of the Central Committee of the ruling party - the Seychelles People's Progressive Front.

The first appellant is a private limited company and also the proprietor of the Seychelles Independent newspaper (hereinafter referred to as the "Independent"); the second appellant is the publisher; the third appellant is the editor; and the fourth appellant in the printer of the Independent.

There is no dispute that the article complained of was published in the Independent edition of October 7, 1993, in an narrative form under the title:

"THE JUICY TAPE
Telephone Tapping: Business as Usual."

The telephone conversations had taken place in the kreol language but their translation into English, as published in the Independent, was perfect. It was

averred that although pseudonyms had been used in the publication, the real people were easily identifiable by the respondent's clients. Thus, "Bon" meant Mr. Bonte (the respondent); "Bado" meant Mrs. Bernadette Barrado, the secretary to the President and "Prez" meant President France Albert Rene, the President of Seychelles. Both President Rene and Mrs. Barrado were at all material times clients of the respondent.

As a result of telephone tapping, the conversations aforesaid were tape-recorded. The telephone conversations were then published in the Independent on the front page (and continued on page 4) as a lead article. The article which noticeably cast aspersions on the respondent, started and ended in these terms:

> "THE JUICY TAPE
>
> Telephone Tapping: Business as Usual
>
> It has been dubbed Transcrip t 412, a recording of a conversation between Mr. Bon and Mrs Bado (not their real names). The tape contains enough juice to whet the curiosity appetite of many, and raise concerns that the business of telephone tapping in Seychelles is still fashionable and conventional
>
> .....
>
> .....
>
> More juice to follow later".

The respondent averred that the publication of the transcripts was unlawful and amounted to a fault in law in that the appellant had invaded his privacy and breached the confidentiality of conversations and instructions between him as an Attorney and his clients in the performance of his work and had thus affected his professional standing among his clients and in society generally. As a result, he lost a number of clients and his livelihood was affected. He prayed for damages and an injunction to restrain the appellants and their servants, agents, etc. from making any further publications both of which prayers were subsequently granted.

The Independent has a circulation of about 2000 copies in Seychelles and in about three or four other countries. The third appellant averred that a tape which, to his knowledge, bore the respondent's telephone conversations was understood to be in the hands of the publisher, i.e. the second appellant.

The second appellant is not only the publisher of the Independent, but he also owns 51% shares in that company. When Mr Pardiwalla asked him during examination-in-chief how and why he had published that article, his response was, inter alia, as follows:

"We decided to start Seychelles Independent after a party political paper called the Liberal collapsed. We did not go into publishing business for any profit. It is just that we felt the need for it. At the time there were only party political papers and we decided to take a political stand....

The raison d'etre of the newspaper was to create a balance as opposed to purely political party papers. Having taken up this task, this self-imposed task, we decided that anything that was subjected to controversy or was controversial that we would write about it. It was our duty having taken up the task of publishing newspapers to publish anything that we found would be of interest to our readers or the public at large.

In this case we were aware that there was public controversy over Mr Bonte's appointment as Chairman of the CAA. This has been written down by another journal and it was common knowledge. It was also common knowledge there was a certain cassette being circulated amongst certain individuals and which showed, or that would imply that Mr Bonte was of certain dubious character.

After all, as Chairman of the CAA the person appointed to that post must be of unquestionable integrity. Whilst the Bar Association was complaining about the conflict between the appointment and his job as a Barrister we felt that the steps showed something else, showed new light on Mr Bonte's character.....

For us at the time the controversy was surrounding Mr Bonte and nobody else. We took the decision to print the tapes in a way where we did not make a lot of comments. We just printed it the way we heard it. In fact I am the one who wrote the article. I know exactly why I wrote the article and how I wrote the article.

Having heard the tapes, I just printed exactly what was on the tapes. I wanted the Seychellois people to see and judge for themselves what kind of person Mr Bonte was."

The memorandum of appeal contains many grounds sixteen of which hinge on the question of liability and the law pertaining thereto; while the remaining eight are confined to the issue of damages. As between the learned counsel for the appellants, the arrangement is that Mr Pardiwalla would argue the grounds on liability and Mr Shah would deal with damages.

Firstly, it is complained, not only that the lawfulness or otherwise of the interception of the telephone conversations was immaterial and should thus not have been considered, but also that the consideration given thereto adversely influenced the trial court in the determination of all material issues, including fault and damage.

The right to privacy is granted and protected by the provisions of Article 9(b) of the Civil Code of Seychelles (hereinafter referred to as the Code) and Article 20 (1) (a) of the Constitution of the land. It is not in dispute that the learned trial judge made a finding to the effect that the transcripts had emanated from the bugging of the respondent's telephone conversations and that the said bugging was "illegal as it had not been allowed by the plaintiff".

Mr Pardiwalla, who uses the terms "immaterial" and "irrelevant" interchangeably, argues that unlawful telephone bugging was not pleaded and that the finding on the matter was irrelevant. It is further argued that what was pleaded was that the publication was unlawful, not that the bugging was unlawful.

Paragraphs 3 and 7 of the respondent's plaint shows that the bugging took place and that it was without the respondent's authorization. Paragraph 11(2) of the plaint contains a prayer for an order of injunction restraining the appellants from any further publication of the said, or any similar, transcripts of the respondent's telephone conversations with his clients. In paragraphs 2 and 5 of the respondent's affidavit, in support of a motion for the injunction alluded to in prayer 11 (2) of the plaint, the following appears:

"2. That I have read the SEYCHELLES INDEPENDENT NEWSPAPER of the 7th October 1993 and it contains an article titled:

THE JUICY TAPE

Telephone Tapping: Business as usual", which indicated that my telephone conversations with my clients have been unlawfully intercepted and recorded".

"5. That the Respondents have threatened that they may publish further transcripts of my telephone conversations with my clients which have been unlawfully intercepted".

It is noteworthy that the plaint, the notice of motion and the affidavit in support thereof were all filed together on the same date, namely, October, 1993. From the very outset, therefore, the appellants were apprised of the issues they were to meet. In our judgement, the affidavit above-mentioned was, to all intents and purposes, to be regarded as part of the pleadings. In any event, the respondent's case was not predicated on unlawful bugging as the real issue was the alleged unlawful publication of the telephone transcripts.

The question of irrelevancy does not arise here by reason of the fact that the publication of the offending transcripts was the direct result of the interception of

the respondent's telephone conversations. Had no such interception occurred, this matter could never have arisen.

With regard to whether the finding on unlawful interception adversely influenced the learned trail judge in his determination of all material issues of the case in relation to liability, a close look at the judgement does not appear to lend support to M Pardiwalla's contention. Surely, it was the publication of the transcripts of the respondent's telephone conversations in the Independent that constituted the alleged fault, not their interception. That this is so is borne out by paragraph 9 of the respondent's plaint as well as the judgement itself. For instance, at pages 365 and 366 of the appeal record, the learned trial judge expressed himself in these terms:

> "In the present case, it is my view that the plaintiff's assertions have been proved to the required standard. Leaving the question of damages to be discussed at a later stage, it is my observation that the main issue was to establish whether as not the defendants published the transcript. This has been established to my satisfaction."

It must be evident from the sum total of what we have said above that the first ground cannot succeed.

This brings us to the appellant's defence of public interest which pervades grounds 2-15. In considering this defence, we take cognizance of the following principles laid down by Stephenson, L.J. in Lion Laboratories Ltd v. Evans and Others (1984) 2 All ER. 526 at pp. 537-538:

> "There are four considerations. 'First, there is a wide difference between what is interesting to the public and what it is in the public interest to make known'... Secondly, the media have a private interest of their own in publishing what appeals to the public and may increase their circulation or the numbers of their viewers or listeners. Thirdly, there are cases in which the public interest is best served by an informer giving the confidential information, not to the press but to the police or some other responsible body, as was suggested by Lord Denning, M.R., in Initial Services Ltd. v Putterill (1968) 1 QB 396, 405-406; and by Sir John Donaldson M.R., in Francome v Mirror Group Newspapers Ltd. (1984) 1 WLR 892, 898. Fourthly, it was said by Wood, V-C, in 1856, Gartside v Outrum (1856) 26 LJ Ch. 113, 114, 'there is no confidence as to the disclosure of iniquity'; and though Mr Hoolahan concedes on the plaintiff's behalf that as Salmon LJ said in Initial Services v Putterill (supra) 'What was iniquity in 1856 may be too narrow... or too wide for 1967', and in 1984 extends to serious misdeeds or grave misconduct, he submits that misconduct of that

> kind is necessary to destroy duty of confidence or exercise the breach of it... Some things are required to be disclosed in the public interest in which no confidence can be prayed in aid to keep them secret, and "iniquity" is merely an instance of just cause or excuse for breaking confidence." It is, however, significant to note that, in striking a balance between public interest and the right to privacy of the individual and confidential information, regard must be had to the common sense approach, namely, that not everything of interest to the public is in the public interest.

In the case now under consideration, the defence of public interest is introduced in the second ground which is couched as follows:

> "The fault complained of consisted in the intentional act of publication of the telephone conversations which was alleged to have led to an invasion of privacy and to the breach of confidential information. The Defence to the intentional act of publication was that it was done in the public interest".

It is submitted that the second ground encapsulates the respondent's case which is based on the allegation contained in paragraph 9 of the plaint. As Mr Pardiwalla correctly puts it, the respondent's claim falls under Articles 9 and

1382 of the Code which read (omitting clauses 3, 4 and 5 of Article 1382 with which we are here not concerned):

"Article 9

1. Subject to the provisions of any law, persons shall be entitled to the protection of the court with regard to their rights to privacy and confidential information.

2. It shall be a defence to a civil action arising from an intentional act, which has led, in fact, to the invasion of the privacy of a person, or to the breach of confidential information to which he was entitled, that the act was performed as part of a legitimate investigation of allegations of behaviour against the public interest."

"Article 1382

1. Every act whatever of man that causes damages to another obliges him by whose fault it occurs to repair it.

2. Fault is an error of conduct which would not have been committed by a prudent person in the special circumstances in which the damage was caused. It may be the result of a positive act or an omission."

For the defence of public interest to succeed under clause 2 of Article 9 aforesaid, the following conditions must be proved:

(a) that there was an intentional act;

(b) that the intentional act under (a) above led

(i) to the invasion of the privacy of a person; or

(ii) to the breach of confidential information to which the person alleging the breach (i.e. the aggrieved party) was entitled; and

(c) (i) that the act complained of was performed as part of a legitimate investigation; and

(ii) that the legitimate investigation related to behaviour against the public interest.

What needs to be considered now is whether the conditions set out above were satisfied. From a reading of the second ground of appeal, it is apparent that condition (a) was satisfied. In any case, this condition is not, and never has

it been, in dispute. As it will be recalled, the ground starts off by stating that - "The fault complained of consisted in the intentional act of publication of the telephone conversations..." and ends with this sentence: "The defence to the intentional act of publication was that it was done in the public interest." This touches on condition (c) to which we shall return. In the meantime, it is logical to reflect on condition (b) which (like condition (c) is vigorously contested.

The double-pronged allegations that the intentional act of publication led (i) to the invasion of the respondent's privacy; and (ii) to the breach of confidential information, was resisted at the trial stage and the position now remains unchanged.

It is contended by Mr Pardiwalla that the respondent was aware that the telephone was not a safe system of communication since it was susceptible to bugging and that, as such, he had only himself to blame for having used the telephone as a means of communication. If the respondent had wanted to keep communications with his clients strictly confidential, so the argument continues, then he should have refrained from using the telephone. In saying all this, Mr Pardiwalla primarily relies upon Malone v Metropolitan Police Commission

(1979 Ch 344 ChD, an English authority.

In Malone, the plaintiff was tried before the Crown Court on a number of criminal offences of handling stolen property. During the trial, the prosecution counsel stated that the plaintiff's telephone had been intercepted on behalf of the police on the authority of a warrant issued by the Secretary of State. The plaintiff issued a writ against the police claiming, inter alia, declarations (i) that any tapping of the plaintiff's telephone lines without his consent or disclosure of the contents of conversations on those lines to third parties was unlawful; (ii) that the plaintiff had rights of property, privacy and confidentiality in respect of telephone conversations on the lines and that tapping was a breach of those rights; and that the tapping of the plaintiff's telephone lines violated article (8) of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950. The plaintiff contended, inter alia, (i) that the Crown had no power either under statute or at common law, to tap telephones; and (ii) that article 8 of the 1950 Convention conferred on him a direct right to have his private and family life, his home and his correspondence respected or, if it did not confer a direct right, it was at least a guide to the interpretation and application of English law. Sir Megarry, V-C, dismissed the action, holding, inter alia, that Malone's rights under common law had not been

infringed; that there was in English law neither a general right of privacy nor a particular right of privacy regarding the holding of a telephone conversation without molestations, and therefore telephone tapping by the Post Office could not amount to a breach of the law; that neither the Post Office nor anyone else who overheard a telephone conversation was under a duty to respect the confidentiality of that conversation because there was, inter alia, no general (nor particular) right to have the confidentiality of an overheard telephone conversation respected since a telephone user had to accept the risks of being overheard inherent in the telephone system; that on the principle that everything was permitted except that which was expressly forbidden, telephone tapping was not unlawful since there was nothing, such as trespass by the Post Office, to make it unlawful; it followed that, since telephone tapping by the Post Office at the request of the Police could be carried out without any breach of the law, it did not require any statutory or common law power to justify it; and that Malone could not rely on the 1950 European Convention on Human Rights since, as a treaty that had not been given domestic effect by legislation, the Convention was not justifiable in English Courts, nor could the court use the Convention as a guide to the interpretation and application of English law, because, although English law might not satisfy the requirements of the Convention that there had to be adequate and effective legal safeguards against any abuse of official telephone tapping, there was no legislation

before the court requiring interpretation in conformity with the Convention, and, in the absence of legislation, the court was unable to "lay down new rules of law in a field as complex as telephone tapping". However, having examined a decision of the the European Court of Human Rights on telephone tapping in Germany in the case of Klass v Germany (1978) 2EH.RR24, Sir Megarry, V-C, concluded that telephone tapping "is a subject which cries out for legislation."

In Kaye v Roborson (1991) FSR62, Glidewell, LJ, had this to say:

> "It is well known that in English law there is no right to privacy, and accordingly there is no right of action for breach of a person's privacy. The facts of the present case are a graphic illustration of the desirability of Parliament considering whether and in what circumstances statutory provision can be made to protect the privacy of individuals.'

(See also Civil Liberties Cases and Materials, 3rd ed., Butterworths, p. 472). In that case, the Court of Appeal's acknowledgement that there is no right of privacy in English law follows similar pronouncements in the Malone case (supra).

Plainly, the Malone case is distinguishable from the one under consideration primarily because, as Megrry, V-C, found, the right to privacy was not

recognised by English Law. This is not the case in Seychelles for here recognition is duly accorded to the right to privacy and to confidential information. Hence, once the right to privacy, etc., is recognised, as it is here, anyone who overhears a telephone conversation is under a duty to respect the confidentiality of that conversation as failure to do so can only be at the peril of the overhearer, unless such person can successfully plead the defence of public interest in terms of Article 9(2) of the Code. It is refreshing to recall the words of The Law Commission of England and Wales when they commented that they did not think that in a civilised society, a law abiding citizen using the telephone should have to expect that it may be tapped. See para. 6.35 of Individual Rights and the Law in Britain by the Law Society (edited by Christopher Mc Crudden and Gerald Chambers).

It is thus not a defence to an action for breach of the right to privacy and/or the right to confidential information to, for instance, plead and show that the telephone user had himself/herself to blame as he/she had to accept the risks of being overheard which risks are inherent in the telephone system. In the absence of the defence of public interest, the courts have an obligation to accord protection to individuals against unauthorised access to personal data and/or against improper disclosures of confidential information.

It is next argued that the respondent's assertion in paragraph 7 of his affidavit sworn on October 8, 1993, to the effect that he had information and that he verily believed that there were in circulation copies of transcripts of his telephone conversations with his clients and recorded tapes of the telephone conversations, showed that no fault had been committed by the appellants' publication of the respondent's telephone conversations with his clients as the said telephone conversations were already in the public domain and, consequently, there was no invasion of the respondent's privacy or breach of confidential information.

However, Mr Renaud, for the respondent, maintains that the circulation referred to in his client's affidavit occurred after the publications had already taken place; and that the affidavit was in support of an application for an injunction whose object was to prevent further publication of the tapped telephone conversations. We have no hesitation in accepting Mr Renaud's submission which reflects an accurate state of affairs.

We will now examine an aspect of the case which appears to have generated unnecessary argument especially before the Supreme Court, namely, who has the right to sue for breach of confidential information? This illustrates that there is some

confusion as to whether a case of breach of confidential information is on all fours with a case involving a lawyer-client relationship under legal professional privilege.

The legal professional privilege applies to a lawyer - client relationship only; it does not extend to any other relationships. The privilege is not only established for the protection of the client, but it also belongs to him/her, not to the lawyer. Thus, only the client, not the lawyer, can claim the benefit of the privilege. It follows, therefore, that it is the client alone who can sue under the privilege. It thus would not have been competent for the respondent in this case to have taken action on the basis of a lawyer-client relationship against the appellants as he would have had no locus standi.

However, an action for breach of confidential information in terms of article 9 of the Code encompasses a much wider field of relationships and entitles even a lawyer in a lawyer-client relationship, as in this case, to recover damages. In the circumstances, the respondent's action against the appellants for breach of confidential information was properly founded.

This brings us to condition (c) above. Here, an examination of the record of appeal

does not at all reveal that the act complained of (i.e. the publication) was performed as part of a legitimate investigation pursuant to clause 2 of Article 9 of the Code. In point of fact, there was no evidence whatsoever of any investigation. On the facts of the case, it would appear that the motive for the publication of the telephone transcripts was not to launch an investigation into the respondent's behaviour, but rather to implement the Independent's policy of publishing "anything that was subjected to controversy". In the words of the second appellant, he said this in his evidence:

> " In this case, we were aware that there was a controversy over Mr Bonte's appointment as Chairman of the CAA... I wanted the Seychellois people to see and judge for themselves what kind of person Mr Bonte was".

I any case, there was nothing in the appellant's pleadings in aid of the argument that the publication formed part of an investigation into the respondent's behaviour. The upshot of it all leads to the conclusion that condition c (i) was not satisfied. In the circumstances of this case, it is unnecessary to consider the question of public interest under condition (c)(ii) as this does not arise; otherwise it would be like putting the cart before the horse. In other words, public interest becomes a live issue only when it is

shown that the act complained of (e.g. publication in this case) formed part of an investigation and that the said investigation was legitimate.

The last issue on liability is whether the fourth appellant, the printer, was liable as a joint tortfeasor. It is argued that the printer of a newspaper has a purely mechanical role to play; that he does not take part in publication; and that unless it is proved that he acted in complicity with the publisher, he should not be made liable for a newspaper publication constituting invasion of privacy or breach of confidential information unless it is proved that he knew of the tortious character of the publication.

This argument is a misconception as it is trite law that where there is actionable publication of the printed work, the author, publisher, printer and proprietor are jointly and severally liable. Vide, for instance, Halsbury's Laws of England, 4th edition, vol. 28 para. 38 where it is stated that -

> "Every person who takes part in, or procures, the publication of a libel, is prima facie liable jointly and severally for the damage caused by it. Thus, if a libel appears in a newspaper the author of the libel and the proprietor, editor, printer publisher and vendor of the newspaper are prima facie jointly and severally liable".

In the Law of Defamation in South Africa, Burchell affirms that -

> "Every person who participates in the publication may be liable. It is no defence to say that he was merely a link in the chain leading to ultimate publication. Thus, where defamatory matter appears in a newspaper, not only the author but also the editor, printer, publisher and proprietor can all be held responsible for the publication."

In the case of Pakendorf en Andere v De Flamingh (1982) (3) SA 146 (A), the South African Appellate Division held that persons who participate in the publication of a newspaper are subject to strict liability, but news-vendors (book-sellers and libraries) can raise the defence of absence of negligence on their part. However, in Brittain, the Faulks Committee Report on Defamation (Cmnd 5909, 1975 paras. 302 and 304) rejected the claim of printers for immunity but did recognise that it is extremely difficult for the printer to check the defamatory content of all matter printed.

Although the illustrations given above all relate to defamation cases, there is no denying the fact that they offer useful guidance on the liability of joint fortfeasors in such cases as well as in other cognate cases, including the case under consideration. Thus, for the fourth appellant to expect that he would

escape liability in this case is a cry for the moon.

For all the reasons given above, we are satisfied that the learned trial judge made correct findings on liability. Accordingly, the appellants' appeal against the said findings must fail.

We now turn to consider the issue of damages. The respondent's claim for damages comprised the following three heads: (i) Actual Prejudice - R300.00-00; (ii) Prospective Prejudice - R100,000.00; and (iii) Moral Damages - R500,000.00. At the end of the day, however, he was awarded R150,000.00, R1,000.00 and R400,000.00, respectively, which totalled R551,000.00. He was further awarded costs of the suit and interest at the rate of 16% per annum from the date of filing the suit.

Mr Shah argues that the damages awarded under heads (i) and (iii) were unreasonable and manifestly excessive. Although there is an appeal against the quantum of damages (R1000.00) granted in respect of prospective prejudice under head (ii), Mr Shah tells us he has no quarrel with it.

Starting with head (i), Mr Shah contends that there was no evidence to show that the respondent had earned less since the publication had taken place; that it was for him to establish actual prejudice, but that this onus had not been discharged; and that he should thus not have been awarded any damages under this head.

This is conceded by Mr Renaud, learned counsel for the respondent, and consequently, the appeal based on this ground must succeed.

As previously indicated, the quantum of damages granted in connection with prospective damages under head (ii) is now not contested; indeed, there is no cross appeal against it. The result, of course, is that the damages awarded under this head cannot be disturbed.

The only head now outstanding is (iii), i.e. moral damages. The thrust of the ground of appeal here is that these damages were unreasonable and manifestly excessive. It is added that the said damages were clearly punitive, not compensatory, and that they ought to be substantially reduced.

Mr Shah urges the Court to obtain some guidance from French jurisprudence where the quantum of damages has not exceeded FF50,000. But this submission was previously made before the learned trial judge who dismissed it on the basis, inter alia, that the French authorities cited did not clearly show the reasoning behind the court's awards. We do not think that the authorities referred to us offer useful guidance in the instant case.

Mr Shah further argues that although there are no comparative cases for invasion of privacy in Seychelles, the Court can nevertheless use defamation figures as a guide. Again, it doesn't seem to us that such figures are of much use in this novel case.

In all the circumstances of the case, we are of the view that the moral damages awarded were manifestly excessive and must be reduced. The appeal based on this ground must, therefore, succeed.

Before the subject of damages can altogether be disposed of, we need to address ourselves to Mr Shah's submission concerning the printer, the fourth appellant. The point Mr Shah makes is that, in the circumstances of this case,

damages should be apportioned as the degree of responsibility of the fourth appellant was minimal. Although he acknowledges that-

> "It has been decided in both Mauritian and French jurisprudence that when damage has been caused by several tort-feasors and it is not possible to determine the amount of damage due to the 'faute' of each tort-feaser, judgement should go against all the tort-feasers jointly and severally for the whole amount (Vide Cader versus Valona Ltd. 1945 MR 157. Dp 1908. 1.139)"

he argues that the contrary is also true, and draws our attention, inter alia, to this Court's decision in the yet unreported case of Berlouis and Seychelles Broadcasting Corporation v Barrado in which damages awarded against two tort-feasors were apportained.

Mr Renaud's response to this submission is that there was no evidence to show that the fourth appellant's participation was less culpable; and that, in any case, the fourth appellant's pleadings did not contain any plea for the apportionment of damages.

In our judgement, a distinction must be drawn between this case and that of Berlouis and Seychelles Broadcasting Corporation in that the latter was a defamation case, involving a live political party broadcast in which the

second appellant/defendant, the Seychelles Broadcasting Corporation, had had no prior knowledge of the contents of what was to be put on air during the broadcast.

In contract, however, the fourth appellant in the instant case knew, or ought to have known, the contents of the article in question prior to its publication in the Independent, especially that it was not only a lead article, published on the first page, but also that it carried an eye-catching title: "The Juicy Tape" which contained "enough juice to whet the curiosity appetite of many..." and which ended with the words: "More juice to follow later". In our view, Mr Shah's argument on the point under discussion is misconceived; and the fourth appellant's appeal in this regard cannot conceivably succeed.

Finally, we are going to consider a ground of appeal relating to the rate of interest applicable to this case. It is here contended that the trial court's order of interest at the rate of 16% per annum from the date of filing the suit is bad in law and ought to be set aside. The rate of interest is fixed at 4% per annum by section 3 of the Interest Act (Cap.100). Interest on a judgement debt resulting from a tort must start to run from the date of the

judgement when the amount of the debt is determined. This ground is conceded, and properly so, by Mr Renaud.

Both Messrs Shah and Renaud are right as to the applicable rate of interest and date of commencement. It follows that the interest rate ordered by the trial court as well as the date of its commencement must be, and are hereby, set aside.

To recapitulate, the trial court's findings on liability against all four appellants are upheld and so their appeals against the said findings are dismissed.

With regard to damages, the appeal by all the appellants are successful vis-a-vis the heads of actual prejudice and moral damages, with the result that the damages adjudged under both these heads are set aside. In so far as moral damages are concerned, we feel that in the circumstances of this case, the respondent should be awarded R150,000.00 and we so order. Taking into account the sum of R1,000.00 previously awarded as prospective damages, the respondent will get R151,000.00 in aggregate, with costs in the Supreme Court at the rate of 4% per annum from the date of the judgement in that Court. In view of the fact that the most substantial and time consuming

issues raised on appeal pertain to liability (which are resolved in favour of the respondent), rather than to damages (two aspects of which one resolved in favour of the appellant), we are inclined to grant the costs of this appeal in favour of the respondent and we so order, at the said applicable rate of interest.

Given at VICTORIA this 30th day of OCTOBER 1996

A.M. Silungwe
JUSTICE OF APPEAL

E.O. Ayoola
JUSTICE OF APPEAL

L.E. Venchard
JUSTICE OF APPEAL