

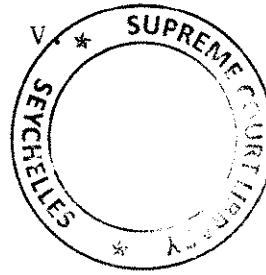
IN THE SEYCHELLES COURT OF APPEAL

DANIEL BLACKBURN

APPELLANT

HUBERT ALTON

RESPONDENT



Civil Appeal No. 29 of 1994

Mr. Boulle for the appellant  
Mr. Georges for respondent

JUDGMENT OF GOBURDHUN, P.

The appeal arises out of a judgment of the Supreme Court dismissing a claim for damages for defamation.

In his plaint appellant alleged that respondent in a letter written by him and addressed to the State Assurance Corporation of Seychelles made false and malicious defamatory statements about him and he claimed R.57,000.00 for loss and damage caused to him. Appellant alleged that the letter contained "allegations" and "innuendos" concerning appellant to the effect that "appellant is incompetent and dishonest and not qualified to undertake Quantity Surveying works" and "should never have been issued with a Quantity Surveying Licence, his "professional ethics leaves a lot to be desired." In his letter he further said the "State Assurance should never ask appellant to undertake Quantity Surveying Work." Respondent went on to say "there is something very fishy here and I leave it to your imagination."

The letter addressed to the State Assurance Corporation was copied to the Licensing Authority. Respondent pleaded 'inter alia' that the words were true in substance and in fact and were published on an occasion of qualified privilege and the parties to whom they were published had a common and corresponding interest in the subject matter and the publication of the words complained of.

Both appellant and respondent were employed by the State Assurance Corporation to evaluate properties in connection with insurance claims. Respondent was asked to evaluate a property which had burnt down. The owner of the property also caused his property to be evaluated by appellant. The valuation of appellant far exceeded that of respondent. The State Assurance asked for the comments of respondent on the big difference in the two valuations. Respondent wrote the letter which is the subject-matter of this case. He also copied the letter to the Seychelles Licensing Authority - a body which issues licence to Quantity Surveyors.

The learned trial judge found that respondent had failed to prove that the imputations made against appellant in his letter were true in substance and fact. The learned judge also found that there was no malice on the

part of respondent, he upheld the defence of "qualified privilege" and dismissed the plaint.

The learned judge, in the event appellant would have succeeded, would have awarded:


- (a) R.15,000 for general and moral damages
- (b) R.5,000 for loss of prospective career.
- (c) R.7,000 for pecuniary loss


Appellant is challenging the findings of the learned judge on the issue of qualified privilege and finds the amount of estimated damages of the learned judge inadequate and in his view it should be enhanced.

The only issue before this Court is that of "qualified privilege" as pleaded by respondent. It has been repeatedly held that a privileged occasion is, in reference to qualified privilege, an occasion where the person who makes the communication has an interest or a duty (legal, social or moral) to make it to the person to whom it is made and the person to whom it is made has a corresponding interest to receive it. If it can be said that respondent had a duty to make the communication to the State Assurance Corporation in response to the request made by the Assurance Corporation I do not consider he had a similar duty towards the Licensing Authority. The privilege is not absolute but qualified. It is lost "if the occasion which gives rise to it is misused." In my view respondent overreacted. He not only used very strong language which was uncalled for but also copied his letter to the Licensing Authority. This only shows his bad faith. The defence of qualified privilege is destroyed if there is bad faith on the part of the maker of the communication. The learned judge erred on the issue of qualified privilege and I hold that respondent is liable in damages for defamation.

On the issue of damages Mr. Georges had no quarrel with the estimated award of R.15,000 for general and moral damages. I agree that the Barrado case is of no help in this case as in the Barrado case the defamation was broadcast to the country. This Court may only increase an award if it is too low, I do not find that it is so. As regards the items of damages for "loss of prospective career with Sacos" and "pecuniary loss" I agree with counsel for respondent that these should be disallowed on the ground that there is no satisfactory evidence to support them. I accordingly award R.15,000 to appellant. As appellant has succeeded on the main issue respondent to pay the costs of the Supreme Court and this Court.

Delivered on

  
H. GOBURDHUN, PRESIDENT  
COURT OF APPEAL

*Judgment delivered in the  
presence of counsel:*  
  
AT 65  
31/1/196



IN THE SUPREME COURT OF SEYCHELLES

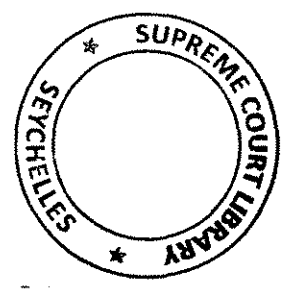
DANIEL BLACKBURN

PLAINTIFF

VERSUS

HUBERT ATON

DEFENDANT



CIVIL SIDE NO 114 OF 1992

JUDGMENT

I have had the advantage of taking cognizance of the judgement of the President and I concur with the conclusions reached by him.

The issue raised on the merits of this case relates to the defence of Qualified Privilege raised by the Respondent. It is no longer in dispute that the statements made of the Appellant were defamatory but it is claimed that the Respondent is absolved from liability inasmuch as those statements were made in the course of a duty and that the defence of Qualified Privilege should be upheld.

The trial judge made a praiseworthy and correct appraisal of the principles governing the defence of Qualified Privilege. It is therefore not necessary to consider those principles. However, it is unfortunate that the trial judge erred when applying those principles to the facts of this case.

The Respondent not only addressed his defamatory statements to SAGOS but also to the Licensing Authority. He could be said that he had a duty towards SAGOS who had retained his services but the diffusion of the defamatory statements to the Licensing Authority was uncalled for and was made in very violent terms indicative of bad faith.

The defence of Qualified Privilege must therefore fail and the appeal is allowed.

I also award R15000 as damages to the Appellant with costs both in this Court and the Supreme Court.

*L.E. Venchard*

L.E. VENCHARD

*Judgment delivered and that  
possession of counsel's*

*J*

*AJCS*

*31/1/196*