Gappy v Barallon
(2008) SLR 36

John RENAUD for the plaintiff
Bernard GEORGES for the defendant

Judgment delivered on 26 November 2008 by:

RENAUD J: On 9 July 2004 the plaintiff entered a plaint alleging that the defendant slandered him and he claimed damages.

The defendant denied the allegation and sought the dismissal of the plaintiff's claim.

It is not in dispute that the plaintiff was a customer of one Ronny Barallon the son of the defendant who is and was at all material time carrying on the business of importation of vehicles.

The plaintiff pleaded that sometime during the year 1999 he and Mr Ronny Barallon entered into an agreement for importation of a pick-up and subsequently the said pick-up was seized on its arrival by the Custom Authority which resulted into a court case in connection with that transaction.

The plaintiff further pleaded that in connection with that transaction, on 26 August 2000 whilst he was attending a football match between St Michel and Red Star at Stade Linite the defendant falsely and maliciously, in front of a crowd, said to him the following words — "*voler pick-up".* He added that those words complained of, in their natural and ordinary meanings are understood to refer to the plaintiff and its natural and ordinary meaning are explicitly understood to mean that the plaintiff is a thief who robbed the defendant's son of his pick-up. The plaintiff alleged that the said words were false and constitute a grave slander on the plaintiff and as a result of these false and malicious allegations against him, the plaintiff has been severely injured in his credit, character and reputation and has been brought into ridicule, hatred and contempt. The plaintiff also alleged that he has suffered prejudice and has sustained loss and damage for which he is praying this Court to enter judgment in his favour and award damages in an amount to be determined by this Court.

The defendant denied all the material allegations. He specifically denied having spoken the words complained of or any words similar to them at a football match on the day specified or at all.

In the case of *Bouchereau v Rassool* (1975) SLR 238, the Court of Appeal inter alia held that:

(i) The law of slander and libel in Seychelles is that obtainable in England, the English rule must be followed, and where the words complained of are in a

foreign language the plaintiff must prove by a witness capable of being cross-examined their meaning in English. There was before the Court no evidence of the correctness of the translation into English of the alleged slanderous words.

(ii) The allegations in the plaint that plaintiff had used the words complained of in Creole and their meaning in English were met in the defence by a general denial. Though open to criticism, such denial could not be construed as an admission of the correctness of the translation.

In the case of *Labrosse v Fabien* (1979) SLR 15 the Court held that in omitting to plead the translation of the Creole words uttered is fatal.
Counsel for the defendant submitted that no proof of the words into English was made by the plaintiff and there are thus no words before the Court to ground the case.

With respect, I find otherwise, as at paragraph 5 of the plaint the plaintiff has pleaded in paragraph 5 of the plaint that - "the said words within their natural and ordinary meaning are explicitly understood to mean that the plaintiff is a thief who robbed the defendant's son of his pick-up" to which the defendant in his statement of defence simply made a general denial.

The plaintiff and one witness testified in support of his claim and the defendant alone testified in his defence.

The determination of this case hinges on this Court accepting one of two diametrically opposed versions of the events of the day in question. On the other hand, the plaintiff and his witness who testified that the defendant accused the plaintiff of being a thief. On the other hand, the defendant states that he cannot remember the incident and denied ever calling the plaintiff a thief, at a football match or elsewhere.

In determining which of the two versions is more credible, I observed the demeanour of all the parties when they were testifying, the cogency and consistency of their evidence-in- chief and as well as under cross-examination. The evidence of the plaintiff was corroborated by that of his witness as to the material particulars. One could be tempted to believe that there could have been collaboration in preparing them. The incident happened on the remarkable occasion when two top football teams were competing. The plaintiff's witness is a police officer who by his training ought to be observant and be able to recollect such an incident. There is no reason that would lead me to doubt his testimony. The defendant's testimony was obviously self-serving as one would expect in such circumstances. He stated that he was always accompanied by either his son-in-law or his brother at such football matches but he failed to bring any witness. Of these two versions, I find on a balance of probabilities, that the version of the plaintiff is more credible than that of the defendant.

I find and conclude that on the material date and time at Stade Linite the defendant did utter the words as alleged by the plaintiff. I also find that such words were uttered

loudly and were heard by other people including the witness. The words uttered amounted to a false allegation, were slanderous and malicious. By doing so, the defendant injured the credit, character and reputation of the plaintiff and brought him into ridicule, hatred and contempt.

In determining the damages that I ought to award in the particular circumstances of this case, I have taken into consideration that it was a slanderous act imputing a criminal offence, however, I do not believe that the damage caused was so severe as to merit an award of substantial damages.

For the reasons stated above, I enter judgment in favour of the plaintiff as against the defendant in the amount of R 8,000 with interest and costs on the Magistrates Court scale.

Record: Civil Side No 204 of 2004