

**THE REPUBLIC OF SEYCHELLES**

**IN THE SUPREME COURT OF SEYCHELLES HELD AT VICTORIA**

Civil Side No. 242 of 2011

Daniel Cesar=====Plaintiff

Versus

Niall Scully=====Defendant No.1

National Drug Enforcement Agency=====Defendant No.2

---

*Joel Camille for the Plaintiff*

*Mathew Vippin for the Defendants*

---

**RULING**

**Egonda-Ntende, CJ**

1. This is a ruling in respect of a plea in *limine litis* by the defendants who assert that the action against the defendants is bad in law on 2 grounds. Firstly that the defendant no.1 has immunity by virtue of section 7 of the National Drugs Enforcement Agency Act, Act 20 of 2008. Secondly that the plaint does not disclose a cause of action and therefore ought to be struck out.
2. The plaintiff is an attorney and notary public who also runs a bar known as Honey Pot in Victoria. The defendant no.1 is the Director of the defendant no.2, a statutory agency, set up to fight drug trafficking. It is alleged on the plaint that on 1<sup>st</sup> December 2011 the defendant no.1

accompanied by officers of the defendant no.2 carried out a search on the premises where the plaintiff runs Honey Pot at Lodge Street, Victoria.

3. I will start by considering the second limb of the objection and that is whether or not the plaint in this case discloses a cause of action. The plaintiff's cause of action is set out in paragraphs 4,5, 6, 7 and 8 of the plaint. I shall set them below.

‘4. That on Thursday 1<sup>st</sup> December 2011, during and after the search, the 1<sup>st</sup> Defendant inter alia uttered the following words to the plaintiff: “that the defendants had credible information that the Plaintiff was dealing in drugs and that the 2<sup>nd</sup> Defendant held a dossier on the plaintiff which indicated that the plaintiff was not an honest person.” It is further averred that the 1<sup>st</sup> Defendant caused to the publication in Seychelles Nation that stated ‘professionals have allowed themselves to be used by drug dealers to conceal the ill gotten gains.

5. The plaintiff avers that the said words refer to and are understood to refer to the Plaintiff.

6. The plaintiff further avers that the said words either by innuendo or in their natural and ordinary meaning mean and are understood to mean that the plaintiff is a drug dealer, harbours drug dealers and allows his chambers to be used so as to launder money for drug dealers. Further the said words are also understood to mean that the plaintiff is dishonest.

7. The plaintiff avers that the said words are slanderous, false and malicious in that the plaintiff is not a drug dealer and does not harbour drug dealers nor does the plaintiff launder monies.

8. By reason of the publication of the said words, the plaintiff has been severely injured in his credibility as an individual, his character and reputation as a lawyer and has been brought into ridicule, hatred and contempt and has as a result suffered prejudice loss and damage.’

4. The first set of words complained of were spoken to the plaintiff and to no one else. There was therefore no publication of the same by the

defendant no.1 on the basis of this plaint. The said words cannot constitute a cause of an action in slander against the defendant no.1.

5. The second set of words which, it is alleged, were published in the Seychelles Nation make no reference to the plaintiff. The date of the publication is not disclosed. A copy of the publication is not attached to the plaint. The innuendo that connects the said statement to the plaintiff is not spelt out in the plaint. The plaintiff has not shown on the plaint that this libel is in relation to the plaintiff. Is there a cause of action against the defendants?

6. Article 1383 (3) of Civil Code of Seychelles provides,

‘The provisions of this article and of article 1382 of this Code shall not apply to the civil law of defamation which shall be governed by English Law.’

7. The Civil Code was enacted in 1975 and this means that the English law applicable to Seychelles is English law as it was in 1975 when the Civil Code came into effect. See Francis Biscornet v Eugene Honore [1982] SLR 451.

8. In Francis Biscornet v Eugene Honore [1982] SLR 451 the plaintiff sued the defendant for slander but failed to state in the plaint the names of the person to whom the slander was published. The defendant sought to have the plaint struck out on the ground that the plaint failed to disclose a cause of action. Sauzier, J., as he was then, held that the plaint should disclose the case the defendant was to meet and as the names of the persons to whom the slander was published were not mentioned in the plaint the plaint should be dismissed.

9. A somewhat similar point arose in Bruce v Odhams Press Ltd [1936] 1 All E R 287. The plaintiff in that case complained that she had been libelled by a newspaper article concerning certain aeroplane smuggling exploits of “an English woman.” The plaintiff was not referred to by name or description but alleged that the words “an English woman” referred to her.

10. Greer, L.J., observed at page 289,

‘The first observation that occurs to me as relevant is that it is an essential part of the cause of action of a plaintiff in cases of defamation, whether of slander or libel, that the words are defamatory of the plaintiff. If they are defamatory of some other person, real or imaginary, they do not provide the plaintiff with any cause of action at all. Defamatory statements which are in the air, as it were, and do not appear by their words to refer to the plaintiff, have got to be made referable to the plaintiff by reason of some special facts and circumstances which show that the words can be reasonably construed as relating to the plaintiff. It is not sufficient under existing rules of practice merely to allege in general terms a cause of action. Such cause of action must be alleged with particularity. ....  
.....The material facts on which the plaintiff must rely for her claim in the present case seem to me necessarily to include the facts and matters from which it is to be inferred that the words were published of the plaintiff. Without a statement of these facts and matters, it seems to me impossible that the defendants could be in a position to decide how to plead to the statement of claim.’

11. Slessor, L.J., at 291, stated,

‘In such a case as the present, the plaintiff, not being actually named in the libel, will have to prove an innuendo identifying her in the minds of some people reasonably reading the libel with the person defamed, for there is no cause of action unless the plaintiff can prove a publication of and concerning her of the libellous

matter. .... And such innuendo being essential to the plaintiff's case, seems to me to fall with RSC Ord. XIX, r.4, as being a statement of the material facts on which the party pleading relies, without which no cause of action is disclosed.'

12.Scott LJ, on page 294, said:

'The cardinal provision in r. 4 is that the statement of claim must state the material facts. The word "material" means necessary for the purpose of formulating a complete cause of action; and if any one "material" fact is omitted, the statement of claim is bad; it is "demurrable" in the old phraseology, and in the new is liable to be "struck out" under Order XXV, r. 4: see *Philipps v. Philipps* 4 QBD 127;'

13. The weight of authority in this matter leads me inevitably to only one conclusion. The plaint fails to disclose a cause of action against the defendant no.1 as no innuendo is set out in the plaint to connect the plaintiff with the article allegedly published in the Nation newspaper.

14. There is no allegation of wrong doing made against the defendant no.2. There is no cause of action against the defendant no.2 on the amended or original plaint.

15. This plaint is struck out with costs for failing to state a cause of action either in libel or slander. In light of this finding it is not necessary to consider whether or not the defendant no.1 enjoyed immunity from civil action under section 7 of the National Drugs Enforcement Agency Act.

Signed, dated and delivered this 28<sup>th</sup> day of June 2012

FMS Egonda-Ntende

**Chief Justice**