

THE REPUBLIC OF SEYCHELLES
IN THE SUPREME COURT OF SEYCHELLES

Civil Side no. 32 of 2008

Jude Suzette

Plaintiff

Versus

Bernard Toulon
Defendant

John Renaud for the Plaintiff

William Hermine for the defendant

JUDGMENT

FMS Egonda-Ntende CJ

1. The plaintiff in this action is seeking to recover from the defendant damages for slander. The plaintiff contends that on the 15th January 2008 at about 9.00pm in the evening he was standing opposite the defendant's house at Takamaka. The defendant came out of his house and made the following statement in Creole in the presence of one Jean-Paul Halter. The statement translated into English stated,

‘I will always leave my dogs loose because you are a thief. You are an accomplice to a thief. Now that you have gone to smoke your drugs and had all your drinks you come and take your rage out on me.’

2. The plaintiff contends that these words in their ordinary and natural meaning or by innuendo, mean and were understood to mean that the plaintiff is a thief and accomplice to a thief, takes drugs and a drinker.

The said statement is false and malicious and constitutes a grave slander on the plaintiff. As a result the plaintiff has been severely injured in his credit, character and reputation and has been brought into ridicule, hatred, and contempt generally, and by members of the Takamaka District. The plaintiff estimated that the prejudice he had suffered amounted to SR 50,000.00 which he claims from the defendant with interest and costs.

3. The defendant denies this claim. He contends that the plaintiff had aggressively thrown a bottle at his dog which was on his premises. The plaintiff accused the defendant of keeping the dog loose. The defendant responded with the following words which were in Creole but translated into English state,

‘I will always keep my dog untied after 9pm because of thieves. Two weeks ago, thieves attacked the Manager of Takamaka Residence , my neighbour.’

4. The said remarks were intended not to defame the plaintiff but were offered as an explanation as to why the dog was not tied up.
5. At the trial the plaintiff testified as well as one other witness, Jean-Paul Halter, who was in the company of the plaintiff at the time of the incident. The defendant testified as well as one other additional witness, Nestor, who was in company of the defendant.
6. I shall start by setting out what I see as the issues in this case and review the evidence that deals with those issues. I see possibly three issues. Firstly whether the defendant uttered the words complained of? Secondly if the answer to issue no.1 is in the affirmative whether those words were defamatory of the plaintiff? And lastly what damages is the plaintiff entitled too?

7. It is not in dispute that on the day and time in question the plaintiff was outside the house of the defendant. The house has a fence around it. There was a dog inside which I suppose on seeing the plaintiff and his friend on the road started barking. The plaintiff threw a missile at the dog. He also shouted some words, apparently to the owner. The owner, who turned out to be the defendant came out. He responded to the plaintiff's words with his answer. The key question is to determine what actually was stated by the defendant. It appears that both parties were pretty emotional at this stage.

8. The plaintiff's testimony was much to the same effect as set out in the plaint as was the defendant's testimony and that of his witness. The witness for the plaintiff, Mr. Halter slightly varied from the plaintiff's account when he added that the defendant called the plaintiff a 'gay' person. The plaintiff did not mention this. The defendant's witness was attacked for not being fluent in Creole, as he had just come from Madagascar at the time of the incident. He plays for a football team here and resides with the defendant.

9. Both testimonies of the parties are on oath. It is difficult to choose either and find it more probable than the other, which is the standard of proof in cases of this nature. It is the duty of the plaintiff, if he is to succeed on this issue, to prove on a balance of probabilities that the defendant made the statements that he is alleged to have made. On the facts of this case it could be probable that the defendant did not state what he was alleged to have said but stated what he claimed to have stated. The reverse could also well be true. On the evidence before me I am unable to find out what exactly was said that evening by either of the parties hereto.

10. The result would be that the plaintiff has failed to discharge his

burden, and show on a balance of probabilities that the defendant uttered the words the plaintiff alleges that the defendant uttered. As the plaintiff has failed on this issue it is unnecessary to consider the remaining issues. This suit is dismissed. In the particular circumstances of this case it is just that each party bears his costs. I so order.

Signed, dated, delivered at Victoria this 4th day of December 2009

FMS Egonda-Ntende

Chief Justice