

**Talma v Henriette  
(1999) SLR 108**

Frank ELIZABETH for the plaintiff  
Antony DERJACQUES for the defendant

**Judgment delivered on 28 October 1999 by:**

**PERERA J:** This is an action for defamation wherein the plaintiff alleges that on or about December 1994 and 18 February 1995, the defendant uttered the following words to him in Creole:

alleges that on or  
the following words

Tir sa lakord lo mon miray e al amar li kot fes ou fanm. Ou li en fanm sal. I annan en lot zonm e ler ou al travay I an lakaz. I annan en piti pou sa zonm.

ilon e ou fanm  
sa zonm dan

These words translated into English appear in the plaint as follows: "Remove the rope from my wall and go and tie it at the curb. You are a homosexual and your wife is a dirty woman. She has a child by another man whenever you go out to work she brings a man at home."

our wife. You  
other man and  
has a child by

The sworn interpreter called by the plaintiff confirmed the correctness of the translation, save for the last statement, which she said should read as "she has a child by another man."

s of the translation,  
a child by this man"

The parties are admittedly neighbours. It is the case for the plaintiff that he had been given permission by one Leon Adrienne, the father-in-law of the defendant, to tie his boat to the boundary wall near the sea. He alleged that some time between December 1994 and 18 February 1995, the defendant uttered the words complained of when he was tying the boat as usual.

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The instant action was filed on 4 November 1996. The plaintiff produced a certified copy of a judgment dated 17 June 1996 (exhibit P1) wherein the learned Magistrate had held that the words allegedly uttered by the defendant in respect of the complaint, directed to her husband, the present plaintiff, were on the basis of the complaint, and accordingly dismissed the complaint.

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By definition, libel or slander is :

Any imputation which may tend to lower the plaintiff in the estimation of right-thinking members of the society generally, to cut him off from society, or to expose him to hatred, contempt or ridicule. (*Gateley on Libel and Slander* - page 6, paragraph 4).

The South African Judge, De Villiers, had this to say in an action for defamation

Every person has an inborn right to the tranquil enjoyment of his peace of mind, secure against aggression upon his person, against the impairment of that character for social or moral worth to which he may rightly lay claim, and of that respect and esteem of his fellow men of which he is deserving and against humiliating and degrading treatment; and there is a corresponding obligation incumbent on all others to refrain from assailing it to which he has such right"

It is a pre-requisite that for any defamatory statement to be acted upon, in the sense that the words complained of were published to the knowledge of some third person, that is a person other than the plaintiff, the plaintiff must prove facts from which it can be inferred that the words were published to the knowledge of some third person, he would have established a prima facie case. The plaintiff testified that the words complained of were heard by her husband, Mr. Adrienne, the father-in-law of the defendant who was seated in the living room of his house which was about 3 metres away from the wall. He testified that Mr. Adrienne is now dead and that his house has also been demolished. The only evidence of publication adduced by the plaintiff was that of his wife's testimony. She stated that the defendant has always insulted her husband. On being questioned by counsel as to why she did not file the case in the Magistrates' Court, and not her husband, she replied -

"I brought the matter before the Court because I was afraid that the words were uttered by the defendant, maybe my husband did not believe in what the defendant had said."

However, she further testified that consequent to what the defendant had alleged, her husband took it seriously and started to consume alcohol regularly. She stated that on several occasions she was assaulted and that she obtained a non-cohabitation order from the Magistrates' Court in about 1997. She however stated that the defendant has since then stated that he was misled and that he now believed that the allegations were false. The present action was however filed on 4 November 2006 on the basis of alleged defamatory words concerning him as well as his wife.

The defendant denies that she used the words complained of. She asks the court whether publication to third persons is required for the purposes of a civil action. Hence a defamation action against a husband about his wife, or to a wife about her husband is not actionable at the suit of one of the parties.

prima facie case. The plaintiff testified that the words complained of were heard by her husband, Mr. Leon Talma, sitting in the living room of his house which was about 3 metres away from the wall. He testified that Mr. Leon Talma is now dead and that his house has also been demolished. The only evidence of publication adduced by the plaintiff was that of his wife's testimony. She stated that the defendant has always insulted her husband. On being questioned by counsel as to why she did not file the case in the Magistrates' Court, and not her husband, she replied -

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The tort of defamation as laid down in article 1383(3) of the Civil Code is governed by English Law. It was held in the case of *Kim Koon v Wirtz* (1976) SLR 101 that the law of defamation applicable in Seychelles is the law in force in the United Kingdom on 31 October 1975.

English law recognizes four types of cases which are actionable per se, without proof of special damages. They are:

1. Where the words impute a crime for which the plaintiff can be made to suffer physically by way of punishment.
2. Where the words impute to the plaintiff a contagious or infectious disease.
3. Where the words are calculated to disparage the plaintiff in any office, profession, calling, trade or business held or carried on by him at the time of publication.
4. By the Slander of Women Act 1891, where the words impute adultery or unchastity to a woman or girl.

In the words allegedly complained of in the present case, there is an allegation of adultery against the wife of the plaintiff and a direct allegation of homosexuality against the plaintiff. It is only the allegation of adultery that falls under the fourth head, that would be actionable per se. But that would be in an action brought by the wife of the plaintiff. As Gatley states at page 93 (paragraph 201)-

Where 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 damages as the natural and probable result of the publication, however disgraceful the slanderous imputation maybe, and it is that it will injure the reputation of the plaintiff.

The wife of the plaintiff, who was the sole witness for the plaintiff's counsel for the defendant whether it was true that the plaintiff was homosexual, stated "I do not think so. I have never heard or seen him." Therefore that allegation and hence the plaintiff had failed to establish special damages.

Apart from the allegation of homosexuality against him, the plaintiff has also suffered defamation of his wife. The words complained of allege that the plaintiff had an adulterous relationship with another man and that the plaintiff is not the biological father of one of the children. Admittedly the plaintiff was married to his wife at the time of the alleged defamation. In Roman law, as well as in Roman Dutch law, there is a defamatory action on the basis of *injuria per consequential relationship* in respect of a person in relation to his relationship he has with his wife and child. However the plaintiff could bring a claim in English law is

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somewhat different. Gatley states at page 406 (paragraph 939) that –

A husband cannot sue for defamation of his wife. But where a husband has sustained special damage as the direct and natural consequence of a libel or slander on his wife he may be able to maintain an action on the case in respect of such damage. In such a case both husband and wife can joint their respective claims in one and the same action. The damages recovered by the wife will belong to her, and special damage recovered by the husband will belong to him.

The instant action has however been filed only by the husband. Cross-examined specifically by counsel for the defendant, the plaintiff stated that his wife was not having any adulterous relationship with anyone and that neither his brother, father nor any other member of his family, or his neighbours, or anyone else had ever told him about or discussed any such behaviour on her part. On the basis of such evidence it could not be held that the plaintiff as husband has gone down in the estimation of members of the society. As regards his claim that due to the suspicion created by the alleged utterance of the defendant he and his wife obtained a non-cohabitation order and separated for three months, there was no documentary evidence adduced to ascertain the grounds on which such order was obtained. Moreover in the breach of the peace case filed by her in the Magistrates' Court, she alleged that the defendant uttered the alleged defamatory words to her. In the present action she states that they were uttered to the plaintiff. This creates a doubt as to whether those words were uttered at all.

The defendant in her evidence, denying that the words complained of were uttered by her, stated that the plaintiff often fought with his wife and children and also with the neighbours. She referred to two specific incidents, first where the plaintiff chased one Mr Naidoo with a dagger in hand, and another which involved one Mr Cooposamy. She also stated that the plaintiff cut her water line and she had to complain to the PUC. In view of the contradictory nature of the evidence, I prefer to accept the denial of the defendant.

If the instant claim of the plaintiff is based on special damages suffered as a direct and natural consequence of the slander of his wife, the only ground available to him was the alleged separation by a non-cohabitation order. The plaintiff and his wife were unable to give the date of filing the non-cohabitation application in the Magistrates' Court for this Court to assess whether that application was actuated by any misunderstanding that arose after the alleged defamatory words were uttered, as claimed by the plaintiff. In the absence of the reason for such an order, the Court is unable to determine that the plaintiff has suffered consequential damages.

The plaintiff has therefore failed to establish his case on a balance of probabilities. The action is accordingly dismissed with costs.

**Record: Civil Side No 338 of 1996**