

**Lalanne v Regar Publications Pty Ltd & Ors  
(2006) SLR 101**

France BONTE for the Plaintiff  
Bernard GEORGES for the Defendants

*Appeal by the Defendant was allowed on 24 August 2007 in CA 25 of 2006.*

**Judgment delivered on 23 October 2006 by:**

**PERERA J:** The Plaintiff was, at the time of instituting this action for libel, the Principal Secretary of the Ministry of Environment and Chairman of the Seychelles Islands Foundation (SIF). It is averred that the Defendants, in the 14 June 2002 issue of the “Regar” Newspaper published the Plaintiff’s photograph with the following Caption in English language:

Fishing in the Aldabra Lagoon is strictly prohibited. The above picture from the last Saturday’s “Nation” may indicate that this regulation, like all regulations in Seychelles, does not apply to everyone.

The Plaintiff avers that —

The said statements were intended to mean and in their natural and ordinary meaning and/or by way of innuendo the damages meant and were understood to mean that the Plaintiff & as the Principal Secretary for the Ministry of Environment and chairman of the SIF is fishing in the Aldabra Lagoon, an area which is by law, rules, and regulations prohibited for fishing and as Chairman of SIF the Organisation responsible for the enforcement of such law, rules and regulations the Plaintiff does such prohibited acts as though those laws, rules and regulations do not apply to him; he being above such rules and regulations.

It is further averred that the statements published were false and malicious and constitute a grave libel on the Plaintiff, affecting his character, credit, reputation and office as the Principal Secretary of the Minister of Environment and as the Chairman of the SIF. He also avers that he has consequently been lowered in the esteem of right thinking members of society, and generally been brought into hatred, ridicule and contempt. A sum of R600,000 is claimed as damages, including exemplary damages.

The Defendants deny that the statements complained of bore or were understood to bear or were capable of bearing or being understood to bear any of the meanings attributed by the Plaintiff, or any meaning defamatory of him. The Defendants rely on the defence of truth, further and in the alternative; they aver that the words complained of were published on an occasion of qualified privilege.

The Defendants also aver further and in the alternative, that the comments were fair comment made in good faith and without malice and in the public interest, namely the action of a High Government Officer entrusted with the protection of the environment, fishing in the vicinity of a strict nature reserve. The Plaintiff in his testimony denied that he was fishing in the lagoon as alleged. He stated that the lagoon was strictly prohibited. He was fishing "inside the reef" with three other people off Polymnie Island. He explained that Polymnie is a small island on the West side of Picard Island. After Picard, is the entrance called the main channel. Next to that is Polymnie where they were fishing. The Plaintiff further testified that in terms of internal Regulations under the National Parks and Conservation Act (Cap.141), more particularly under Regulations (Aldabra Special Reserve Regulations), members and staff of the Society for the Preservation of Fauna and Flora (SIP) are permitted to fish for subsistence up to 1 kilometre from the high water mark. He, as the Chairman of SIP was fishing for subsistence outside the 1 kilometre limit. As regards the procedure, he stated that in a venture of that nature, the boat would start off on the reef edge, and allow the boat to drift, and it is in this way that fish to be consumed are caught. Referring to the position he was in when the photograph was taken, he stated that the boat had drifted outside the 1 kilometre limit. He stated that in any event, the SIP Regulations permit fishing within the 1 kilometre limit. He also stated that the photograph was taken by Mr Claude Pavard, another Director of SIP, who downloaded that photograph onto his laptop computer. The Ministry of Education wanted a few copies of the photograph for their Article in the "Nation" about school children visiting Aldabra. He sent them the photograph in question. He did not find anything wrong in that photograph being published as he was not doing anything illegal.

The Plaintiff further testified that the internal SIP Regulations regarding fishing for subsistence is contained in an Operations Manual and another manual which is revised every year by the Board. He added that when Aldabra was under the management of the Royal Society, subsistence fishing in the lagoon was allowed, and that this practice has been perpetuated by the SIF. He however stated that that facility has been withdrawn.

On that day there were 15 members of the staff on the Island on the Atoll. Four of them were on the boat. The fish caught were categorized, weighed in the presence of the Research Officer and put in a freezer to be consumed later. He agreed that the internal SIF Regulations obviously applied for the benefit of the staff of the Board, but stated that his objection was to the assertion that he was fishing inside the lagoon which was a prohibited area for everyone. He further stated that people questioned him about the imputation in the "Regar" Newspaper that he was an illegal fisherman as he was allegedly flouting Regulations. He maintained that he did not fish in the lagoon and that he did not breach any law or Regulation as implied in the Article. He further stated that the other person on the boat who was fishing, was doing so between 1 and 1.2 or 1.3 kilometres outside the lagoon, which was not a prohibited area for anyone.

Mr Jean-Francois Ferrari, the Publisher of "Regar" Newspaper testified that his Newspaper championed the worthy cause of environment and has been systematically

regarding fishing for subsistence in the lagoon which is revised every year by the Board. He added that when Aldabra was under the management of the Royal Society, subsistence fishing in the lagoon was allowed, and that this practice has been perpetuated by the SIF. He however stated that that facility has been withdrawn.

publishing at least one Article every week in that field. As regards the publication of the photograph in issue with the comment, he stated that the “Regar” received a “couple of telephone calls” from people who expressed concern about the photograph which might involve a breach of the law, and “suggesting that they take up the matter and seek to inform the public on the possibility of that breach of the law.” However before republishing the photograph from the “Nation”, he “sought advice from a friend, a colleague, who is a “Master Mariner, and a sea Captain, whether the photograph could have been taken as far as 1 kilometre from the shoreline of Aldabra.” The opinion he received was that it had been taken well within the 1 kilometre radius of Aldabra. He also found out that of the three persons on the boat, only two were SIF personnel, and the other was a Teacher who was accompanying the students on the trip. He further stated that the “Regar” raised the issue, as at least one person on the boat was not authorised to fish in that particular area. Mr Ferrari further stated that examining the photograph with an “expert eye”, the glare on the water, from a professional point of view, indicated that the boat was very close to the Island. They then decided to republish the photograph with an extended Caption “raising the question of possible disregard to Regulations.” He said that it was common knowledge that there were restrictions on fishing around the Island. He further stated that it was the policy of “Regar” to avoid publishing names of people and hence left it to their readers to identify the people and make their own assessment of the situation. He emphasized on the word “may” in the Caption and stated that it was a deliberate choice of word as they were not hundred percent sure of the accusation as they had to rely on the advice and opinion of others on that matter. He however contradicted himself and stated that the Editorial Board was satisfied with the opinion of the “Master Mariner”, that the boat was fishing not more than 1 kilometre from the shore. He further stated that the Caption referred to the “lagoon”, as the “Master Mariner” who examined the photograph observed the backdrop of the Island and the trees and concluded that the boat was in a shadow area close to the Island. Mr Ferrari however did not name the “Master Mariner”. In these circumstances the Editorial Board decided that in the interest of environment, the issue should be raised publicly to prevent a repetition. He denied that the publication was done with malice towards the Plaintiff.

After the publication, Mr Claude Pavard sent him a letter dated 9 July 2002 (P3). It was published, with a note from the Editor in the “Regar” Newspaper of 12 July 2002. The English translation of the letter and the note are as follows:

### **Fishing outside the Aldabra lagoon**

Dear Editor

I refer to the Regar newspaper No.20, Volume 11, where you have published on page 8 a photo of three persons fishing accompanied by a commentary supposedly that the fishing had taken place inside the Aldabra lagoon. I would like to give three remarks on that subject:

1. I am the author of that photo and certified that the photo was taken on 16<sup>th</sup> April at 18:00 hrs, one kilometre open sea at the reef of Picard Island. After the fishermen returned, the fish was weighed and placed in the deep freezer to supply the staff at the Research Station.
2. One of the gifts of Seychellois people is their interest in fishing. Even in fishing competitions rules are by-passed sometimes. What affects me the most as a board member of the SIF, is that this misunderstanding could be spread abroad in the world of conservationist or the WWF, or again the World Heritage, and this will tarnish the image of SIF in particular and Seychelles in General. This is why I am asking you to rectify this issue in the next edition of the Regar newspaper.
3. A critical journal is indispensable in all democratic countries but the critics must not miss the target. As the saying goes 'Car Enchainé!'. A famous French criticism weekly newspaper: 'Pan sur le

Yours faithfully

**C. PAVARD**

Editor's Note

*The picture published was reproduced in the Nation' ne  
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The Defendants also called Captain Jeffery Benoiton, a Director of the Maritime Administration. He stated that he was familiar with the Aldabra Atoll sea chart and instruments, he plotted Aldabra Atoll and Polymnie Atoll. He stated that 1 kilometre from the high water mark off Polymnie was about 600 metres and at 1.2 metres was about 600 metres or more. Similarly from Picard Atoll, 1 kilometre was about 400 metres in depth. He stated that it was not normal for a boat to fish with a hand line at those depths as it was not possible for a small boat. He further stated that it will not be possible to fish in the depths of 200 to 250 metres while drifting. He further stated that from a fisherman's point of view, depths of 200 to 250 metres would be considered as deep water. Cross examined by Counsel for the Plaintiff, Captain Benoiton stated that the fish "Etelis" was considered to be a deep water fish, but the photograph, he stated, was taken from Aldabra. The Court examined the photograph and asked the Defendant to identify the location of the boat in the photograph. He stated that it "bears resemblance to Aldabra, but it could be also any other Island". Hence the positive location of the boat in the photograph remained inconclusive.

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The Seychelles “Nation” Newspaper of 8 June 2002, in a Center-Spread Article entitled “Aldabra: A Haven of Life” carried eight photographs, one of which was the photograph in issue, which was republished in the “Regar” Newspaper of 14 June 2002. The “Nation” Article (Exh. D1) was written by a student of Plaisance Secondary School, which was one of the four Schools that went to Aldabra with three Teachers and the then Principal Secretary in the Ministry of Environment and Chairman of SIF Mr Maurice Lousteau Lalanne, the Plaintiff in this case. The Plaintiff testified that he gave permission to the “Nation” Newspaper to publish all the photographs as there was nothing wrong with any of the activities they portrayed. Their photographs were used to illustrate the activities that took place during that trip. The Defendants reproduced the photograph in issue, without his consent or approval, nor that of the “Nation” Newspaper.

Liability for publication of photographs for purposes other than those intended, was well illustrated in a South African case of *O’Keefe v Argus Printing and Publishing Co Ltd* (supra). In that case the Plaintiff was employed by the South African Broadcasting Corporation which did not allow publicity in advertisements by their employees. She agreed to the use of her photograph for the Article in the Defendant’s Newspaper. However the Defendant published a picture of her shooting with a rifle and assisted by an Instructor, and the Advertisement in which the Second Defendant was described as being the exclusive factory distributor for the union of South West Africa of certain Makes of rifles, pistols, revolvers and ammunition. There was a caption beneath the photograph describing what the Plaintiff was doing and inviting others to come and use her shooting range. The Plaintiff had not consented to the Advertisement. It was held by the Cape Provincial Division that, judged in the light of modern conditions and thought, the Plaintiff had been subjected to offensive, degrading and humiliating treatment, and hence the Defendants were found liable in damages. In that case, Watermeyor AJ added that:

Much must depend on the circumstances of each particular case, the nature of the photograph, the personality of the Plaintiff his station in life, his reference to publicity, and the like.

Although that decision was based on the *actio injuriarum* in Roman Dutch Law, the basic principle of liability for defamation remains the same.

In the present case, questioned by Counsel for the Plaintiff as to why he did not ask the Plaintiff where he was fishing, Mr Ferrari replied as follows:

A: Because this Captain had nothing to do with Mr Lalanne. It was not about the people who are seen in the photograph, it is about the incident of fishing. So we did not, at any point, believe that we should be talking to anyone of these people, because we are not targeting anyone of them in particular.

,Q: So, that is why you did not do anything about it?

A: Yes, there are other reasons, and, the other reason would be that, it is generally difficult to get information from Government Officials, when this information concerns sensitive or controversial material.

Q: Yes but the picture was, one of the persons from the picture was Mr Lalanne, and you tell the Court that you did not attempt to contact him to get the location of the fishing?

A: No, I did not.

However, Mr Ferrari testified that the photograph was republished after an unnamed "Master Mariner" advised him that the boat was fishing within the 1 km radius of Aldabra which is the prohibited area. This "Master Mariner" was not called to testify, and Mr Georges, learned Counsel informed Court that he was not being called. Hence Mr Ferrari's evidence on the issue remains unsubstantiated.

Mr Ferrari's second ground was the identification of the persons in the photograph. He positively identified the Plaintiffs, while an unnamed "fisherman" identified one other, as an employee of SIF. Then "someone" informed him that the third person was a Teacher. He then stated:

So, we checked out the photograph and the information, what we found was that, at least, at least one person on the boat fishing that day was probably not authorised to be fishing in that particular place. So that is why we raised the issue.

The Defendants rely mainly on the defence of truth. The evidence adduced by the Defendants was inconclusive as regards the position of the fishing boat. The gist of the Caption was that the three persons were fishing in the Aldabra lagoon. The truth of that assertion was not established. In fact Mr Ferrari stated that they used the word "may" as they were not sure whether any Regulations were being breached. He said "we decided to leave it to the appreciation of our readers to identify the people and to make their own assessment of the situation." That was recklessness on the part of the Publisher,

As Lord Devlin stated in *Lewis v Daily Telegraph Ltd* [1952] 3 WLR 50):

... You cannot escape liability for defamation by putting the libel behind a prefix such as 'I have been told that' or 'it is rumoured that', and then asserting that it was true that you had been told or it was in fact being rumoured ... for the purpose of the law of libel, a hearsay statement is the same as a direct statement, and that is all there is to it.

Similarly the use of the word "may" has the same impact. The Defendants rely on "truth in substance."

Mr Georges, learned Counsel for the Defendants referred the Court to Geoffrey Robertson on *Media Law*, where at page 74, he states:

The question of “substance” may be significant — it is not necessary to prove that every single fact stated in a criticism is accurate so long as it’s “sting” (its defamatory impact) is substantially true.

The “sting” in the caption, sued upon in this case is that the Plaintiff, among others in the photograph was engaged in illegal fishing by flouting Regulations. That was not, on the basis of the evidence, true.

The Defendants also rely on the Defence of qualified privilege. In the case of *Adam v Ward* (1917) AC 309 at 224, Lord Atkinson stated that:

A privileged occasion is ... An occasion where the person who makes a 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 or duty to review it. This reciprocity is essential.

No privilege will attach where the common interest is one which springs from idle gossip or curiosity only (*London Association v Greenlands Ltd* (1916) 2 AC 35) the use of the word “may” in the caption attracts the inference that the publication of the photograph, without positive knowledge of the position of the boat was based on curiosity and guess work and hence no privilege can be claimed. As Hoexter J.A stated in the case of *Neething v Weekly Mail* (1994) 1 SA 708, and cited with approval by Adam JA in the case of *Roger Mancienne v Claude Vidot* (SCA) 36 of 94:

In deciding whether a defamatory publication affects qualified privilege, the status of the matter communicated (i. e, its source and intrinsic quality) is of crucial importance. In this connection obvious questions which suggest themselves ... are: Does the matter emanate from the official and identifiable source or does it spring from a source which is an informal finding based on reasoned conclusions, after weighing and sifting of evidence, or it is no more than ... mere hearsay.

The pre-publication investigation, if any, in the present case was based on unidentified sources, undisclosed in evidence to Court.

In England, unlike in the United States of America, the law does not recognise any special privileges attaching to the profession of the press as distinguished from the members of the public. The reason has been explained by the privy council in the case of *Arnold v King Emperor* (AIR) PC 116 as follows:

The freedom of the Journalist is an ordinary pan of the freedom of the subject and to whatever length the subject in general may go, so also may the Journalist; but, apart from statute law, his privilege is no other and no

higher. The responsibilities which attach to his power in of printed matter may, and in the case of a conscienti make him more careful, but the range of his assertions, comments, is as wide and no wider than that or any othe

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The defence of qualified privilege is available to responsit matters of public interest.

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In paragraph 10 of the Defence, the Defendants aver that:

... The Plaintiff was at all material times the Chairman Island Foundation and Principal Secretary of the Ministr A picture reproduced from the Seychelles Nation the Plaintiff fishing in the vicinity of Aldabra, a world heritage environment reserve under management of the St Foundation, instead of protecting its environment, was the Defendants and the Seychellois public had corresponding interest in the publication of the photo gra

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Although all privilege is based on the publication being in the p difference between that which is interesting to the public, ar interest: *Neethling v Weekly* (supra). It is therefore not necess to publish what interests the public (*London Artists Ltd v Little* 615.

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Although, by virtue of Article 1383 (3) of the Civil Code, the c Seychelles is governed by English Law, not all decisions applicable here in view of the specific provisions in the Constit of expression and right of access to official information. Both th derogations. The law of defamation in America gives great le conduct of public officials in view of the public interest in getti public affairs and public officials. In two landmark decisions, *Ne* 376 US 254 and *Gertz v Welch* (1974) 418 US 323, it wa statements made about the official conduct of a Public Officer r it is done with malice. This is permitted to generate public interest. The Courts specifically held that even erroneous s Officials are entitled to constitutional protection. Such laxity is j to the 1<sup>st</sup> amendment to the Constitution which provides that:

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Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof or abridging the freedom of speech, or the press, or the right to the people.” There are no derogations to that fundamental right.

In the recent case of *Wall Street Journal Europe SPRL* (2006) UKHL 44 (11 October 2006), the House of Lords decided (Lord Hoffmann and Baroness Hale dissenting in



part) that publishers of an article of “clear public interest” were not to be denied the protection of qualified privilege on the narrow ground that, despite having taken reasonable steps to verify its contents, they failed to delay publication to enable the Plaintiffs to respond. The matter arose in a case where the Defendant Publishers, in an Article in the “Europe” alleged the monitoring of certain bank accounts by the Saudi Arabian Central Bank, at the request of US Enforcement Agencies, to prevent the channeling of funds to terrorist organisations. The Plaintiffs, a Saudi Arabian businessman and his Trading Company incorporated there, were among those named as holding such accounts. That Company however owned no property and conducted no trade in the U.K, but had a commercial reputation in U.K. The appeal arose initially from the decision of Eady J in the Queen’s Bench Division that qualified privilege was not available to the Publishers as they had failed to obtain the response from the Plaintiffs Company prior to publication, and that hence that Company was entitled to seek protection of its reputation, relying on the common law rule of presumption of damage: [2004] 2 All ER 92. That decision was upheld by the Court of Appeal: [2005] QB 904.

In the House of Lords, Lord Bingham of Cornhill stated inter alia that on the issue of privilege, the decision in *Reynolds v Times Newspapers Ltd* [2001] 2 AC 127 built on traditional foundations of qualified privilege but carried the law forward in a way which gave greater weight than formerly to the value of informed public debate on significant public issues. In that case, Lord Nicholas considered that matters relating to the nature and source of the information were to be taken into account in determining whether the duty of the Publisher to publish, and the public interest test was satisfied. In brief, the test was whether the public was entitled to know the particular information. It was held that where the public interest requirement was satisfied, the Publishers had to satisfy the test of responsible Journalism, and that where an ingredient of the Article was complained of as being defamatory and untrue, its inclusion might be justifiable so long as the thrust of the Article was true,

These recent decisions in the UK seem to move somewhat closer to the public interest concept followed in the USA. But the UK has no written constitution and hence, to meet any changes in defence situations, public safety, public order, public morality or public health, the extension of the concept or public interest by developing the common law there is justified. However, in our written constitution, due to the permitted derogations on those aspects, the freedom of expression does not equate to the *Freedom of the Wild Ass*. The Defendants therefore cannot rely on the defence of qualified privilege as the publication of the photograph and the caption, on the basis of the evidence, had been done recklessly and, therefore, maliciously, without making an honest attempt to investigate whether the Plaintiff was fishing in a prohibited area, merely because the background island resembled Aldabra. Even Captain Benoiton who was called as a witness for the defence, was not prepared to tread that path and make any positive assessment on that issue. Schedule Part II of the Constitution, lists 46 small islands as forming the Aldabra atoll in the Aldabra group. Hence the publication was designed to mislead the public, and to bring the Plaintiff to hatred any ridicule.

The Defendants also rely on the defence of fair comment. This defence implies that every person has a right to express an opinion honestly and fairly on matters, which are of public interest. In *Kemsley v Foot* (1952) 1 AER 502 Birkett LJ stated:

The defence of fair comment is an integral part of the greater right of free speech. It is the right of every man to comment freely, fair/y and honest/y in any matter of public interest and this is not a privilege which belongs to particular persons in particular circumstances.

This statement is qualified by the statement of Lord Porter in *Turner v MGM* [1950] 1 All ER 449 at 461, that:

The question is not whether the comment is justified in the eyes of the judge or jury, but whether it is the honest expression of the commentator's real view and not merely abusive or invective under the guise of criticism.

The defence of fair comment cannot be maintained if the comment is made without any factual basis. In the present case, the evidence disclosed that the comment in the caption could not have been an honest expression as it was made without positively establishing the position of the boat in the area where there are several small islands.

The defence of fair comment is therefore not available where the publisher was actuated by malice, in the legal sense, which is, lack of honest belief, and publication with reckless disregard of the truth when circumstances existed for proper investigation. Geoffrey Robertson, in *Media Law* states at page 83:

A failure to apologise or to publish a retraction will not normally be evidence of malice, but rather of consistency in holding sincere views. But editors who refuse to retract damaging comments after clear proof that they are wild/y exaggerated may lay themselves open to the inference from this conduct that they were similarly reckless at the time of the original publication.

Mr Claude Pavard identified himself as the person who took the photograph in question and sent the letter dated 9<sup>th</sup> July 2002 (P3) to the editor of "Regar" wherein he specifically stated that "it was taken on 16 April at 1800 hours, one kilometre open sea at the reef of Picard Island." He further stated that, as per the regulations, the fish were weighed and placed in a deep freezer to supply the staff of the research section. He further asked for a rectification in the next issue.

The "Regar" published that letter in full but with an editorial note, which read:

.....fishing round the Aldabra atoll is prohibited within a radius of one kilometre. We regret that some people or organisations felt affected by the publication of the photo and the comment that accompanied.

That was not a retraction or an apology. The “sting” in the caption was perpetuated, and hence the inference of malice, on the part of the publisher has been established. Hence the defence of fair comment fails.

In conclusion therefore, the three defences relied on by the Defendants failed. The Defendants used an otherwise innocuous photograph appearing in the Seychelles Nation in connection with an environment article, to bring the Plaintiff who was the Chairman of the SIP and Principal Secretary to the Ministry of Environment; both organisations responsible for the Administration of Aldabra, to hatred, ridicule and contempt in the eyes of the public. Such publication with a caustic comment is a masterpiece of irresponsible journalism. Hence the Defendants are liable in damages.

### **Damages**

The Plaintiff claims R600,000 as damages against the Defendants jointly and severally, and a further sum as exemplary or punitive damages deemed appropriate by Court. In the case of *Seychelles Broadcasting Corporation & Or v Barnadette Barrado* (SCA Nos. 9/94 and 10/94) Ayoola JA stated:

in my judgment, in any action for damages for libel and slander, English Law applies in determining the nature and quantum of damages to be awarded. Where the circumstances justify it, exemplary damages could be awarded.

Where a Plaintiff sued more than one person in the same action in respect of the same publication, Gately on *Libel and Slander* states at paragraph 1463 that:

In an action against two or more persons as co-Defendants in respect of a joint libel, the jury may not discriminate between them in finding separate damages against the Defendants but there must be one verdict and one judgment against all for the total damages awarded.

As regards the nature of damages to be awarded in defamation cases, Windeyer J summed up the position in the case of *Uren v John Fairfax & Sons Pty Ltd* (1967) 117 CLR 118 and 180, thus:

It seems to me that, properly speaking a man defamed does not get compensation for his damaged reputation. He gets damages because he was public/y defamed for this reason, compensation by damages operates in two ways — vindication of the plaintiff to the public, and as a consolation to him for wrong done. Compensation is here a solatium rather than a monetary recompense for harm measurable in money.

In the *Barrado* case (supra), Ayoola JA stated that: “It was perfectly legitimate for the judge to have taken into consideration the status of the Plaintiff in the assessment of damages on the principle. “The higher the Plaintiff’s position the higher the damages.”

(*Dingle v Associated Newspapers* [1961] 2 QB 162, and *Lewis v Daily Telegraph Ltd* (supra)).

The position and status of the Plaintiff at the relevant time is not in dispute. In that capacity any allegation whether implied or expressed, that he was engaged in breaching regulations under the National Parks and conservancy Act, and condoning such acts by others in his company, was a gross attack on his reputation and credibility. The Plaintiff testified that several people questioned him about it, and he felt humiliated and distressed. In *Barrado* (supra) the Plaintiff was the personal assistant to the former President of Seychelles. This Court awarded damages in a sum of R550,000 as a solarium for the wrong done to her personal reputation. That award was reduced by the Court of Appeal to R100,000. In the case of *Patrick Pillay v "Regar" Publication & Ors* (Cs. 11 of 1996) the Minister of a senior Ministry was defamed with imputations of dishonesty and a global sum of R450,000 was awarded on the basis of a solarium and also as a demonstrative mark of vindication. The Court of Appeal in reducing the award to R175,000 stated:

It is, however, pertinent to place all factors into perspective in considering the assessment of damages. In the *Barrado* case, for example, the defamatory statement was made in a political party television broadcast during prime viewing time; in the present case, the defamatory statement was made in a weekly newspaper with a total distribution of 2600 copies, 2300 of which accounted for local distribution, and 150 for overseas distribution. Great care should always be exercised in any effort to arrive at a fair assessment of damages.

Hence the quantum of damages was based on the size of the area of circulation. The *Pillay* case was decided by the Court of Appeal on 13 August 1998, It has been admitted by the Defendants that the total distribution of the "Regar" both locally and abroad has increased to over 2000 copies and that "Regar" is now available on the world wide website ([www.regar.sc](http://www.regar.sc)). Moreover, there are several websites on environmental matters and hence the Defendants created the possibility of the libel to be published to a larger readership than in the *Pillay* case.

In assessing the quantum, the amount payable to the Plaintiff should be more than in the *Barrado* case, as the Plaintiff was holding a much higher position, as Chairman of S.I.F, an institution which was known worldwide due to Aldabra being a world heritage site. Mr Pavard in his letter to the edition of "Regar" alluded to this fact when he stated:

What affects me the most as a board member of the SIP, is that this misunderstanding could be spread abroad in the world of conservationists or T-WWF, or again the world heritage, and this will tarnish the image of SIP in particular and Seychelles in general This is why I am asking you to rectify this issue in the next edition of the Regar Newspaper.

The Defendants as I stated before did not retract the publication in substance but merely expressed regret to those who felt affected. Hence as the publication was done with malice in the legal sense, and reckless disregard of the truth, the Defendants should be made liable to compensate the Plaintiff not only for the damage done the Plaintiff's reputation, but also as exemplary damages. Taking all those factors into consideration, I award a sum of R350,000 to the Plaintiff payable jointly and severally by the Defendants, together with interest and costs.

**Record: Civil Side No 226 of 2002**