

**Pool v Loizeau & Or
(1999) SLR 92**

John RENAUD for the plaintiff
Antony DERJACQUES for the defendant

Judgment delivered on 21 October, 1999 by:

JUDDOO J: The plaintiff has filed a plaint against the defendants claiming damages in the sum of R75,000 for defamatory words uttered by both the defendants concerning her at Green Estate, Anse Aux Pins. Both defendants have filed a defence denying that they had 'alleged or said the said words or at all and were duly represented in Court. The parties were neighbours at the material time.

It is averred in the plaint that 'on or about 5 April 1998 the defendants said of the plaintiff, at Green Estate, Anse Aux Pins, within the hearing of several persons' including Mrs Irene Figaro and Mr Michel Figaro the following words:

"Ou vol R30,000- pou SPPF pou ou donn sak dimoun R300- e ou'n osi vol 40 kret labyer" translated to mean:

"The plaintiff has stolen R30,000 for the Seychelles People Progressive Front in order to share it with its supporters by giving them R300 each and the plaintiff has also stolen forty crates of beer".

The plaintiff averred that the said words refer to and are understood to refer to the plaintiff and either by their innuendo or in their natural and ordinary meaning are understood to mean that the plaintiff is a 'thief'. Mrs Henderson (PW5), sworn interpreter, gave evidence that the English translation of the words in creole in the plaint were correct. She maintained her version under cross-examination.

The plaintiff testified that she lived at Anse Aux Pins at the material time and both defendants were his neighbours. On 5 April 1998, she was in her yard at her residence when the two defendants called out to her that she was a person who steals and had stolen R30,000 from SPPF and crates of beer. There were several persons around and the plaintiff felt ashamed. As a result she was labelled as a 'thief' by others and had to leave the vicinity to reside at her daughter's place.

A second witness Jose Hollander (PW3) was called on behalf of the plaintiff. He is a police officer and was stationed at Anse Aux Pins on 5 April 1998. He testified that he received a complaint from the plaintiff at about 15.30 on that day. He called to the plaintiff's house was informed by the latter that both defendants had accused her of stealing SPPF money and drinks. The witness added that he approached both defendants and they agreed to having made the allegation against the plaintiff. He called upon all parties to behave in a peaceful manner as they were neighbours.

Mr Daniel McGaw (PW4) gave evidence that he was present on 5 April 1998 in the area at the material time. He saw Mr Loizeau, the first defendant, who was swearing about and who alleged that the plaintiff had stolen R30,000 and 40 crates of beer from SPPF. Under cross examination he explained that he was with a group of four persons playing dominoes and there in addition there were four to five persons standing around. He clarified that he heard the two defendants saying the defamatory words as the allegation was distinct. The defendants came from the public road and swore at the plaintiff. He admitted that he was living with the plaintiff's daughter, one Mirenda.

Mrs Irena Figaro (PW5) gave evidence that she is acquainted with the plaintiff and the defendants and that she lives at Green Estate. On 5 April 1998, she heard the argument whereby the defendants averred that the plaintiff had stolen R30,000 and 40 crates of beer. She believed as true the allegation that the defendants had laid against the plaintiff. Under cross-examination, the witness verily maintained having heard both defendants uttering the remarks. She added that she had seen a police officer walking up and down in civilian clothes whom she identified as the police witness who deponed. The latter looked a bit everywhere and went away.

The first defendant, Mr Thomas Loizeau testified that he lives at Green Estate. On 5 April 1998, the plaintiff had an argument with him and he said to her "as your daughter Aviva Pool said you have stolen R30,000 and 40 crates of beer". He explained that he had heard this allegation from the plaintiff's daughter, Aviva, who had uttered such allegation against the plaintiff in public. Under cross-examination he added that he only repeated what he had heard. He denied that any police officer had called upon him after the incident.

The second defendant, Elisa Fred, testified that she lives at Green Estate. She explained that she did not utter the alleged defamatory words and added that she and other persons in general, were aware that the plaintiff's daughter Aviva Pool, had alleged on 1 April 1998 that the plaintiff had stolen money from SPPF.

Hansel Pothin, (DW3), another defence witness, was called. He testified that he lives at Green Estate, Au Cap, and he was aware that Aviva Pool had said that the plaintiff had stolen money. However, under cross-examination, he added that the time of the alleged incident involving the plaintiff and the defendants, he was at work.

Gilly Fred (DW4) father of the second defendant, testified that he lives at Green Estate, Anse Aux Pins. On 5 April 1998, he was present when the incident occurred. He heard Aviva, the plaintiff's daughter uttering that the plaintiff had stolen R30,000 and 40 crates of beer from SPPF. When queried, under examination-in-chief as to whether he heard anything between the plaintiff and the first defendant he candidly replied: "I did not hear anything, they quarreled and swore at each other and I left them alone." Under cross-examination he added that he did not know whether his daughter, the second defendant; had also uttered the defamatory words.

A last defence witness, Lisette Pool (DW5), sister of the second defendant gave evidence she lives at Green Estate. She was present when there was an exchange of words between the plaintiff and the first defendant but added that it was Aviva Pool who said "mother you a thief you have stolen R30,000 from the SPPF and 40 crates of beer".

Both defendants have under paragraph 2 of the defence pleaded that 'they never alleged or stated the said (defamatory) words or at all.' This plea is further maintained under paragraph 4 of their defence which states that the "defendants never uttered the said words or implied directly or by innuendo that the plaintiff was a thief." Under section 75 of the Code of Civil Procedure (Cap 213) "the statement of defence must contain a clear and distinct statement of material facts on which the defendant relies to meet the claim." It is a cardinal rule that parties must plead all the material facts they wish to rely upon at trial. Any material fact not pleaded is ultra petita and cannot be relied upon by the Court in its determination. Accordingly, the alleged material fact that the defamatory words were first published by Aviva Pool, daughter of the plaintiff, is clearly and distinctively outside the pleadings.

The plaintiff testified in Court in a straightforward and consistent manner as far as the fact that the two defendants uttered the defamatory words to her address. She was thoroughly cross-examined and verily maintained her version. I find her to be a witness of truth. Her version is supported by the testimony of Mrs Irena Figaro a neighbour and also by Mr Daniel Mcgaw. The latter admitted that he has a relationship with the plaintiff's daughter. However, his testimony in Court was as a witness to the incident rather than an interested party. I find him to be a witness of truth.

The first defendant admitted having uttered the defamatory words to the address of the plaintiff. His added averment that it was a second publication is outside the pleadings. The second defendant maintained her denial that she had uttered the defamatory words. She added that she had heard the defamatory remarks from Aviva Pool on 1 April 1998 and that she has had no argument with the plaintiff other than what she referred to as a "chicken problem" between neighbours whereby the police interfered. To some extent defence witness Gilly Fred stated that he heard the defamatory remarks from Aviva Pool on 5 April 1998 at the time of the incident. This is inconsistent with the version of the second defendant.

Overall, I find that the evidence adduced by the plaintiff and her witnesses has established on a balance of probabilities the case against both defendants. Accordingly, I shall proceed on the next issue of quantum of damages sought.

The essence of the defamatory remarks made in public were that the plaintiff had stolen S30,000 from SPPF and 40 crates of beer. The evidence shows from the testimony of witness Mcgaw, that at the material time there were some eight persons playing domino and some of the neighbours around. I am not convinced by the evidence adduced by the plaintiff that she had left Green Estate to reside at her daughter's place at Barbaron as a result of the incident. As she stated under cross-examination "I love to stay at my

daughter's house because she is the one to stay with me." It has also not been established that the plaintiff has closed her shop as a direct result of the defamatory remarks.

I find that the words uttered by the defendants are defamatory since they impute the commission of theft by the plaintiff. The publication has been limited to persons who were present at the material time but has affected the plaintiff in the small community that she then resided at Green Estate, Anse Aux Pins. However, I find the claim of S75,000 to be on the high side. Taking all the circumstances of the case into account I find that the sum of S12,500 would represent a reasonable amount for the prejudice suffered. Accordingly, I enter judgment in favour of the plaintiff against both defendants for the sum of S12,500 with costs.

Record: Civil Side No 312 of 1998