

IN THE SUPREME COURT OF SEYCHELLES

Civil Side: CS009/2015

[2017] SCSC 284

HANIF SULEMAN

FIRST PLAINTIFF

PEMMA SULEMAN

SECOND PLAINTIFF

LIAM SULEMAN

THIRD PLAINTIFF

AIDAN SULEMAN

FOURTH PLAINTIFF

FARHAAD SULEMAN

FIFTH PLAINTIFF

(a minor represented by his parents
The First and Second Plaintiffs)

MAIA SULEMAN

SIXTH PLAINTIFF

(a minor represented by her parents
The First and Second Plaintiffs)
All residing at Pascal Village, Mahe

VERSUS

JAMES FAURE

FIRST DEFENDANT

And

MASTURA SHAH-FAURE

SECOND DEFENDANT

Both residing at Fairview, La Misere, Mahe

Heard:

Counsel: Miss Karen Domingue for Plaintiffs
Mr Rene Durup for Respondents

Delivered: 27 March 2017

JUDGMENT

McKee J

[1] The Plaintiffs are Mr and Mrs Suleman and their four children. The facts are reasonably straightforward. Their children, the third, fourth, fifth and sixth plaintiffs enrolled in the karate club of the defendants, Mr and Mrs Faure, in 2009. The parents felt that the skills learned would be of value to their children and promote their self confidence and self esteem. It is fair to say that each of the children showed a quick understanding and ability in the technique of karate. They progressed through the normal grades of development with the award of “belts” until the senior students were at a stage just short of the coveted black belt. Their innate skills were quickly recognized by the defendants and other teachers in the club and also other students. They attended regional championships. This prowess could have been utilized to increase their career prospects. By 2011 complaints that the four pupils showed a lack of discipline and were been disrespectful to the defendants, teachers and other students began to surface. The plaintiffs disagreed with this analysis. Matters continued but without marked improvement. Letters of temporary suspension were issued but this did not solve the issue. Eventually the Third, Fourth, Fifth and Sixth Plaintiffs were expelled from the karate club. There were references and appeals to the parent organization, the WTSDA, but the expulsion order was confirmed. The first and second plaintiffs rejected the allegations and complaints in respect of their children. In the Complaint the plaintiffs gave specific instances where they alleged that the defendants have acted maliciously and wrongfully and evidence was given on these points. The four students felt disappointed and betrayed by the Defendants after what had been such a promising start to their karate careers. They were unsure of the reason for their expulsion. The expulsions had affected their general lifestyles. The parents felt their

children had been discriminated against and that there was no reason for their expulsion. They felt humiliated and embarrassed by the whole situation. All six plaintiffs alleged that the defendants had acted maliciously and wrongfully.

[2] The Second Defendant gave evidence and stated that in 2012 the First Defendant started to have behavioural and protocol issues with the Third, Fourth, Fifth and Sixth Plaintiffs. He found that they were disrespectful to instructors and fellow students and he was receiving complaints about this behaviour from the parents of other students. The matter reached such a pitch that the First Defendant sought advice from the regional director of the karate association. Thereafter he considered what was in the best interests of the club and his other students and took the decision to expel. There had been earlier letters of warning but this had no effect on the four plaintiffs who did not regulate their behaviour. The Second Defendant explained the codes and tenets of the martial art known as karate. These are integrity, perseverance, concentration, self control, indomitable spirit, humility, respect and obedience. She denied that the First Defendant had misled the parent organization as to the true position. She denied that the motive behind the expulsion was to limit the progress of the Third to the Sixth Plaintiffs on the ladder of progression through the upper levels of grading in karate. She denied that she and her husband had set out to embarrass and humiliate the Plaintiffs. She found that the Suleman pupils were outstanding in technique but very poor in attitude.

[3] The First Defendant confirmed that he and his wife, the Second Defendant, own the club. He explained how young children would join the club. He would observe their development as he taught them the technical moves in karate. He found that the Third to Sixth Plaintiffs learned quickly but sometimes there were disciplinary problems. He spent some considerable time talking to them. As with all students he tried to instill the good value of life. He tried to persuade them to get even better at their craft. He gave them opportunities to improve their behaviour before finally deciding to expel them. He denied that he tried to alienate them. He denied that he acted maliciously towards all the Plaintiffs. He denied that he expelled the four students since he did not wish them to succeed. He denied that he wished to humiliate and embarrass the Suleman family.

Defence witnesses favoured neither the Plaintiffs nor the Defendants with their evidence but witness Marie stressed the importance of respect for others.

[4] FINDINGS

[5] The Plaintiffs submit that their case is based on Article 1382 of the Civil Code hence seek to show that by their actions the Defendants have been at fault. If successful, the Plaintiffs argue, that they are entitled to damages. With all due respect to Counsel that is not what the Plaintiff alleged. The Plaintiff, at paragraphs 13, 14 and 18, alleged that the Defendants acted with malice. The Plaintiff averred that the Defendants had acted “maliciously and wrongfully”. That approach brings an element of the criminal law into what is otherwise a civil suit. It means in this case that the Defendants had an actual intention to inflict a particular type of harm and that was in fact done.

[6] Having said that, this remains a civil case and the standard of proof is on the balance of probabilities rather than on the more onerous criminal burden of beyond reasonable doubt.

[7] I find from the facts that the Third, Fourth, Fifth and Sixth Plaintiffs, after joining the karate club, became very talented in karate techniques and this was evident to the Defendants, other instructors and fellow students. They progressed swiftly up through the grades and the more senior members of the family were close to achieving the coveted black belt standard. They were supported enthusiastically by their parents, the First and Second Plaintiffs.

[8] However, perhaps due to age, I find that the Third, Fourth, Fifth and Sixth Plaintiff became over-confident and acquired an inflated sense of their level of skill. I find that this placed the First and Second Defendants in a difficult position. They wished to encourage even further improvement but within the tenets and codes of behaviour which were outlined to the court in the evidence of the Second Defendant. I find that the Third, Fourth, Fifth and Sixth Defendants failed to fully understand the significance and importance of these tenets. I find that the Defendants and other instructors tried to instill in the four young people the importance of humility, respect and obedience and that it

was of equal importance to a high standard in karate technique. I find that this was found to be a very difficult concept for the young people to understand and accept. In my view the these plaintiffs failed to realize that their skill in martial arts was not a skill to be flaunted but that it had to be practiced with modesty and humility. I find that they continued to act in a selfish manner and at the end of the day they became a disruptive force in the karate club.

[9] I find that the First Defendant was placed in an invidious position. His very talented pupils had become a liability, a disruptive element in the club and they failed to understand or accept his concerns. He spoke to them, sent warning letters but to no avail. It was against this background that, I am sure with great reluctance, he came to the conclusion that the Third, Fourth, Fifth and Sixth Plaintiffs had to be expelled. It is little wonder that the First and Second Plaintiffs felt embarrassed but it is not to the Defendants that they should attribute fault or blame. I reject the allegation that the First Defendant, so steeped in the whole ethic of karate, would maliciously and without reason expel his very talented pupils for the simple reason, as suggested in cross-examination, that he did not wish the Third, Fourth, Fifth and Sixth Plaintiffs to progress in the art to which he had no doubt devoted a considerable part of his life. I reject any suggestion that such a course of action was suggested by his wife and agreed to by him. I reject the allegation that the Defendants were acting maliciously and wrongfully when they ordered the expulsion of the Third, Fourth, Fifth and Sixth Plaintiffs from the karate club. I reject the allegation that the Defendants sought to humiliate and embarrass the First and Second Plaintiffs. I find that, in all the circumstances, the Defendants were entitled to expel the Third, Fourth, Fifth and Sixth Plaintiffs from their karate club.

[10] Therefore I dismiss the Plaintiffs' case.

[11] There will be judgment for the Defendants with costs.

Signed, dated and delivered at Ile du Port on 27 March 2017

C McKee
Judge of the Supreme Court