

IN THE SUPREME COURT OF SEYCHELLES

Civil Side: CS 111/2013

[2015] SCSC

WAVEL RAMKALAWAN

Petitioner

versus

CHRISTOPHER GILL

Respondent

Heard: 14 October 2015

Counsel: Mr Anthony Derjacques for petitioner

Mr Frank Elizabeth for respondent

Delivered: 26 November 2015

JUDGMENT

McKee J

[1] By Plaint dated 2nd December 2013 and lodged with the Registrar of the Supreme Court on 12th December 2013 it was averred by the Plaintiff that the blog site known as Seychelles Reality [hereinafter referred to as “the blog”] is printed and circulated by the Defendant. He further averred that two statements dated 17th October 2013 [timed at 06.27 and 0857] and 18th October 2013 [timed at 5.12] appearing in the blog referred to him. He further averred that these particular statements were libelous, the content thereof

being false, malicious and exposing him to public ridicule, odium and hatred. Furthermore these statements painted him as dishonest, a criminal, a traitor and a fraudster. He further averred that by the printing, publication and distribution of the statements he was severely injured and prejudiced in respect of his credit, character and reputation as a political figure, namely, the former leader of the Opposition, the leader of the Seychelles National Party and as a priest, husband and family man. He seeks from the Court damages in the sum of Rs 1,000,000 [One million rupees] and a permanent injunction against any repetition of the issue of like allegations.

- [2] I refer to paragraph 6 of the Plaintiff and the photocopy of the blog, attached to the Plaintiff, more especially at page 3 thereof, for the content thereof and on which the averments are based.
- [3] The Defendant lodged written Defences.
- [4] The Defendant admitted paragraphs 1, 2 and 3 of the Plaintiff. While paragraph 4 of the Plaintiff seems to be erroneously numbered 6 and given sub-paragraphs (a), (b) and (c), this paragraph 6 is denied as are the remaining prayers in the Plaintiff. The Plaintiff is put to strict proof on his averments. I will continue to refer to the thrust of the complaints as being set out in paragraph 6.
- [5] In paragraph 3 of the Defence the Defendant admitted the truth of paragraph 3 of the Plaintiff. He thus admitted that a blog called “Seychelles Reality Today” was printed and circulated by him, had a readership of approximately one thousand members of the Seychelles public and had an international audience through its publication through the internet. I will refer to the significance, if any, of the difference in titles, namely Seychelles Reality and Seychelles Reality Today later.
- [6] The thrust of the complaint by the Plaintiff is set out in paragraph 6 of the Plaintiff. The Plaintiff averred, despite the inclusion of what is referred to as “fake profile names” in the statements therein, that he was the person referred to in the statements in the blog.
- [7] Sub-paragraphs 6 (a)(b) and 6(c) are to be read and considered in their totality. The

Plaintiff averred that he was the person referred to as “Ben Willy, fake profile, priest cum mega millionaire” and the related allegations referred to him. He was also the person referred to where allegations were made against a person with a fake name of “Benny faky” and that the allegation was that he was a drug trafficker. He further averred that the statement suggested that he was a paid informer for State House. He further suggests that the statement contained an allegation that he could have been involved in pushing two named persons into an army van. Furthermore there is a reference to his father, that he had held a senior position in a militia death squad and had also built “Zonm Lib”, which I am told is a metal statue. The Plaintiff states that there is a reference that he “crossed the house” which I take to refer to changing support in the National Assembly. There is also a reference to a person called “Father” and is him.

[8] The Defendant denied the statements were published on his blog. If it is found by this Court to be so, he denied that it was published by him or that the words refer directly or indirectly to the Plaintiff. He further averred that if it is found that the words do refer to the Plaintiff the words in the statements are true. In that event the Defendant relies on the defence of fair political comment. The Defendant denied that the credibility, character and reputation of the Plaintiff has been or had been damaged or that he was liable to the Plaintiff in damages.

[9] EVIDENCE.

[10] The Plaintiff and the Defendant each gave evidence and the Plaintiff called two witnesses. The Defendant did not call witnesses.

[11] The Plaintiff gave evidence to substantiate his claims as set out in the Petition although he had to concede that some remarks in the statements in the blog were not defamatory. He conceded that the words in the first statement [repeated in paragraph 6(a) of the Plaintiff] were not defamatory but maintained that there was defamatory wording in the third statement [repeated in paragraph 6(c) of the Plaintiff], namely those words that alleged that he was a drug trafficker and that he had been involved in pushing two persons into an

army van. The short second paragraph added nothing to the Plaintiff's case.. The Plaintiff remained firm under cross-examination. The libels, if any, were hence contained in the third statement. He had also confirmed that he is the current leader of the Seychelles National Party [hereinafter referred to as the "SNP"] and is also an Anglican clergyman. witness Alcindor could speak to the distress and frustration that the message had caused to the Plaintiff and that the message had caused general public discussion. Witness Prea spoke of the Plaintiff being annoyed, angry and saddened by the article in the blog and that constituents of the SNP had enquired about the article seeking some explanation.

[12] The Defendant gave evidence and was subject to detailed cross-examination. He is currently a businessman but holds no position in any political party. He agreed that he contributes to blogs. He holds no position of ownership or authority in the blog with the title "Seychelles Reality". He admitted involvement with the blog titled "Seychelles Reality Today". As I understand his evidence he was saying that he did not write the statements complained of directly into the blog but that a third party may have transferred them to the blog without his knowledge from his [the Defendant's] Facebook page, which entries were open to the public. He agreed that his Facebook page was set at a public setting. He agreed that **he** wrote the statements which were repeated at paragraph 6[a] [b] and [c] in the Plaintiff, into his Facebook page but maintained that these were transferred by copy and paste to the blog. He was not the publisher of the blog, he did not create the blog nor was he the administrator of the blog. He denied that the Plaintiff was being referred to when a reference to drug trafficking was mentioned. He denied that the Plaintiff was being referred to when mention was made of a group of persons pushing two men into a van. The Plaintiff's name was not specifically mentioned in any of the statements in the blog. The Defendant's position was, as I understand it, if there was any blame for the statements, that blame lies at the door of a fake profiler, a fictitious person, whose identity is unknown. He denied that the statements complained of were defamatory or written to hurt anyone but were by nature "fair political comment". The Defendant gave a fairly full explanation of his understanding of what a fake profiler was. [13] In re-examination the

Defendant slightly readjusted his position by stating that he was not sure if the statement had come from his Facebook page but he stated that “there seemed to be a lot of copying and pasting going on”. He maintained his “blanket” denial of all allegations as stated in paragraph 4 of his statement of defence. Accordingly he should not be called upon to pay damages.

[13] Neither Counsel made a closing submission but Counsel for the Plaintiff produced four authorities for consideration.

[14] FINDINGS.

[15] This is a civil matter and accordingly the burden of proof is on the balance of probabilities which is a lesser burden than that which is required in a criminal case, where the burden of proof is the higher burden of beyond reasonable doubt.

[16] Mr Derjacques, Counsel for the Plaintiff, has provided me with four authorities. I would make the preliminary observation that these relate to publication in newspapers while the present matter refers to publication in a blog. For the purposes of this matter I would intend to give “social media”, a “blog” and “Facebook” their ordinary meanings as now understood by members of the public. Generally speaking, “social media” are internet-based platforms which allow for interactions between individuals and a “blog” and a “Facebook page” are two such platforms.

[17] The blog in question in this matter carried the title “Seychelles Reality”, [which is referred to as “the blog”], as seen from the exhibits before the Court. In this present matter the Plaintiff averred that the defamatory material was contained in statements [amongst others] with the title “Fake Profile Mega Millionaire attacks Gill”. It is clear that this is the blog to which the Plaintiff refers. The Defendant took the stance that he had no direct involvement in the management of this blog. but did admit to a supervisory position in a blog “ Seychelles Reality Today”. The

slight difference in the title is, at the end of the day, of no relevance as will be seen, since the alleged material is within the blog “Seychelles Reality”. In passing I note that the website for “Seychelles Reality” is shown at the top of the pages of the exhibit as [http://seychelles reality today.blogspot.com](http://seychellesrealitytoday.blogspot.com).

[18] I have these points to make.

[19] A libel is published when it is communicated to anyone other than the person libelled.

[20] By virtue of Article 1383[3] of the Civil Code of Seychelles the civil law of defamation in Seychelles is governed by English law. Consequently I look to the Defamation Act 1996 and the Defamation Act 2013.

[21] Section 15 of the 2013 Defamation Act, at the interpretation clause, defines “statement” and “publish” and “publication”.

[22] “statement” means any words, pictures, visual images, gestures, or any other method of signifying meaning.”

[23] “publish” and “publication” in relation to a statement, have the meaning they have for the purposes of law of defamation generally.” I have looked to the Oxford Dictionary for assistance. In it “publish” means to make known generally, to make public, to circulate. “Publication” is the act of making something publicly known.

[25] Section 1 [1]of the 2013 Defamation Act is also relevant and reads as follows “ A statement is not defamatory unless its publication has caused *or is likely to cause* [my italics] serious harm to the reputation of the claimant”. A defamatory statement has also to satisfy the “seriousness” test.

- [26] For assistance, I have considered the case *Thornton v Telegraph Media Group Ltd 2010 EWHC1414 QB*. While this case was decided prior to the 2013 Act it fully considered what a definition of defamation is and also examined the element of seriousness. The Court extensively reviewed the earlier authorities where a satisfactory definition of defamation was sought. At paragraphs 66 and 67 of this judgment it was held that the appropriate test now is “ Would the words tend to lower the Plaintiff in the estimation of right thinking members of society generally?”. In my opinion it is correct that I apply this test in the present case.
- [27] The *Thornton* case also considered the element of “seriousness” as is required in defamation. The Court in the *Thornton* case held that a claimant had also to show that the defamation had a threshold of seriousness, namely, that there was some tendency or likelihood of adverse consequences for the claimant. I also apply this test in respect of the present case.
- [28] In the present matter, the Plaintiff averred liability on behalf of the Defendant as a publisher of the statements. The Plaintiff took a straight-forward approach. His evidence was that the two statements in the blog which cause him concern were written by the Defendant directly into the blog as evidenced by the recording of his name at the commencement of each statement and as such it was “published”.
- [29] The Defendant took a more circuitous route. He admitted that he wrote the words in the statements on his Facebook page but the transfer of these words from the Facebook page on to the blog were to be attributed to a third person, a fake profiler. The Defendant stated that the two statements were written into his Facebook page but he did not write the words directly into the blog. Rather, the words were “copied and pasted” into the blog from his Facebook page by a third party. Hence he was not responsible for their entry in the blog as averred by the Plaintiff and hence no liability arises.
- [30] I have considered the evidence of the Defence. The Defendant has not produced as an

exhibit a copy of the alleged statements in his Facebook page in support. The Defendant gave no explanation or credible evidence why his name appears at the beginning of each of the three offending statements in the blog. I have looked at the sequence of entries and content of the blog for the days 16th, 17th and 18th October 2013. I take into account the heading of the blog and the references throughout to drug traffickers and drugs and an entry “Ramkalawan fat pension”. I note that there are two intervening statements given by a “Christopher Gill “ between the statements which are referred to in this case. The Defendant suggested that a third party transferred three statements from his Facebook page into the blog but gave no reason why, “out of the blue”, a third party should suddenly decide to do so by the method known as “copy and paste”. There was no further evidence from the Defence to consider.

[31] As mentioned, this is a civil case and proof is on the balance of probabilities. On consideration of the evidence and taking into account the civil standard of proof I find that it is more likely than not that the Defendant wrote the three statements referred to in the Plaintiff directly into the blog . The blog is public and can be read by members of the public. By doing so he published the three statements. He circulated the statements.

[32] If, in fact, I had found that the three statements had been transferred [ie copied and pasted] by a third party from the Facebook page of the Defendant to the blog it is my opinion that this would still not have provided any relief or defence to the Defendant. In stating so I refer to section 1 of the Defamation Act 1996. This provides that a person has a defence in defamation proceedings if he shows that he:

1. Was not the author , editor or publisher of the statement complained of;
2. Took reasonable care in relation to its publication; and
3. Did not know, and had no reason to believe, that what he did caused or contributed to the publication of the defamatory material.

[33] In the present matter, on the Defendant’s version, I would have had to find that he was the author of the statements, wrote them on to his Facebook page and hence had

published them on his own Facebook page. On his evidence his Facebook page was on a public setting. The entry was hence in the public domain. A third party could read it, share any entry with friends or colleagues or copy and paste it on to a public blog. The defendant would not have succeeded in a defence in view of the public nature of his Facebook page since he could not show that he had taken reasonable care in relation to its publication and that he had no reason to believe that he had contributed to the publication of defamatory material.

[34] Developments in defamation law in the most recent years was fully canvassed by Lord Neuberger, President of the UK Supreme Court when he gave the Keynote address on “What’s in a name? - Privacy and anonymous speech on the Internet” at the Conference 5RB on 30th September 2014. At paragraph 23 of his address he refers to a quotation from the US Supreme Court in *Renov v ACLU* in 1997 “Through the use of chat rooms, any person with a chat line can become a town crier with a voice that resonates farther than it could from any soapbox”. This quotation could be kept in mind by those wishing to use social media to dispense their opinions.

[35] I now consider the statements contained in the blog and which are repeated in the Plaint. The Plaintiff stated the contents of the statements refer to him. The Defendant denied this. Despite the fact that the Plaintiff had quite fairly admitted that there was no defamation in the first statement I consider that I am entitled to look at the terms of three statements to determine whether, in my opinion, the person at which the comments are aimed is the Plaintiff. From the first statement I find that the target of the comments is a person described as a priest and mega millionaire. It also stated that the person has a connection with the SNP. I can infer from these remarks that the person is a clergyman and is of considerable financial worth. I can also infer that he holds a senior position in the Seychelles National Party, otherwise known as the SNP. In the third statement there is also mention that the father of the person concerned was in charge of some sort of Militia Squad in the St Louis area. Also in the third statement there is a sentence which reads “*Come on Father – go to confession*”. I find from the Defendant’s own evidence that he agrees that the word “*Father*” refers to the Plaintiff.

[36] From the evidence before the court I can find that the Plaintiff is an Anglican clergyman and long serving politician who also the leader of the Seychelles National Party. He also has been receiving a pension as a result of long service in the Legislative Assembly which may accumulate to a sizable sum. The Plaintiff has also told the Court that his father was of a different political persuasion to himself and resided in the St Louis area. In the present matter the Plaintiff gave St Louis as his place of residence.

[37] On the matter of identification the Defendant states, as I understand it, that the person or persons making these allegations were fake profilers, not himself, and whose identities are unknown. He suggested that it is also unclear whether the Plaintiff is the person concerned since the targeted person is only referred to by the names of “Ben Willy” and/or “Benny Faky”.

[38] I take a reasonable approach, not naïve and not unduly suspicious. The person targeted is both clergyman and politician, there is only one such person, and a leader within the Seychelles National Party with a connection to the St Louis district. He may well be a man of some financial substance as a result of political service over many years. I find that all these factors point to the Plaintiff as the person referred to in the statements in the blog.

[39] I have to reject the evidence of the Defendant on this aspect of the case. I find that his evidence concerning fake profiles was an elaborate and imaginative ploy in an attempt to disguise the fact that the remarks were directed at the Plaintiff. His evidence also, in my view, lost all meaningful sense under the cross-examination by Mr Derjacques. I find that the Defendant cannot hide behind a veil of anonymity.

[40] I find on the balance of probabilities that the comments contained in the statements within the blog refer to the Plaintiff. Based on my prior finding, I find that these statements were published by the Defendant.

[41] I now consider the three statements to decide whether any contain material which is

defamatory. I need not consider the first statement since the Plaintiff has acknowledged that none of the remarks therein are defamatory. I look to the second statement but this adds nothing to the case of the Plaintiff.

[42] I look the third statement. I find that the suggestion that the Plaintiff was an ex paid informer to State House or that he was involved in pushing two persons into a van lacks weight or substance and I find that, while these remarks may be considered insulting they are not likely to diminish the standing of the Plaintiff in the community and hence are not defamatory.

[43] I focus on the initial wording on the third statement and the reference to drugs and the trafficking of drugs. The wording is as follows “What are you baking today? Where are your other fake profile gang members? How ‘s the drug trafficking going ? Any luck on releasing your cargo?”. These questions are directed at the person referred to as “priest mega millionaire” who I have found to be the Plaintiff in this case.

[44] In my opinion the imputation is clear. The remark is addressed to the Plaintiff. I give these words their ordinary everyday meaning. This statement in its entirety carries the imputation that the Plaintiff is involved in drug trafficking. There is not a scintilla of evidence before the Court that this statement is truthful. I find that this statement in the blog has been published and is available for third parties to read. It is in the public domain. I find that this statement is aimed at the Plaintiff. I keep in view that the Plaintiff is both clergyman and politician. I believe that the Plaintiff is correct to take the view that he has to have the utmost concern that this statement has been written and published about him. I find that these words would tend to lower the Plaintiff in the estimation of right-thinking members of society generally. The reference to drug trafficking and the imputation, without foundation, that the Plaintiff was involved in such a matter will certainly satisfy the “threshold of seriousness” requirement. I find that the publication of this statement has caused or is likely to cause serious harm to the reputation of the Plaintiff. The offending words are defamatory of the Plaintiff.

- [45] The Plaintiff is entitled to an award of damages as a result of the libel by publication of the defamatory words.
- [46] In assessing damages I take into account that this publication would appear to have been made within a climate of insulting behaviour but in this case the Defendant went far beyond what could be considered a reasonable or acceptable level.
- [47] I consider that a sum of RUPEES TWO HUNDRED THOUSAND [Rs 200,000] as being a reasonable sum that should be awarded to the Plaintiff.
- [48] I reject the application for a permanent injunction. This matter can be dealt with satisfactorily by the award of damages.
- [49] Accordingly Judgment is entered in favour of the Plaintiff in the sum of RUPEES TWO HUNDRED THOUSAND [Rs 200,000] together with interest thereon and Costs of the action.

Signed, dated and delivered at Ile du Port on 26 November 2015

C McKee
Chief Justice