

IN THE SUPREME COURT OF SEYCHELLES

Civil Side: CS34/2014

[2018] SCSC 507

CHANTAL LEON
Plaintiff

versus

**THE SEYCHELLES UNITED PARTY
THE PROPRIETOR OF
SEYCHELLES WEEKLY NEWSPAPER
OF MONT FLEURI MAHE**
First Defendant

**MR. ROBERT ERNESTA
EDITOR OF SEYCHELLES WEEKLY
OF MONT FLEURI MAHE**
Second Defendant

**WEEKLY PUBLICATIONS PUBLISHERS AND PRINTERS
OF SEYCHELLES WEEKLY NEWSPAPER
HEREIN REPRESENTED BY MR. ROBERT ERNESTA
OF MONT FLEURI MAHE**
Third Defendant

Heard:

Counsel: Joel Camille for plaintiff

Daniel Cesar for defendant

Delivered: 29 May 2018

JUDGMENT

RELEVANT FACTUAL BACKGROUND

1. This matter is before the court on Chantal Leon's ("*the Plaintiff*") Amended Complaint filed on 21 October, 2015, against the Seychelles United Party, the proprietor of Seychelles Weekly Newspaper, ("*the First Defendant*"), Robert Ernesta ("*the Second Defendant*") and Weekly Publications ("*the Third Defendant*") — collectively "*the Defendants*" — for libel.¹ On 12 January, 2016, the Defendants filed a Statement of Defence generally denying the Plaintiff's allegations.
2. The Amended Complaint claimed 500,000.00/- rupees in damages for the Defendants' allegedly libelous article. On 29 May, 2017, the Plaintiff took the stand and the Defendants submitted the testimony of Robert Ernesta.
3. *The evidence of Plaintiff.* The Plaintiff testified that in 2013, she lived at Union Vale at Villaz Trezor with her mother, brother, and two children. She was a police officer with the rank of Sergeant in the Crime and Investigation Division; and that she had been an officer for 14 years. The Plaintiff's name had been referenced in an article published on 15 November, 2013, by the Seychelles Weekly along with a photograph of her mother's apartment, not her place.
4. The article entitled "*Chantal Leon's spectacle at Villaz Trezor*" stated in relevant part that

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"[s]everal people residing at the same village have approached this newspaper complaining about the unbecoming behaviour of the lady in question. As a police officer she is not setting a good example for others to follow, especially the children who are witnessing the shenanigans of Chantal Leon. It is said that she has noisy arguments on a regular basis with her mother standing on the veranda at their house. The surrounding area and the neighbours fall victim to all the insults and foul language

¹ Plaintiff initially filed a Complaint on 15 April, 2014, however, subsequently amended her Complaint as the second named defendant at the time, Ralph Volcere, was no longer the editor of the Seychelles Weekly.

they throw at each other. Sometimes a crowd will gather to watch the spectacle and Chantal has no hesitation to turn her attention towards them with her insults.

The neighbours have done all they could to bring a stop to this situation. They have gone to the police, they have also gone to the housing authority, and nothing has come of it. Chantal Leon is still at it – for a lady who works for law enforcement she leaves a lot to be desired. Even her boss the Commissioner of Police have tried and failed to curb the antisocial behaviour of one of his police officers. This newspaper is exposing this story in the hope that it will help in bringing some peace and quiet to the neighbourhood at Villaz Trezor. We are naming and shaming – hoping it will bring results."

(See Exhibit P1, Seychelles Weekly, Vol. 12, Issue No. 44, p. 3, 15 Nov. 2013).

5. The Plaintiff denied that her behaviour was unbecoming and that she had noisy arguments on a regular basis. She testified that she had had noisy arguments with her mother, but not on a regular basis – sometimes two, three, four or five months could go by before she had an argument. She maintained that *"everybody has a quarrel which is part of everyday life"* and that her quarrels were in the house, where the public could not see. However, she also testified that because the houses are so close to each other, even if she was not talking in a loud manner it would be heard by the neighbours. And she indicated that during this time, she would argue with her mother about her brother who would take her things without permission.
6. She denied trading insults and using foul language, ever seeing a crowd gathering to watch, insulting bystanders, and being aware that neighbours had intervened to stop the situation. She testified that she had never been summoned by the police, housing authorities, or been approached by the Commissioner. Moreover, she testified that she

felt embarrassed by these allegations; and that it had affected her children and her work, as she is perceived as not worthy of being in the police department.

7. On cross-examination, she testified that her attorney had sent a letter on 30 November, to Seychelles Weekly addressed to Mr Ralph Volcere, the editor of the newspaper, requesting an apology and retraction of the article.²
8. *The evidence of Robert Ernesta.* Mr Ernesta testified that he became the editor of Seychelles Weekly on 2 May, 2014, on the same date the newspaper came to belong to the First Defendant, the Seychelles United Party ("SUP").³ And he testified that the publishers and printers were Weekly Publications. He confirmed that the structure of Seychelles Weekly was changed on 2 May, 2014. He testified that he had never been contacted by the Plaintiff and had never been handed over the letter received by Ralph Volcere or had knowledge of this letter. He indicated that he was not aware that Ralph Volcere had been previously named as the second defendant in this case; and that Ralph Vocere had sought the services of Mrs. Amesbury to represent him in relation to this case.

ANALYSIS

9. This court has considered the evidence in light of the submissions of counsel.
10. Article 1383 (3) of Civil Code of Seychelles Act provides —

"1383 (3) 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."

² See the testimony of Plaintiff, 29 May, 2017, at p. 14 (Exhibit P2, Letter from Plaintiff's Attorney to Ralph Volcere, Editor of Seychelles Weekly, dated 30 November, 2013).

³ See the testimony of Robert Ernesta, 29 May, 2017, at p. 17 (Exhibit D1, Affidavit of Robert Ernesta, Editor of Seychelles Weekly, dated 2 May, 2014).

11. It was held in the case of *Kim Koon v Wirtz* (1976) SLR 101 that the law of defamation applicable in Seychelles is the law in force in the United Kingdom on 31 October, 1975.
12. In the case of the publication of a newspaper, the journalist, editor (See *R v Dover* [1663] 8 How.St.Tr. 547; *Watts v Fraser* [1835] 7 C. & P. 369; *Keyzor v Newcomb* [1859] 1 F. & F. 559 at 562), publisher (*Morrison v Ritchie* [1902] 4 F. 645) and printer (*Johnson v Hudson* [1836] 7 A. & E. 233n) would all be prima facie liable, if they are found to have procured or participated in the publication of a libel.
13. As stated in *R v Paine*⁴ —
- "If one repeat[s], and another write[s] a libel, and a third approve[s] what is written they are all makers of it; for all persons who concur, and show their assent or approbation to do an unlawful act, are guilty."
14. "The act of publishing the libelous matter constitutes the cause of action" (*O'Keefe v Walsh* [1903] 2 L.R. 706). Similarly, "it is the publication not the composition of the libel which is the actionable wrong" (*Lee v Wilson* [1934] 51 C.L.R. 276 at 287). As per *Regar Publications v Pillay* SCA3/1997 and *Talma v Henriette* (1999) SLR 108, a defamatory statement is one injuring the reputation of another as it exposes them to hatred, contempt, ridicule or lower them in the estimation of right-thinking members of society. In the **Talma case** (supra), the court held as follows —
- "It is a pre-requisite that for any defamatory statement to be actionable, there should be publication, in the sense that the words complained of were brought to the actual knowledge of some third person, that is a person other than the person defamed. If the plaintiff proves facts from which it can be inferred that the words were brought to the knowledge of some third person, he would have established a prima facie case."*
15. In *Esparon v Fernez and anor* (1980) SLR 148, Sauzier J succinctly described the law of defamation as follows —

⁴ (1696) Comb 358, 5 Mod Rep 163, Holt KB 294, 90 ER 527, 90 ER 834, Carth 405

"Under article 1383 of the Civil Code of Seychelles, defamation is governed by the principles of English Law. The following are the relevant principles for this case:

- 1. A man commits the tort of defamation when he publishes to a third person words containing an untrue imputation against the reputation of another.*
- 2. Words which impute to the plaintiff the commission of a crime for which he can be made to suffer corporally by way of punishment are actionable without proof of special damage.*
- 3. A man, stating what he believes to be the truth about another, is protected in so doing, provided he makes the statement honestly and without any indirect or improper motive."*

16. It was held in the case of *Barrado v Berlouis and Another* (1993) SLR 12 that —

"...truth of the allegation or imputation is a matter of defence, since the falsity of defamation is presumed until disproved by the defendant."

17. Similarly, in *Pillay v Pillay* [2013] SCSC 68 at para [30], it was held —

"A defamatory statement is presumed to be false unless the Defendant can prove its truth."

18. Further, in *Pillay* (supra) at para [29], it was held —

"There are five essential elements that a plaintiff must prove to establish defamation: (1) The accusation is false; (2) it impeaches the subject's character; (3) it is published to a third person; (4) it damages the reputation of the subject; and (5) that the accusation is done intentionally or with fault such as wanton disregard of facts or with malicious intention."

19. In *Pillay* (supra) at para [30], it was held —

"Allowable defences against defamation are justification which includes the truth of the statement, fair comment which is determined by whether

the statement was a view that a reasonable person could have held, absolute privilege when the statements were made in Parliament or in court, or they were fair reports of allegations in the public interest and qualified privilege, where it is determined that the freedom of expression outweighs the protection of reputation, but does not amount to the granting of absolute immunity. A defamatory statement is presumed to be false unless the Defendant can prove its truth.”.

20. The Defendants have filed a general denial of all allegations in the Plaintiff, and have averred that they have no knowledge of the events giving rise to the libel. They did not raise any of the defences listed above. It is settled law that parties are bound by their pleadings (see: *Antoine Leon v Volare (Prop) Ltd* [2005] SCCA 3). The court may not formulate a case for a party after listening to the evidence (*Hunt v R* [1987] SCAR 160).

The liability of the First Defendant

21. The proprietor of a newspaper may be held civilly liable even though the libel may have been published without his knowledge or in his absence (*Shepherd v Whitaker* [1875] L.R. 10 C.P. 502). However, before this court proceeds to make a decision on the merits of this case, it has to ascertain the legal status of the First Defendant. The Plaintiff as amended avers that "*The First Defendant is a registered political party in Seychelles and the owner of the Newspaper known as "Seychelles Weekly"...*". If the Seychelles United Party (SUP), is a registered political party, then it is deemed to be a body corporate under section 23 of the Political Parties (Registration and Regulation) Act (Cap 173), capable of being sued in its corporate name under section 33 of the Companies Act (Cap 40). It is to be noted that the only documents the Plaintiff has relied on as evidence in support of her claim are a "*Copy of Article dated 15th November 2013 of "Seychelles Weekly" Newspaper*" and a "*Letter of demand*". Where the "*Seychelles Weekly*" is concerned, its legal status is not evident from the pleadings. This is enough to dispose of the case against the First Defendant.

The liability of the Second Defendant

22. It was not disputed that the Second Defendant, Robert Ernesta, became the editor of the "Seychelles Weekly" Newspaper on 2 May, 2014, and that he did not have any knowledge of the letter which was published therein in 2013. However, before this court proceeds to make a decision on the merits of this case in relation to the Second Defendant, it has to ascertain the legal status of the Second Defendant. The Plaintiff as amended avers that "*the second defendant was the editor of "Seychelles Weekly" Newspaper and its caption states - "Mr Robert Ernesta Editor of Seychelles Weekly of Mont Fleuri, Mahe"*". Clearly the legal status of "Seychelles Weekly" is not evident from the pleadings. This is enough to dispose of the case against the Second Defendant.

23. *The liability of the Third Defendant*

24. The common law spreads the net of liability very wide, and the printer of the defamatory material may be deemed to have participated in the publication. In an old case, a printer's servant "*whose business was only to clap down the press*" was held liable, though no circumstances were offered of his knowledge of the import of the paper (*R v Clerk* [1728] 1 Barn. 304).

25. Be that as it may, as explained above, this court has to ascertain the legal status of the Third Defendant. The Plaintiff as amended only avers that "*the third Defendant was the Publisher and Printer of the same newspaper, published on the 15th November, 2013...*" and its caption states "*Weekly Publications Publisher and Printers of Seychelles Weekly Herein represented by Mr Robert Ernesta of Mont Fleuri, Mahe*". Clearly, the legal status of "Weekly Publications" is not evident from the pleadings. This is enough to dispose of the case against the Third Defendant.

DECISION

26. In view of the above, this court is of the opinion that the Plaintiff has failed to establish her case on a balance of probabilities against the Defendants. This court dismisses this suit and makes no order as to costs.

Signed, dated and delivered at Ile du Port on 29 May 2018

A handwritten signature in black ink, appearing to read 'F. Robinson', written in a cursive style.

F Robinson
Judge of the Supreme Court

*Sitting as
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