

**Belmont v Quatre
(2004) SLR 45**

Frank ALLY for the Plaintiff
John RENAUD for the Defendant

Judgment delivered on 6 February, 2004 by:

PERERA J: This is an action for defamation. The Plaintiff is a Police Officer occupying Police Force Quarters at Mont Fleuri, while the Defendant is a Nursing Assistant residing at Barbarons.

The Plaintiff's case is that on 1 November 2001 at 6 a.m. in the morning, the Defendant came to her Quarters with another person, and told her "in Creole":

Mon ganny lenformasyon ki ou avek mon mari Pierre MARCEL. E Pierre in al travay depi yer bomaten 7er e i pa ankcor retournen. Wa pe kasyet li anndan kot ou, mon pe al rod lasistans en gard pou vin tir mon mari anndan kot ou.

Which, when translated into English, is -

I have received information that you are having an affair with my husband Pierre Marcel. Since 7 a.m. yesterday morning Pierre has gone to work and he has not yet returned. You are hiding him inside your house. I am going to seek assistance from the Police to remove my husband from inside your house.

It is averred that those statements in their natural and ordinary meaning or by innuendo, mean and are understood to mean, that the Plaintiff is a person of low morals and was sleeping with her colleagues, and keeping her husband overnight. The Plaintiff therefore avers that the publication of these statements has injured her reputation both in her personal capacity and as a Police woman in the force. She claims R50,000 as damages.

The Defendant denies uttering these statements, and avers that on that day whilst she was inquiring about the whereabouts of Pierre Marcel, her concubine, she sought the assistance of the Plaintiff who was working on the same shift as Pierre Marcel at the Mont Fleuri Police Station. She admits speaking to her but denies that the words used were defamatory.

The Plaintiff testified that she occupied a flat in a block which had six flats. Her brother and his concubine also lived in that flat. When the Defendant uttered those allegations everyone in those flats and others passing by were listening and watching. She called Police Inspector Neige Raoul who was also there at that time. The Defendant repeated

the allegations in her presence.

The Defendant in justification of her suspicions stated that one day she caught her husband in the company of one Lucy Jean at the Port Launay beach. The Plaintiff stated that Pierre Marcel worked as a driver and he drove her and several others at the station on official duties.

The Plaintiff further stated that she telephoned the Police on behalf of the Defendant, as another lady who came with the Defendant was guarding the back door and she was in front, and that if she went to the Police Station, she could have stated that Pierre was in the house and had left in the meantime. When Sgt. Belle arrived she told him that the Defendant wanted his assistance. Then the Defendant repeated the allegation to him.

Detective Inspector Neige Raoul testified that she occupied a flat close to that of the Plaintiff. On that day around 6 a.m. she was going to the dustbin to throw rubbish, and she saw the Plaintiff standing in front of her house, while the Defendant and another lady were standing outside the gate. Then the Plaintiff signaled her to come. The Defendant repeated the allegation. Then she saw Sgt Belle come. She informed the Defendant that she could be sued for making such an allegation, and advised her to make further Investigations as regards of her whereabouts of her husband. At that time three neighbours were watching the incident. The Defendant did not tell her that she had come merely to obtain information about Pierre and not to make any allegation. She appeared to be aggressive. When Sgt. Belle arrived the Plaintiff told him that the Defendant was accusing her of harbouring her husband, and the Defendant did not deny that.

Idens Belmont, the brother of the Plaintiff stated that on that day, the Plaintiff went downstairs to meet the Defendant, he heard them talking and the Defendant stating that she had information that the Plaintiff was having an affair with her husband. The neighbours were also watching, and Inspector Raoul also came there. This witness corroborated the evidence of the Plaintiff and Inspector Raoul on material particulars.

Sgt. David Belle testified that he was invited by the Plaintiff to enter her house and search for Pierre Marcel as an allegation had been made by the Defendant that she was harbouring him. He searched the entire house, but he was not there.

The Defendant testified that her husband Pierre Marcel left for work on 31st October 2001 but never returned. The following morning he went to meet Daniel Dugasse, another Police Officer who lived in the Police Quarters to obtain information regarding the absence of Pierre. He told her that he saw him on Friday around 8 a.m. but he did not come back to his house for lunch. He advised her to go to the Plaintiff's house, as she worked with him, and would be in a better position to tell her about his whereabouts. When he went there, a boy peeped through the window and she asked to see the Plaintiff. When the Plaintiff came down, she greeted her, but she did not reply. Asked about Pierre, she said that although she worked with him he was not in charge of him. The Defendant further testified that from the tone of the Plaintiff, she suspected

that she had something between her and Pierre and she told her so. Then the Plaintiff invited her into the house to search. When she stated that she did not want to do that without the assistance of Police Officer, she volunteered and phoned the Police Station. Sgt. Belle entered the house at the request of the Plaintiff, but he could not find Pierre there. She denied uttering the words complained of in the plaint. She maintained that she came with another lady that day to get information from Dugasse and it was on his suggestion that she went to the Plaintiff's house. On being cross-examined as to why she could not have telephoned Dugasse without coming all the way from Barbarons to Mont Fleuri early in the morning, she stated that she did not have a telephone, and that a call box was far away.

Lance Corp Daniel Dugasse testified that the Defendant came to his house that morning in search of Pierre. He advised her to ask the Plaintiff who works with him. Pierre had never stayed overnight at his house, but he came there often for lunch. After the incident, Pierre told him that when his wife was looking for him he was spending the night with a friend who was a taxi driver. Although the Defendant denied making the statements set out in paragraph 2 of the plaint, the accuracy of the English translation was not challenged. Accordingly the Court accepts that as a correct translation of the statements averred to have been uttered in Creole. The statements in their natural and ordinary meaning impute immoral conduct on the part of the Plaintiff, and hence they are per se defamatory.

The only consideration therefore would be whether the Defendant in fact made those statements as averred. If as the Defendant stated she was only worried about her husband's absence that night, she could well have telephoned the Police Station where he was attached, and not come with another lady so early in the morning, unless she intended to surprise him and accost him in the company of the Plaintiff. I find that her visit to Daniel Dugasse was to ascertain the flat of the Plaintiff. The evidence of Inspector Raoul regarding the allegation, puts it beyond doubt that the Defendant formed the suspicion long before speaking to the Plaintiff. It was therefore a planned visit based on a suspicion that the Plaintiff was having an affair with Pierre. The Plaintiff acted diligently and called the Police Officer herself to prevent the Defendant from claiming that Pierre was with her and had left while she went to the Police Station. On a consideration of the evidence, the Court accepts that the Defendant uttered the statements set out in paragraph 2 of the plaint and that thereby defamed the Plaintiff in the presence of her neighbours and passersby. There was therefore publication. Accordingly, the Defendant is liable in damages.

An oral defamatory statement is actionable per se. that is without proof of special damage, when such statement inter alia imputes unchastity or adultery to a woman. "Without proof of special damage" means, that the Plaintiff need not prove that she has suffered any resulting damage, as such damage is presumed.

The Plaintiff is a Police Officer by profession. She is therefore entitled to a degree of respectability in society. She has claimed R50,000 as damages. Damages awarded being compensatory and not punitive, I award the Plaintiff sum of R25,000.

Judgment is accordingly entered in favour of the Plaintiff in a sum of R25,000 together with interest and costs.

Record: Civil Side No 336 of 2001