

**IN THE SUPREME COURT OF SEYCHELLES**

**Civil Side: CA6/2014**

**Appeal from Magistrates Court Decision 1/2013**

[2017] SCSC 137

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**JAMES PORTLOUIS**  
Appellant

versus

**MINISTRY OF EDUCATION**  
First Respondent

**ATTORNEY GENERAL**  
Second Respondent

**LES SEYCHELLES HEBDO (PTY) LTD**  
Third Respondent

**XPRESS PRINTING**  
Fourth Respondent

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Heard:

Counsel: Mr. Nicole Gabriel for appellant

Mr. Vipin Benjamin for first respondent  
Mr. Vipin Benjamin for second respondent  
Mr. Bernard Georges for third respondent  
Mr. Bernard Georges for fourth respondent

Delivered: 15 February 2017

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**JUDGMENT**

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**Robinson J**

[1] **The Background**

[2] Appellant (then Plaintiff) filed an amended plaint against the Ministry of Education, First Defendant therein, herein First Respondent, the Attorney General, Second Defendant therein, herein Second Respondent, Le Seychellois Hebdo (Proprietary) Limited, a newspaper, Third Defendant therein, herein Third Respondent, and Xpress Printing, the publisher of Le Seychellois Hebdo (Proprietary) Limited, Fourth Defendant therein, herein Fourth Respondent.

[3] It appears that the plaint in its amended form claimed damages against all Defendants for libel contained in an article headed "*Teacher suspended after sexual assault charges surface*" of the issue of the newspaper dated 25 November, 2011. First and Second Defendants applied that the plaint be struck out on the grounds that it disclosed no reasonable cause of action under section 92 of the Seychelles Code of Civil Procedure (herein "SCCP"). The plea in *limine litis* was adopted by Third and Fourth Defendants, through counsel. The plea in *limine litis* reads thus —

*"1. The Plaintiff's Plaint does not disclose any cause of actions against the 1<sup>st</sup> and 2<sup>nd</sup> defendants.*

*2. Therefore, as no cause of action has been disclosed by Plaintiff against 1<sup>st</sup> and 2<sup>nd</sup> Defendants, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants pray to this Honourable Court pursuant to section 39 of the Magistrate Court (Civil Procedure) Rules to strike out the Plaintiff's pleadings and to dismiss this Plaint against the 1<sup>st</sup> and 2<sup>nd</sup> Defendants with Costs."*

[4] The trial Senior Magistrate accepted the plea in *limine litis* and dismissed the plaint in its amended form in a ruling dated 27 January, 2014.

[5] **The present proceeding**

[6] Appellant seeks to appeal the ruling on the following grounds —

- "i) *The learned trial Senior Magistrate erred in law in not properly considering and weighing the objection raised by the Appellant on the plea in limine litis.*
- ii) *The learned [Senior Magistrate] was wrong to uphold the plea in limine litis raised by the Respondents without hearing the whole of the evidence prior to making such ruling.*
- iii) *The finding of the learned Senior Magistrate was unsafe and unsatisfactory."*

[7] Appellant seeks the following reliefs from the court —

- "a) *A judgment reversing and overruling the decision of the Learned Senior Magistrate in the Court below;*
- b) *To give judgment in favour of the Appellant as per the grounds of appeal pleaded above."*

[8] **Submissions of counsel**

[9] *Mr. Gabriel* for Appellant. Appellant has a cause of action for the following reasons —

- (a) that it was First Respondent who informed Appellant by letter dated 23 November, 2011, that Appellant will be suspended from his post;
- (b) that the letter provided for his suspension for one month and stated that the department was treating the allegation of sexual harassment seriously;
- (c) that two days after Appellant had received the letter, an article appeared in the newspaper "*published*" by Third and Fourth Respondents, wherein the case of sexual harassment at the school was mentioned;
- (d) that as a material fact, the Director of the "SAHTC", Georgie Belmont, filed a comprehensive report on the incident and named Appellant on page 1. It was this report that prompted the decision of First Respondent to

suspend Appellant, causing him unnecessary trauma, hardship and so forth.

There is authority for the position of Appellant *Bessin v Attorney General [1951] SLR 37 and Rideau v Elizabeth [1979] SLR 81*.

[10] *Mr. Benjamin* for First and Second Respondents. There is no allegation of wrongdoing against First and Second Respondents for the following reasons —

- (a) Appellant has failed to show that First and Second Respondents caused the said publication by Third and Fourth Respondents;
- (b) there is no nexus between the suspension of Appellant from his duties and the publication. The authority in support of the submission *Loveday Hoareau v United Concrete products (Seychelles) Limited [1979] SLR 155*;
- (c) the plaint failed to set out the words complained of *verbatim*. The authority in support of the submission *Francis Biscornet v Eugène Honoré [1982] SLR 451*.
- (d) the article makes no reference to Appellant by name or reference.

[11] *Mr. Georges* for Third and Fourth Respondents. *Bullen and Leake and Jacob's, Precedents of Pleadings in the Queen's Bench Division of the High Court of Justice, Twelfth Edition at page 626*, clearly states that in drafting a claim for "*Damages for Libel in a newspaper alleging reference to the Plaintiff*", as in the present case, the words complained of must be set out *verbatim*, and the facts must be fully set out and show reference to Appellant. It is submitted that the plaint —

- "a. *failed to set out the words complained of verbatim, and*
- b. *in so doing further failed to plead material facts to show that the words published showed a clear reference to the Plaintiff.*"

There are clear authorities in support of the submissions *Seychelles Broadcasting Corporation v Andre Beaufond & Security Protection Services Ltd 28 August 2015 Civil*

*Appeal SCA 29/2013* at paras [12] and [14] of the judgment, *Francis Biscornet v Eugène Honoré* [1982] SLR 451, *Bessin v Attorney General* [1950] SLR No. 37 208, *Cesar v Scully and National Drug Enforcement Agency* [2012] SLR 190; *Wright v Clements* (25 April 1820), (1820) 3 Barnewall and Alderson 503 106 E.R. 746 and *Bruce v Odhams Press Ltd* [1936] 1 All ER 287.

[12] **Analysis of the contentions of Appellant and Respondents**

[13] It is submitted by Mr. Georges that Appellant has sought to couch his claim within a tortious claim, specifically that of defamation and notably libel under article 1383 *alinéa* 3 of the Civil Code of Seychelles Act, (*the Civil Code of Seychelles Act is hereinafter referred to as the "Code"*). This position is shared by First and Second Respondents, through counsel. The trial Senior Magistrate considered the claim of Appellant against all Respondents based on the allegation of libel. On appeal Appellant insists that he has a cause of action. The court has tried to understand the position of Appellant against First and Second Respondents. Appellant had been suspended from his duties pending an investigation on 23 November, 2011. Appellant's suspension was lifted on 20 December, 2011. It *appears* that Appellant's amended complaint, against First and Second Respondents, confines his claim to an allegation of "*suspension*" from his duties; and that the prayer in the complaint is confined to damages and other reliefs arising from that single allegation of "*suspension*" from his duties. The court could say more about the manner in which this case is pleaded in its original and amended form, but it does not intend to dwell on the point. It is, in the court's view, among other things, that a claim based simply on an allegation of "*suspension*" is not a cause of action. Rightly so, the court is left with the allegation of libel against all Respondents.

[14] It is trite law that English Law governs the civil law of defamation. *Biscornet* states that

—  
*"[i]n cases of defamation ... it is the English law in force at the time when the Civil Code of Seychelles Act 1975 was enacted which applies. That means not only to the substantive law of*

*defamation but also to the procedural rules of the law of defamation".*

- [15] About the procedural rules of the law of defamation *Biscornet* makes the following statement of the law —

*"In Paragraph 2 of Chapter 1 of Gatley on Libel and Slander, Sixth Edition it is stated —*

*"The procedural rules of the law of defamation are of high importance in affecting the substantive law."*

- [16] The above principles will direct the court's approach to the resolution of the matter before it.

[17] ***Right of action against First and Second Respondents – Publication***

- [18] The plaint in its amended form does not reveal that First and Second Respondents have published of and concerning Appellant a libel in the suspension letter dated 23 November, 2011. *Ex facie* the plaint the suspension letter dated 23 November, 2013, was not made known to some other person other than Appellant. A plaint which does not allege publication to some third person discloses no cause of action. That was the finding of the trial Senior Magistrate. The procedure under section 192 of the SCCP as the court understands it is only intended to apply to cases where it is plain and obvious that Appellant has no case and in the present case the court is satisfied that Appellant has no case against First and Second Respondents: *see Hall v Geiger (1929) 41 Br. Col. Rep. 481.*

[19] ***Right of action against Third and Fourth Respondents - The "very" words of the libel to be set out and reference to Appellant***

- [20] In this case the pleadings do not disclose the article published by Third and Fourth Respondents other than the pleadings referring to an article headed: *"Teacher suspended after sexual assault charges surface"*, which heading made no mention of Appellant by

name.

- [21] The main contention of learned counsel for Third and Fourth Respondents is that Appellant has not complied with the procedural rules of the law of defamation. Third and Fourth Respondents state that the *very* words of the libel must be set out. In the case of *Seychelles Broadcasting Corporation*, the Seychelles Court of Appeal applied the opinion of Abbott C.J., in the *Wright case*, on point —

*"Abbott C.J. I am of opinion, that in this case the objection must prevail, and that the judgment must be arrested. In actions for libel, the law requires the very words of the libel to be set out in the declaration, in order that the court may judge whether they constitute a ground of action; and unless a plaintiff professes so to set them out, he does not comply with the rules of pleading..."*

The court also considered the opinion of Bayley J., in the *Wright case* —

*Bayley J. I am of the same opinion. A defendant, in a case like this, has a right to expect that the plaintiff, in his declaration, will set out the very words of the libel used, or so much of them as he means to rely upon..."*

- [22] Additionally, Appellant's difficulty is that he is not named or indicated in the heading of the article. The position of Third and Fourth Respondents is that they are entitled to have such knowledge of the case against them as to enable them to decide how they should plead. In *Bruce* it was held that in a libel action the material facts on which a plaintiff relies will include those facts and matters from which it is to be inferred that the words were published of the plaintiff.

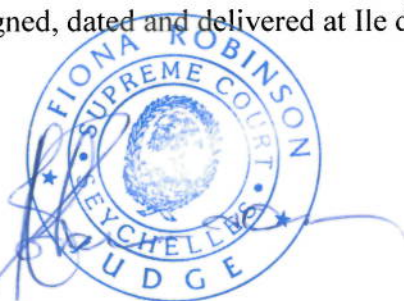
*"In such a case as the present, the plaintiff, not being actually named in the libel, will have to prove an innuendo identifying her in the minds of some people reasonably reading the libel with the person defamed, for there is no cause of action unless the plaintiff can prove a publication of and concerning her of the libellous matter; see per A. L. Smith M.R., in Sadgrove v. Hole [1901] 2 K.B.1, 4."(see per Slessor L.J. at p. 708).*

So in the *Bruce* case, under rules of court a statement (either in a pleading or in particulars) is necessary of the material facts on which the party pleading relies: see also the *Biscornet* case. The court notes that Appellant had not pleaded by innuendo that the heading of the article referred to him as associated with the "sexual assault charges". Moreover, as rightly pointed out by learned counsel for Third and Fourth Respondents, even if the plaint had so pleaded by innuendo, in failing to include the words published *verbatim*, it is difficult to see how the innuendo would have been made out at all. In the *Cesar* case the date of publication was not pleaded, the article was not attached, and the innuendo connecting the statement to the plaintiff was not spelt out. Egonda-Ntende C.J., applied the *Bruce* case and concludes that —

*"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 first defendant as no innuendo is set out to connect the plaintiff with the article allegedly published in the Nation Newspaper. There is no allegation of wrongdoing made against the second defendant. There is no cause of action against the second defendant on the amended or original plaint."*

- [23] In light of the above the court holds that Appellant has failed to make out a cause of action by failing to plead material facts on which his claim was relying and further failed to set out and establish the requirement of innuendo.
- [24] In the result the court upholds the decision of the trial Senior Magistrate and dismisses the appeal against all Respondents with costs.

Signed, dated and delivered at Ile du Port on 15 February 2017



F Robinson  
Judge of the Supreme Court