

IN THE SUPREME COURT OF SEYCHELLES

Civil Side: CS352/2009

[2016] SCSC 1005

JENNY GARCIA

Plaintiff

versus

MARIE ANGE SOOMERY

Defendant

Heard: 1st December 2016
Counsel: Mr. A. Derjaques for plaintiff
Mr. B. Hoareau for defendant

Delivered: 6th December 2016

JUDGMENT

Renaud J

Background

- [1] The Plaintiff is suing the Defendant and praying this Court to order the Defendant to cease and desists from insulting, harassing and approaching and communicating with her and defaming her. She is also claiming **SR100,000.00** for her loss and moral damages for inconvenience, stress, embarrassment and depression. She also claimed for interests and costs.

Parties

- [2] The Plaintiff is a Senior Nursing Officer, married with three children and the Defendant is a Pensioner.

Plaintiff's Case

- [3] The Plaintiff alleged that on numerous occasions during 2009 the Defendant insulted and harassed her. The Plaintiff averred that the Defendant made false allegations publicly in respect of the latter's husband alleging that the Plaintiff was having an adulterous relationship with her husband. Such statements were repeated to Plaintiff's Supervisor and Officers including one Bella Henderson.
- [4] The Plaintiff also averred that the defamation made by the Defendant was intentional and calculated to bring her into public disrepute and odium and further harm her marriage and family. The Plaintiff further averred that the conduct of the Defendant is unlawful and amount to a defamation and a "*faute*" in law rendering the Defendant liable to her.

Defendant's Case

- [5] The Defendant contended that she never made the statements as alleged and that the Plaintiff did not suffer any loss because such loss never exists and that she is not liable for any loss and damages. The Defendant denied all the other material averments and put the Plaintiff to strict proof thereof and sought a dismissal of the Plaint with costs.

Plaintiff's Evidence

- [6] The **Plaintiff** testified that she had been working in the medical profession for over 20 years as a nurse. She is married for over 22 years and has 3 children, 20 years, 19 years

and 9 years and living with her family at North East Point, Mahe. She is now Chief Nurse at North East Point Hospital.

- [7] She did not know the Defendant until about two years ago. Sometime in October 2009 when she met one of her nurse colleague Miss Banane who related to her certain conversation that she (Miss Banane) had heard about her (Plaintiff) having an affair with the son of one Yvon Marie.
- [8] Around that time while she (Plaintiff) was at work she received a phone call from the Defendant who told her that she wanted to rectify certain issues relating to her (Defendant's) daughter. The Defendant allegedly told her that the issue is not her daughter's but hers and added that since a long time ago she wanted to have a conversation and she was taking that opportunity for her to clarify everything regarding the love affair or sexual relationship she (Plaintiff) was having with her husband Wilders Soomery. The Plaintiff took this to mean that she was interrupting the marriage of the Defendant.
- [9] It was over 10 years prior to the present incident that she came to know Defendant's husband who was a timber merchant at the time. There was a handyman who used to work at her house during the weekends and during the week that handyman worked for Mr. Soomery. That handyman usually asked her to phone Mr. Soomery so that he could talk to him concerning his work plan for the coming week, and she did so.
- [10] Later that evening, she talked to the Defendant telling her that she must have made a mistake of identity but the Defendant responded and giving her the impression that she was certain that it was indeed her. The Defendant asked her not to involve her daughter and the issue should be resolved between the two of them.
- [11] The Plaintiff went to see her Chief Nursing Officer, Mrs. Bella Henderson, following a conversation they had had earlier.

- [12] Her Lawyer wrote a letter to the Defendant on 27th November 2009, **Exhibit P5**. Prior to that, the Lawyer of the Defendant had written to her a letter dated 29th October, 2009, **Exhibit P6** but the envelope in which the letter came was date stamped by the Post Office on 16th December, 2009, **Exhibit P7**.
- [13] The Plaintiff maintained that she never distracted the husband of the Defendant. She never interfered in the marriage life of the Defendant and did not have sexual intercourse with Defendant's husband. She did not have any love affair with the Defendant's husband. The Defendant's husband never even touched her hair or her skin. Moreover, she never caused the Defendant's husband to move out of his matrimonial home. She never did anything that caused the Defendant's husband to stop communicating with the Defendant. The Defendant never spoke to or alerted her (Plaintiff) husband. She does not know if the Defendant complained to the Nurses Association about her. She knows that the Defendant complained to Mrs. Henderson about her.
- [14] The incident caused deterioration in her relationship with her husband and her children. Her husband was very upset and insisted that she sued the Defendant if she is not guilty. Her children were also affected by the incident and often talked about it. She felt very demoralized at the time.
- [15] Neither her husband nor her children testified in Court.
- [16] Under cross-examination she admitted that she bought timber from Defendant's husband, Mr. Wilders Soomery, 10 years prior. She personally met Mr. Soomery when doing that transaction. She came to know of his telephone number by heart after phoning him many times on behalf of his employee, the handyman. Mrs. Bella Henderson talked to her Nursing Manager Mrs. Marie-Antoinette Hoareau during the course of her duties in order to clarify her doubt.

- [17] The Chief Nursing Officer, **Mrs. Bella Henderson** testified that she knows the Plaintiff. She also knows the Defendant during her school days and also when the latter worked at Bunson Travel.
- [18] During the course of her duties the Defendant one afternoon reported to her about an alleged relationship between her husband and one of her nurses, namely, the Plaintiff. She was alone in her Office with her (Defendant) at the time. She understood that the Defendant wanted to talk to her about something personal. The conversation was a marital relationship issue involving herself, her husband and the Plaintiff. The Defendant talked about deception of the Plaintiff with her husband, about visit made by the Plaintiff to the maternity when her daughter (Defendant) was on the Ward, and also about the Plaintiff going on a trip to Praslin with her husband.
- [19] Mrs. Henderson was not too sure about the relationship the Defendant was talking about and that was why she asked the Plaintiff to come to her Office when she was able to do so. The Plaintiff came thereafter. As the matter was personal she talked to her about the values a nurse should uphold and also informed her that if there was indeed a relationship between her and the Defendant's husband that was causing pain to the latter and as a nurse one is supposed to alleviate suffering and not to complicate matters.
- [20] Mrs. Henderson recalled that she latter received copy of a letter from the Defendant but she did not recall reading the letter. She did not discuss this personal matter with the Plaintiff's supervisor, Mrs. Hoareau. The Plaintiff was quite distress that afternoon when she came to her Office as it was affecting her reputation and such matter, if true, may be taken up by the Nurses' Council.
- [21] Under cross-examination the witness maintained that at no time did she discuss the complaint of the Defendant with anybody else. She spoke about this only to the Plaintiff privately when she came in her Office. She however agreed that she later talked to Plaintiff's supervisor in case the incident affects her work performance. She did not

place the copy of the letter from the Defendant on Plaintiff's file as it relates to something personal.

[22] The next witness **Ms. Linda Louis** testified that she is a 48 year old Security Guard at Seychelles National Youth Council and is living at La Retraite. She knows the Plaintiff through the latter's sister, Miss Gillian. She does not know the Defendant.

[23] One day she overheard the Plaintiff talking to Miss Gillian about the incident that happened between herself and the Defendant. The Plaintiff was telling her sister that she was scared to go to town after the telephone conversation she had had with the lady. The witness told her not to be scared and that she will accompany her to the Police Station where she will complain about the lady who threatened to kill her. They both went to the Police Station and saw a Police Officer and the Plaintiff told the Officer of her problems with the Defendant. She overheard everything that was said. At the time the Plaintiff appeared to be very afraid and was trying to find solution to her problems. She did not know anything further after that until the Plaintiff told her about her coming to Court as a witness.

Defendant's Evidence

[24] The **Defendant** testified that she lived at Anse Forbans and had been married for 45 years to Mr. Wilders Soomery. She does not know the Plaintiff but she spoke to her twice on the telephone on 8th September, 2009. She talked to her regarding telephone calls to her husband 2 or 3 times a week and asked her what she wanted from her husband. Her husband had previously told her that the Plaintiff called him regarding "mahogany wood" and she phoned the Plaintiff to clarify. The Plaintiff told her that she called Defendant's husband regarding "galer" (wood planer) that was lost.

[25] On 26th October, 2009 she called and spoke again to the Plaintiff on the phone regarding an incident that happened around 19th October, 2009 at the Maternity Ward of Victoria Hospital in relation to her (Defendant's) daughter Laura and her daughter's partner Capt.

Marie. Both conversations that she had with the Plaintiff the latter was not aggressive. She never said publicly that the Plaintiff was having an adulterous affair with her husband.

- [26] The Defendant admitted seeing Mrs. Henderson alone on 27th October, 2009 in her Office at the Victoria Hospital regarding an alleged accusation against her daughter supposedly made by the Plaintiff. She never mentioned anything to Mrs. Henderson regarding any affair between the Plaintiff and her husband.
- [27] Under cross-examination the Defendant insisted that she never reported any allegation to her Lawyer about her husband having an affair with the Plaintiff. Her husband walked out of the matrimonial home on 4th October, 2009. **Exhibit P6** was written by her Lawyer.
- [28] The witness said that when the Plaintiff phoned her husband, the latter got very disturbed and beat her (Defendant) up and knocked her down. She was a little bit suspicious that her husband was having an affair with the Plaintiff, but not sexual relationship. She does not believe that her husband had been unfaithful to her.
- [29] On 7th September, 2009 at about 10.30am when she asked her husband why the name of the Plaintiff appeared over 25 times in his notebook that was when her husband turned violent and beat her.
- [30] The witness admitted receiving **Exhibit P5** from Plaintiff's Lawyer. It was only after receiving Exhibit P5 that she consulted a Lawyer because whatever was stated in that letter never existed. She knows Pat Sedgwick (handyman) who was employed by her husband.
- [31] In re-examination the Defendant confirmed that her husband left the matrimonial home on 4th October, 2009, her daughter gave birth on 19th October, 2009 and she met Mrs. Henderson on 27th October, 2009. She did not go to see Mrs. Henderson after her

husband left her but saw her after her daughter gave birth. She went there to clarify issue regarding her daughter.

[32] The letter from Plaintiff's Lawyer (Exhibit P5) is dated 27th November, 2009 and the letter from her Lawyer (Exhibit P6) is dated 29th October, 2009 (that date was written by hand) but posted only on 16th December, 2009. The Plaintiff received Exhibit P6 after her Lawyer had written Exhibit P5 to the Defendant.

[33] The Defendant maintained that she went to her Lawyer after she had received Exhibit P5 from Plaintiff's Lawyer. It was her Lawyer who stated the two options in the letter. She never at any time spoke to the husband of the Plaintiff. She never complained to the Nurses Council about the Plaintiff. According to the Defendant the correct date on Exhibit P6 should have been 27th November, 2009. There is no mention in that letter that the Plaintiff was having an adulterous relationship with her husband. There is also no mention that her husband left the matrimonial home because of adulterous relationship with the Plaintiff.

The Law

[34] In Seychelles the civil law of defamation relating to liability and damages is governed by English Law. However, the procedure for defamation is governed by Seychelles Law.

[35] Every person has an inherent right to enjoyment of peace of mind, free from violence to their person, against harm to their character for social or moral standing claimed by them, to the respect and esteem that others may hold them in, and against humiliating and degrading treatment. There is a corresponding obligation on all others to refrain from infringing that right. (See *Talma v Henriette (1999) SLR 108*). In that same case the Court also held that – *publication is a prerequisite to a claim for defamation*.

[36] A defamatory statement is one which injures the reputation of another by exposing them to hatred, contempt, or ridicule, or which tends to lower them in the estimation of right-

thinking members of society generally, by making them shun or avoid them, or by causing them to be regarded with feelings of hatred, contempt, ridicule, fear, dislike, or disesteem. (See *Regar Publications v Pillay SCA 3/1997, LC 140*)

- [37] In the above cited case of *Pillay* the Seychelles Court of Appeal held that – firstly, whether a statement is defamatory is judged by the standard of an ordinary right-thinking member of society, and secondly, it is not a defence to say that the statement targeted someone else or that it was not intended to be defamatory.
- [38] However, the defamatory words do not need to be uttered in public, but must be uttered in the presence of a third party, but, the publication to the defamed person is not sufficient. (See *Bouchereau v Guichard (1970) SLR 33*).
- [39] Words spoken and published which impute unchastity, a loose character or adultery to any woman or girl do not require special damage to render them actionable. (See *Louise v Telemaque (1994) LSC 507 [143]*)
- [40] A Defendant in a defamatory suit can raise a defense of qualified privilege because of honest attempt to investigate. Qualified privilege can be used as a defence to a defamatory claim if the publisher made an honest attempt to investigate the truth of the information. (See *Regar Publications v Loustau-Lalanne, SCA 25/2006, LC 304.*)
- [41] A Defendant in a defamatory suit can also raise a defense of qualified privilege because of honest belief that the statement was true and made honestly and without any indirect and improper motive, gives a qualified privilege to the maker of the statement. (See *Esparon v Fernez (1980) SLR 148.*)

The Issues

- [42] Did the Defendant on numerous occasions, during 2009, insulted and harassed Plaintiff?

- [43] Did the Defendant publicly made false and malicious accusations against Plaintiff involving Defendant's husband alleging that the Plaintiff was conducting an adulterous relationship with Defendant's husband?
- [44] Did the Defendant made any defamatory statement to any of the Plaintiff's supervisors?
- [45] Did the Defendant made intentional defamation calculated to bring Plaintiff into public
- [46] disrepute and odium and which also harmed the Plaintiff's marriage and family?

Findings

- [47] It is not in dispute that the Plaintiff was at the material times a Senior Nursing Officer and was and is married with 3 children and the Defendant is a Pensioner.
- [48] The Plaintiff testified on her own behalf and adduced the evidence of her superior Chief Nursing Officer Mrs. Bella Henderson and another witness. The Defendant testified on her own behalf and did not adduce evidence of any other witness.
- [49] In 2009 the Plaintiff allegedly met a work colleague Miss Banane who related to her certain conversation that that person had heard about the Plaintiff having an affair with the son of Yvon Marie. Miss Banane did not testify in Court and the statement she allegedly made to the Plaintiff amount to hearsay.
- [50] Around that same period whilst the Plaintiff was at work she received a telephone call from the Defendant who wanted to rectify certain issues relating to her daughter. The Defendant allegedly also told the Plaintiff that the issue is not only about her daughter but herself and she wanted to clarify an alleged love affair or sexual relationship the Plaintiff was having with her husband.

- [51] Later that evening the Plaintiff telephoned the Defendant and told the latter that there must have been a mistake of identity but the Defendant insisted otherwise. The Defendant told the Plaintiff not to involve her daughter and to resolve the issue only between the two of them.
- [52] The Lawyer of the Defendant by a letter (Exhibit P6) responded to a letter (Exhibit P5) addressed to the Defendant by the Lawyer of the Plaintiff. Both letters went through the Post in sealed envelopes.
- [53] Mrs. Bella Henderson whilst she was in her Office the Defendant came and talked to her about an alleged relationship between her husband and the Plaintiff. They were alone in the Office at the time. Following that Mrs. Henderson invited the Plaintiff to her Office because she was not too sure about the relationship the Defendant came to talk to her about. The matter being a personal one, she advised the Plaintiff to maintain her nurse's values. She kept the matter confidential and no record was placed on the personal file of the Plaintiff. Mrs. Henderson maintained that she never discussed the matter with anybody else.
- [54] The other witness Ms. Linda Louis testified that she accompanied the Plaintiff to the Police Station where the Plaintiff filed her complaint to the Police in her presence. She overheard everything the Plaintiff told the Police Officer.
- [55] My analysis of the facts established by evidence as summarized above, I find that the Plaintiff did not satisfy the Court that the Defendant on numerous occasions, during 2009, insulted and harassed her. The testimony of the Plaintiff and her witnesses fall well below the standard required to sustain this averment.
- [56] The Defendant went alone to see the Chief Nursing Officer (CNO), where they had a confidential meeting. Nobody else was present. It is evident that the intention of the Defendant in calling on the CNO was to solicit the latter's assistance in helping her to resolve her situation. The Defendant was not there to maliciously make any defamatory

statement which would injure the reputation of the Plaintiff by exposing her to hatred, contempt, or ridicule, or which tends to lower her in the estimation of the CNO as a right-thinking Superior Officer of the Plaintiff. The effect of their conversation, as conveyed by the testimony of the CNO, was far from making the CNO to shun or avoid the Plaintiff or by causing the Plaintiff to be regarded by the CNO with feelings of hatred, contempt, ridicule, fear, dislike, or disesteem.

- [57] I find that the Plaintiff did not establish that the Defendant publicly made false and malicious accusations against her involving the Defendant's husband alleging that she was having an adulterous relationship with Defendant's husband. The fundamental element here is whether anything said by the Defendant was publicized. There is no finding that such situation happened.
- [58] From my analysis of the evidence I further find that the Plaintiff did not adduce evidence to the satisfaction of this Court that the Defendant make and/or publish any defamatory statement to any of the Plaintiff's supervisors as discussed above.
- [59] Likewise, I find that Plaintiff did not satisfy this Court that the Defendant made intentional defamation calculated to bring her into public disrepute and odium and which also harmed her marriage and family. The evidence reveals that the Plaintiff is still living with her husband and children as usual.

Conclusion and order

- [60] Having made the findings stated above, I conclude that the Plaintiff by the evidence adduced did not sufficiently meet the threshold required by law that would enable this Court to give a judgment in her favour on a balance of probability.
- [61] It may be true that both the Plaintiff and the Defendant were adversely affected by a situation which was not pleasant to either of them at the material times. Their experience in Court may have served to assist them in putting any previous acrimonious situation at rest.

[62] In the light of my findings and conclusion referred to above, the claim of the Plaintiff is accordingly dismissed.

[63] In view of the particular circumstances of this case, I make no order as to cost.

Signed, dated and delivered at Ile du Port on 6th December, 2016

A handwritten signature in blue ink, appearing to be 'B Renaud', with a large, stylized initial 'B'.

B Renaud

Judge of the Supreme Court