

SUPREME COURT OF SEYCHELLES

Reportable/Not Reportable / Redact
[2019] SCSC
CS 64/2014

In the matter between:

CHRISTEL MARIE
(rep. by Alexandra Madeleine)

Plaintiff

and

LOUIS ROBINSON
(rep. by Karen Domingue)

Defendant

Neutral Citation: *Marie Christel v Louis Robinson* (CS 64/2014) [2019] SCSC(19th February 2019).

Before: Andre J

Summary: Defamation – Article 1383 (3) of the Civil Code (Cap 33)

Heard: 5th December 2018

Delivered: 19th February 2019

ORDER

JUDGMENT

ANDRE J

[1] This Judgement arises out of a Plaint of the 4th August 2014 filed by Christel Marie (“*Plaintiff*”), alleging defamation as against the Louis Robinson (“*Defendant*”), and praying for an Order for the Defendant to pay compensation in the sum of Seychelles Rupees Three Hundred Thousand (*S.R. 300,000/-*), along with interests and costs and to issue a prohibitory injunction against the Defendant not to publish and/or cause to be published any defamatory statement against the plaintiff.

[2] The Defendant by way of statement of defence of the 8th July 2015, denies the plaint to the extent of the defamatory words alleged and claims that his statements were justified in all the circumstances of the case and moves for dismissal of the plaint.

[3] For the purpose of this Judgement, the following are the salient factual and procedural background thereof.

[4] At all material times the Plaintiff worked for the Seychelles Police Force as a Superintendent of the Criminal Investigation Division. The Defendant and herself lived in concubinage for a period of twenty eight (28) years and their relationship broke up but they continued to share the same home in Anse Aux Pins for some time and despite living in the same house, their communication became strained. On the 28th August, 18th September and 19th October 2013, the Defendant went to the Anse Aux Pins police station and made oral complaints/statements, which were reduced into writing about the plaintiff's behaviour towards him. These statements were made to police officers. The contents of these statements were as follows:

(i) *"I want to inform the police that I believe that it is this lady who is doing these things, given that she has split with me and we no longer have a relationship together. She also told me that she wants to see the end of me. As a result, these eight towels have been torn."*

(ii) *"Since we separated, this lady who is a Superintendent in the Seychelles police force has been making my life miserable. Even though I have reported her to the police and gone to see the Commissioner, nothing happens and I don't know if it's because she's a police officer. On many occasions Christel Marie has cut up my clothes, underwear and towels."*

(iii) *“I want to say that because of the things that this lady is doing, I don’t feel safe. I am scared in case she does something to me.”*

(iv) *“This lady spends all her time cutting up all my towels, underwear and clothes. I don’t know what she does with them, because she is capable of doing something more serious than this.”*

[5] As a result of the illustrated statements, the Plaintiff filed the current plaint. She claimed that the statements tarnished her reputation and she suffered distress and embarrassment. She further claimed that the words were defamatory in their ordinary meaning or by innuendo in that the Defendant was suggesting that she abuses her high position and status in the Police Force; that she visits witch doctors, which was why she was cutting up his clothes and towels; that she breaks the law, and was capable of harmful criminal acts against the Defendant; that she was malicious and of bad character; and that her actions were unbecoming of her status as a Superintendent. That the statements were made with the specific aim of tarnishing her reputation and to undermine her position as a Superintendent in the eyes of her junior officers. She claimed therefore that her integrity and professionalism as an officer may be questioned, especially by junior colleagues. The statements were made at the Anse Aux Pins station in the presence of her police officer colleagues and members of the public. And they are now public records, as any officer can access them, which could lead to her embarrassment and ridicule. She claimed that she was entitled to damages as claimed.

[6] The Defendant as indicated above, filed his defence, wherein, he in a gist, admitted that he made the statements and their contents. However, he stated that he made the statements to the police as a way of exercising his rights, which he believed was a

remedy available to all citizens. He denied that he made the statements with the intention or innuendo to defame or tarnish the Plaintiff's reputation. He testified that he was justified in making the statements to the police, as these were statements of facts. The statements, in his view, are police statements and are thus not part of public record. Thus, the Plaintiff was not entitled to any damages.

[7] At the hearing, the Plaintiff testified as well as two other witnesses and the Defendant also testified in favour of his defence and called one witness.

[8] Vincent Marie, the Assistant Superintendent at Aux Pins Police Station testified that he knew the Plaintiff officially and confirmed that the Defendant made several complaints of damage to his personal property at the said police station, on 27th August, 18th September and 19th October 2013. All statements were recorded in the occurrence book, also contained in the investigation diary and in statements. In respect of the first statement of the 27th August 2013, he testified that the defendant complained that the Plaintiff had damaged his personal property and cut holes in his shower cap. He sought assistance and intervention of the police. The complaint was recorded by one Constable Belle. In the second statement of the 28th August 2013, the defendant complained that the Plaintiff had cut his white t-shirt, towel and underwear. One Constable Denousse examined the items and found some holes. Entries of same were made in the occurrence book, which book is accessible to police officials. The third and last complaint of 19th October 2013 was also entered into the occurrence book as per police procedures and practice.

[9] Under cross examination, Superintendent Vincent Marie confirmed that the Plaintiff did not work at Anse Aux Pins station and that he did not personally take the statements afore-mentioned. He further testified that it was common for members of public to report

and make complaints at the police station and that statements recorded are part of The statements were police records, and not public records and thus only police officers could access them.

[10] The Plaintiff also testified and confirmed details concerning her and the Defendant's concubinage and relationship in the aftermath of the separation (supra). She confirmed working for the police for 39 years, and as a Superintendent since 2012. She was presently in charge of the Communication and Command Centre at the Central Police Station. That at the times of the alleged incidents herself and the Defendant had broken up but still shared the same house. *She became aware of the complaints and statements of the Defendant through colleagues. Police officers were talking about the allegations he had made against her. She went to the station, as she was entitled to do through her work, and saw the entries in the occurrence book. She also saw the statements. They said that she had damaged the Defendant's property. She was also called to the Commissioner's office and informed of the allegations and investigation.*

[11] Plaintiff further testified that the allegations of criminal damage to Defendant's property was frivolous and made with intent to tarnish her reputation. That they suggested that she had used her position to remain untouchable. People in Anse Aux Pins were discussing the matter and all the police officials who could access the entry book had access to it. She felt hurt and embarrassed by the allegations, since she had never, in her years of service, had any disciplinary measures taken against her. Being called in and investigated as a senior officer was tarnishing her reputation and this impacted how she felt she was viewed by junior officers. She felt she was made a laughingstock and the defendant had no reason to make the statements he did as they each lived separate lives even though

they were living under the same roof. She felt that he was motivated to make these allegations to try and get her to move out of the house. He had tried to have her evicted through court proceedings but was not successful and the Court allowed her to stay pending the final determination of the case. He did all sorts of things to get her to move out. Ultimately, she did move out for reputation had suffered because of the allegations hence she was entitled to damages as claimed.

[12] Under cross examination, the Plaintiff conceded that members of the public were entitled to lodge complaints with the police when their property was being damaged. She further consented to the fact that that their relationship was acrimonious at all material times and that they each filed civil suits against each other at various forums, including the Family Tribunal. The Plaintiff disputed that the Defendant's statements were police documents and unavailable to the public. She agreed that she was not prosecuted on the allegations made by the Defendant since there was no evidence and that no disciplinary actions ensued against her. She conceded that the Defendant had followed the ordinary steps to file his complaints and was dealt with in the normal manner. That it was inevitable that persons, including the public, could hear when some complaints were made due to the station's layout.

[13] The Plaintiff further testified in cross examination, that although the Defendant was entitled to lodge his complaint, he had done so with the aim of defaming her. The complaints impacted the way junior officials looked at her. People spoke about her. She had worked hard to establish a good reputation as a senior officer and it had been tarnished by the Defendant.

[14] The Defendant on his part testified in a gist that he had no malicious intent in making the complaints against the Plaintiff. The Plaintiff had damaged his property and he had proof of same hence the complaints. At the time, he and the Plaintiff were the only ones living in the same house. He had noticed cuts in his towels, underwear and other garments when he came back home after he had been out. He had no other option but to go to the police even if the Plaintiff was an important member of the Police Force. He was told at Anse Aux Pins police station that they could not help him because of the Plaintiff's high ranking in the Police Force. The relationship between them had become acrimonious and this was his only way of finding peace. Defendant further testified that the only persons present at the time he made the complaints were police officers and that he did not go out to the public to discuss them. He merely asked the police to intervene so that the Plaintiff would stop. When asked whether he had wanted anything to happen to the Plaintiff in her duties as a police officer in his report of the statements, Defendant testified that he wanted to sort out the situation between them. He denied making Plaintiff and or intended to make Plaintiff a laughing stock. He disputed damages as claimed.

[15] On cross-examination, the Defendant conceded that the complaints and statements made against the Plaintiff was to ensure that she moved out of the shared home. He felt that what Plaintiff was doing was intolerable. He conceded that at the time he had also filed a claim to try and evict her from the house. He denied that there were no justifications for his complaints other than to get her out of the house. He denied making the complaints to tarnish her good name as an officer and to undermine her. Defendant further denied the suggestion that he had damaged his property himself and confirmed that no investigation or prosecution followed his complaints. He reiterated that his complaints and claims were

true and that he had proof of same. Further, it was testified that the Plaintiff abused her position because nothing came out of his complaints. It was his view that she was malicious, of bad character and acted in a way that was unbecoming of a police officer.

[16] The witness for the defendant one Roger Thyroomooldy, a former police officer, and he had worked as police officer and the Plaintiff was his superior and that the Plaintiff used to discuss the altercations she was had with the Defendant with him. He was not aware that any disciplinary steps had been taken against the Plaintiff. He testified further, that the Plaintiff had confided in him and told him that she had torn some of the Defendant's clothes and she wanted him out of the house and that he was not privy of the statements made by the defendant against the Plaintiff.

[17] Having illustrated the salient evidence pertinent to this matter, I shall now move on to the applicable law and its analysis thereto.

[18] It is trite that the law against defamation is clearly recognized in several provisions in the Civil Code of Seychelles (*hereinafter referred to as the "Civil Code"*). For instance, Article 1383 (3) recognizes defamation as a valid tort governed by the English laws of defamation.

[19] Article 1383 (3) of the Civil Code recognizes the principles that there may be defamation of a general nature against a person and defamation that suggests the commission of a crime against a person. The principles illustrate that, firstly, a man commits the tort of defamation when he publishes to a third person words containing an untrue imputation against the reputation of another; and secondly, 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. The said principles

enunciated also protects persons from an action for defamation by establishing two justifications, namely, the truth of words published and good faith or no improper motive.

[20] The requirements and justifications for defamation has been subject to scrutiny by our local cases law inter alia, (***Pillay v Pillay (CS 15/10) [2013] SCSC 68 (16 October 2013)***), where in the elements of the tort of defamation was clearly summarized as follows: *(a) a false statement or accusation was made against them; (b) that impeached her character;(c) damaged her reputation; (d) because it was published to a third person; and (e) it was done intentionally or with fault. Once these are established, the defendant may justify the statements by raising any of the following defences namely, (a) that the statements are true; (b) that it is fair comment; or (c) absolute privilege, where the statement was made in Parliament.*

[21] It is thus clear that the impugned statements or accusations must have an adverse effect on the plaintiff and in the case of (***Regar Publications v Pillay SCA3/1997 and Talma v Henriette (1999) SLR 108***), *it was held, that 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.(Reference was also made to (Latour v Maillard (CS 120/2011) [2016] SCSC 54 (02 February 2016) para 17.)*

[22] It follows, thus, that when a defendant raises a justification of truth, the burden rests on him to show/prove that the statement is indeed true. Thus, the Court has held that a defamatory statement is presumed to be false unless the defendant can prove its truth. (*Reference to Pillay case*). And as in any civil matter, the proof is on a balance of probabilities. (Reference is made to (***Bastienne v Ernesta & Another (CS 108/2016) [2018] SCSC 663 (11 July 2018.)***)

[23] Now, the Plaintiff's evidence as summarized (supra) clearly illustrates that Plaintiff's claim was that the Defendant, through the three statements made at the police station in 2013, made accusations against her that was intended to harm her reputation and put into question her ability to hold the office she had. Her evidence was that the statements were false, that the Defendant made the claims of damage to his property to try to get her out of the house. Further, to belittle her before junior colleagues. *She testified that although the statements were not open for public viewing, it nevertheless qualified as publication for purposes of defamation. This is because the Defendant's aim was to ridicule her before her colleagues. She also alleged that some members of the public were present at the station at the time of the statements, and that people spoke about her in the public. But, she conceded that nothing had happened to her career in light of the statements. She was called in by the Commissioner who informed her about the statements, but no disciplinary steps were taken. She was also not criminally charged. Vincent Marie, the Assistant Superintendent at Aux Pins Police Station who testified on behalf of the Plaintiff on his part, merely confirmed the statements, and that only police officials could access them. His evidence did not add or detract from the case in any way.*

[24] The Defendant's main justification for making the statements was that they were true, and that he was exercising his right as an ordinary citizen to report what he viewed as damage to his property. He conceded that he wanted the Plaintiff out of the house but wanted this because he claimed she made his life intolerable with her actions. Roger Thyroomooldy, a former police man who claims to had been close to the Plaintiff and worked with her and testified that the Plaintiff had told him that she had damaged the

Defendant's property later upon cross examination, became unclear whether they worked together during the relevant times the complaints were made.

[21] Both the Plaintiff and Defendant have conceded in their oral testimony that there was animosity between them at the time of these incidents and that they were pursuing suits against each other before several legal forums. They have both conceded that they were the only ones in the house at the time but each has a different view about what happened to the Defendant's personal property as described. Since there was no police investigation into the complaints, the claims were not established as true or untrue in a criminal trial. This leaves to this Court the invidious task of assessing whether the Defendant has proved that the statements he made are true.

[23] The oral testimony and the surrounding circumstances of this case as transpired on records illustrate clear acrimony between the parties at all material times. The Defendant, on his own account testified that he wanted the Plaintiff to leave the house. They had parted ways after 28 years and they were the only ones in the house. The Defendant had failed to obtain an Order to have the Plaintiff removed from the house pending legal proceedings. The Plaintiff refused to move out. In his own evidence, the Defendant further testified that he felt that the Plaintiff was untouchable in view of his ranking in the Police Force. He felt that her position protected her. He insisted that he had a right to complain as an ordinary member of the public, but he did not seriously pursue criminal charges against her, despite making claims that he feared she could harm his person. It seems probable thus, that the statements were indeed false.

[24] Turning to the second element for the tort of defamation, namely that there was intention to harm the Plaintiff's reputation. In that light, the defendant's aim was to get the Plaintiff

to move out of the house, this he made clear during the hearing. To do so, he targeted her profession which, the evidence revealed was unblemished for many years. Any criminal charge could cause significant harm to any person's reputation, but especially to a police officer. The Defendant's evidence as illustrated reveals that he clearly intended to harm the Plaintiff's reputation.

[25] The third requirement being publication of a statement to establish defamation, in this instance, caused some debate during the proceedings. The Defendant's view was that since only the police had access to the statements, and no public members were implicated, this would not amount to publication. Whilst in ordinary parlance publication may be understood to mean publicized through some sort of manner, like word of mouth or media, the report of untrue statements at a police station against a police official whose colleagues will access the statements, does amount to publication. The defamation was targeted at her profession, and thus, publicizing it in the form of oral and written complaints with her colleagues does amount to publication.

[26] Finally, with respect to the last requirement for the tort of defamation as laid out in *Pillay case*, it must be considered whether plaintiff's reputation was indeed damaged by the Defendant's statements. The Plaintiff testified that she was ridiculed by colleagues and that she was embarrassed when she was called in to the Commissioner's office. On the other hand, the witness police Officer Vincent Marie did not testify about his perceptions and views of her following the statements. During the hearing, it was on several occasions sought as to why the person who had taken the statements from the Defendant had not testified and the Plaintiff indicated that she felt that people, especially junior colleagues talked about her and ridiculed her. But this evidence was never adduced. On

that latter basis, it is impossible on the basis of evidence led for the Court to gage what effect the statements had on Plaintiff's reputation and whether her reputation was damaged as a last element of the tort of defamation thus it remains an open question at this stage and hence unproved to the required standard.

[27] It follows, thus, based on the above analysis of evidence, I find the plaint unproved as against the Defendant and the Plaintiff's plaint is dismissed accordingly with costs to the Defendant.

Signed, dated and delivered at Ile du Port on 19th February 2019.

ANDRE J