

**SUPREME COURT OF SEYCHELLES**

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**Reportable**

[2019] SCSC ...626

CS 99/2017

In the matter between

**MARTIN AGLAE**

*(rep. by Alexandra Madeleine )*

**Plaintiff**

and

**GERVAIS HENRIE**

*(rep. by Anthony Derjacques)*

**1<sup>st</sup> Defendant**

**XPRESS PRINTING**

*(rep. by Anthony Derjacques)*

**2<sup>nd</sup> Defendant**

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**Neutral Citation:** Martin Aglae v Gervais Henrie & Anor [2019] SCSC ...626

**Before:** Pillay J

**Summary:** Defamation

**Heard:** 10<sup>th</sup> September 2019 and 16<sup>th</sup> October 2019

**Delivered:** 24<sup>th</sup> July 2019

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**ORDER**

**Plaint dismissed**

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**JUDGMENT**

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**PILLAY J**

- [1] The Plaintiff in this case seeks a judgment from this Court ordering the Defendants to jointly and severally pay a sum of SCR 1, 000, 000.00 in damages, with interest and costs, and to issue a permanent injunction, preventing the printing of any further publications by the first and second Defendants in respect of the Plaintiff.

- [2] The action is based on an article headed “**Linyon sanzman Leader & SG in troubled waters**” which appeared in the issue of ‘Le Seychellois Hebdo’ dated the 17<sup>th</sup> June 2016.
- [3] The Plaintiff avers that the said article falsely and maliciously stated in respect to him that:
- 5.1 *“Both the Leader and the Secretary General of Linyon Sanzman are facing serious accusations of theft”*
  - 5.2 *“Martin Aglae...has had a case lodged against him at the Seychelles Federation of Workers’ Union (SFWU). He is being accused sacking an officer and refusing to pay the seven days notice according to the law.”*
  - 5.3 *“...the two cases are the latest in a series of bad publicity surrounding the party since it came into existence after stealing the name “Linyon Sanzman” from another political movement.”*
- [4] The Plaintiff was at all material times engaged in/on the political scene of Seychelles and trading as Marpol Security, a registered business providing security services to individuals and/or companies in Seychelles.
- [5] The first Defendant was at all material times the Editor and the second Defendant a printing company undertaking the printing of weekly newspaper called ‘Le Seychellois Hebdo’ with large circulation throughout Seychelles and on the first Defendant’s social media network, Facebook and twitter.
- [6] The Defendants denied that the article of 17<sup>th</sup> June 2016 in the “Le Seychellois Hebdo” was defamatory. The Defendants defence is that the article titled “Linyon Sanzman Leader & SG in trouble waters” is based on fact, is true and is fair comment on the basis that a “company with the business name Marpole Security was sued before the Employment Tribunal by its employees and paid the workers before the said Tribunal for breaches of the Employment Act in ET 36 of 2016 on 23<sup>rd</sup> May 2016, ET57 of 2016 on 24<sup>th</sup> February 2017 and ET122 of 2016 on 6<sup>th</sup> December 2016”.
- [7] The Defendants admitted that the article and the words complained of made reference to the Plaintiff. The Defendants further admitted that the article was widely circulated across Seychelles and on the first Defendant’s social media page on Facebook with over 6424 viewers.

- [8] The Defendants denied that the article and the words complained of, in their natural and ordinary meaning or innuendo mean or are understood to mean that the Plaintiff is dishonest, a criminal, a traitor and fraudster. The Defendants denied that the article and the words complained of are false, malicious and calculated to expose the Plaintiff to public ridicule, odium and hatred and constitute grave libel.
- [9] The Defendants' position is that the Plaintiff is distorting and exaggerating the interpretation of the articles. The articles according to the Defendants are simple, truthful and fair comment. They are true, based on facts, bona fide, fair and in the public interest to be kept informed and to maintain transparency and accountability. The Defendants denied that the article was malicious or that it was calculated to give rise to hatred, public odium or ridicule.
- [10] The Plaintiff relied on the cases of **Esparon v Fernez and Anor (1980) SLR 148** as well as **Pillay v Pillay (unreported) [2013] SCSC 68**. The Plaintiff also relies on the case of **Ramkalawan v SPPF [2017] SCSC 445** and **Pillay v Regar Publications and Ors (unreported) CS 11/1996**.
- [11] The Plaintiff submitted that based on the evidence all five elements of the tort of defamation as established in the case of **Pillay v Pillay** above have been satisfied being that the (1) the accusation is false in that the cases the Defendants rely on are either dated after the date of publication of the article or were dismissed and the name Linyon Sanzman had not been registered to any party (2) it impeaches the subject's character as Leader of Linyon Sanzman and in his business "Marpol Security" (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 in that the statements were made intentionally as Plaintiff's previous affiliation with the political party LDS to which first and second Defendants are associated.
- [12] The Defendant relied on the cases of **Pillay v Regar Publications 1997 SLR 125** as well as **Maurice Lousteau Lalanne v Regar Publications** with regards to the issue of damages.

[13] The Defendants submitted that the evidence of the Defendants' witnesses were cogent and truthful. It was the Defendants' submission that the Plaintiff had failed to prove his case as lawfully required, that the Plaintiff had no credibility and should not be believed.

[14] It is in evidence that the Plaintiff is the director of Marpol Security and the Leader of Linyon Sanzman. The Plaintiff testified that Linyon Sanzman was registered on 5<sup>th</sup> April 2016. He testified that at the time the article was written he was not facing any accusation of theft and that the statement in the article was purely malicious and to tarnish his reputation. It was his evidence that the workers union does not deal with any cases but he confirmed that in May 2016 he had a case at the Employment Tribunal regarding an employee. It was further his evidence that at the time the article was published the cases had been settled. It was also his evidence that when he registered the party 'Linyon Sanzman' there was no other party using the name of 'Linyon Sanzman'. The Plaintiff denied stealing any name from any movement or anybody whatsoever. He stated that "the sole agenda at this time was to tarnish the reputation of the party and myself and to try to come up with stories that will get the newspaper to sell out."

[15] Now as to the law as regards defamation.

[16] In **Bouchereau v Guichard (1970) SLR 33**, Souyave CJ confirmed the basic ingredients necessary to prove a case of defamation in Seychelles including the fact that publication is a prerequisite to a claim for defamation.

[17] In **Esparon v Fernez and anor (1980) SLR 148** Sauzier J clearly described the law of defamation as follows:

"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.”

[18] Sauzier J expanded on the law of defamation in **Biscornet v Honoré (1982) SLR 451**, stating that what the plaintiff must contain in a case of defamation are the words complained of, the date on which they were published and the names of persons to whom they were published. They are material facts which must be pleaded and proved.

[19] Now to the decision. I do not propose to consider the article as it appears but from the third paragraph upwards.

[20] The impugned article dated 17<sup>th</sup> June 2016 was produced. It is not in dispute that article was indeed published in Le Seychellois Hebdo and widely circulated.

[21] The Plaintiff testified that the article in the Le Seychellois Hebdo Newspaper gave his party Linyon Sanzman bad publicity<sup>1</sup>.

[22] Mr. Mancienne for the second Defendant testified that the name Linyon Sanzman was a name used by a group of people made up of the leaders of the parties or the candidates who had taken part in the first part of the Presidential election in December 2015. It was his evidence that this movement was formed right after the first round of the Presidential Election<sup>2</sup>.

[23] Mr. Mancienne testified that the group used the word Linyon Sanzman as much as possible in everything they did, in publications, in radio broadcasts and on calendars. He produced the Linyon Sanzman calendar for 2016.

[24] The relevant part of the article relating to Linyon Sanzman reads as follows:

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<sup>1</sup> Page 10 of the proceedings of 10<sup>th</sup> September 2018 at 10am

<sup>2</sup> Page 16 of 10<sup>th</sup> September 2018 proceedings at 2pm

*The two cases are the latest in a series of bad publicity surrounding the party since it came into existence after stealing the name 'Linyon Sanzman' from another political movement.*

- [25] It is in evidence that there was no party registered by the name of Linyon Sanzman prior to the Plaintiff registering the name. However it is also in evidence that the name was in use by a group of people at the time that the Plaintiff registered the name.
- [26] In cross examination the Plaintiff denied knowledge of any movement utilizing the name Linyon Sanzman as their political slogan in the presidential run-off<sup>3</sup>. When questioned further he stated that he was not in politics at the time, yet in the next breath admitted that three months after the presidential elections, in March, he registered the name Linyon Sanzman. According to the Plaintiff's evidence he chose the name. The name was discussed by his committee and they got it registered.
- [27] I am quite dumbfounded as to how a person who worked with a political party just before the presidential election and who forms his own political party a few months after the presidential elections would not have heard of Linyon Sanzman or for that matter seen the slogan. After all one does not wake up one day and jump into politics. One has to be following politics to get into politics.
- [28] In any event I take notice that the name Linyon Sanzman was widely in use with huge billboards around Mahe with the pictures of the leaders of the different parties and their slogan soon after the December 2015 presidential elections. It is unlikely that the Plaintiff would have missed them if he was living in Seychelles at the time.
- [29] On that basis I have to hesitation in saying that I do not believe the evidence of the Plaintiff that he was not aware of any persons using the name Linyon Sanzman. In fact his evidence that he 'chose' the name speaks volumes because that is what the Plaintiff did, he picked a name coined by someone else. Even when asked he could not explain where he got the name from. On this issue I accept the evidence of the Defendants the name Linyon

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<sup>3</sup> Page 23 of the 10<sup>th</sup> September 2018 proceedings 10am

Sanzman was coined and used by a group of party leaders including themselves which the Plaintiff went and registered as his own.

[30] The fact however remains that the name though in use by this group of leaders had not been registered by them. Can it then be said that it was a fact or fair comment by the Defendants to say in the article that the Plaintiff ‘stole’ the name?

[31] Black’s legal dictionary defines ‘Stealing’ as a ‘word used to describe the actions of a person who takes something that is not his to take’.

[32] Collins English Dictionary defines ‘steal’ as ‘taking something from someone without permission or unlawfully especially in a secret manner’. It further defines ‘steal’ as ‘to obtain surreptitiously, to appropriate ideas without acknowledgment’.

[33] In its ordinary sense then stealing means to take something which is not yours with the intent not to return it.

[34] In the case of **Pillay v Pillay (unreported) [2013] SCSC 68** Dodin J in explained the defences available in cases of defamation in Seychelles. He stated thus:

*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.*

[35] I note that all parties in the case were public figures, on the political scene<sup>4</sup> during the relevant period and manner of the registration of the political party ‘Linyon Sanzman’ was a matter of public interest.

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<sup>4</sup> Roger Mancienne for the Defendant testified that he is the Part Leader of LDS and was the running mate in the Presidential elections of 2018 (Page 16 and 21 of 10<sup>th</sup> September 2018 at 2pm). Gervais Henrie testified he is a member of the National Assembly and the one leading the team working on the Party Political Broadcast during

- [36] I would therefore answer the above question in the affirmative. At the least it was a fair comment for the Defendants to make. Though legally the name was not registered to that movement or group of people it was a name coined by them and used by them and “any ordinary right-thinking member of society”<sup>5</sup> would view the action of the Plaintiff in taking a name widely used by others and registering that name as his as stealing.
- [37] With regards to the case registered at the Seychelles Workers’ Union, the article was published on 17<sup>th</sup> June 2016. The Plaintiff confirmed that in May 2016 he had a case before the Employment Tribunal regarding an employee<sup>6</sup>. It was his evidence that the worker had filed a case against his company but that when the claim came up before the Employment Tribunal the employee had already been paid.
- [38] According to Mr. Henrie the article was referring to one Philip Marengo<sup>7</sup>. Mr. Henrie testified that the man, Marengo, had gone to the Federation of Workers Union to get the Union to represent him in his claim against MarPol and after he left their offices Marengo came to his office at Arpent Vert to tell him the story which he supported with documents<sup>8</sup>.
- [39] Mr. Henrie asserts that after the Defendants wrote the story Marpol paid “Maringo” and that was the end of the matter. That fact cannot be verified, however it is safe to say that settlement would have had to be on a date after 13<sup>th</sup> May 2016. The Plaintiff in any event agrees that there was a case whereby the worker was claiming notice which was settled by the time it came up before the Employment Tribunal.
- [40] I note that the article refers to the particular case dating back to May 2016 and the complainant being accused by Marpol of reporting to work drunk. In fact as part of D4 there is included a letter of termination of employment and a note whereby Philippe Maringo accepts a cheque as his final payment both documents dated 13<sup>th</sup> May 2016. The

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the Presidential elections of December 2015 (Page 1, 7 and 8 of 16<sup>th</sup> October 2018 proceedings at 2pm). Martin Aglae is the leader of ‘Linyon Sanzman’ (Page 3 of 10<sup>th</sup> September proceedings at 2018 at 2pm)

<sup>5</sup> Regar Publications v Pillay SCA 3/1997

<sup>6</sup> Page 9 of the 10<sup>th</sup> September 2018 proceedings at 10am

<sup>7</sup> Page 8 of the 16<sup>th</sup> October 2018 proceedings at 2pm

<sup>8</sup> Page 10 of the 16<sup>th</sup> October 2018 proceedings at 2pm

basis for the termination, according to the letter, is that Mr. Marengo had been warned several times and the day before had been found drunk while on duty.

- [41] As for the first paragraph of the article “Both the Leader and Secretary General of Linyon Sanzman are facing serious accusations of theft Mr. Aglae testified that he was not facing any accusations of theft at the time the said article was written<sup>9</sup>. It was his evidence that the statement was purely malicious and made to tarnish his reputation. For his part the first Defendant simply states it is fair and true<sup>10</sup>.
- [42] On a plain reading of the article it is clear that that first paragraph is the lead up to the rest of the article. The article is then broken into two parts, one about the Plaintiff and the issue with the worker and the other about Dave Jeanne, with the conclusion about “the two cases [being] the latest in a series of bad publicity”.
- [43] As for the damage to the Plaintiff’s reputation, the Plaintiff testified that as a result of the article saying that he stole the name Linyon Sanzman it portrayed him as a traitor and dishonest person. He went on to add that he had to spend days and days explaining to his members that the article was false and at times some members lost confidence in him<sup>11</sup>.
- [44] With regards Marpol he stated that “For Marpol, it was also difficult but luckily the staff did not buy ‘Le Seychellois Hebdo’, so we did not get this much question from them but we get some questions from the clients.”
- [45] If that were the case why did these members and clients not come to testify as to their thoughts and opinions of their leader and security service provider after that article was published? I find that the Plaintiff’s own evidence is not sufficient to show that there was damage to his reputation more so in view of the issues as to his credibility as discussed above.
- [46] On the basis of the above I dismiss the Plaintiff. Each side shall bear their own cost.

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<sup>9</sup> Page 8 of the 10<sup>th</sup> September 2018 proceedings at 10am

<sup>10</sup> Page 3 of the 16<sup>th</sup> October 2018 proceedings at 2pm

<sup>11</sup> Page 14 of the 10<sup>th</sup> September 2018 proceedings at 10am

Signed, dated and delivered at Ile du Port on *24/12* *July 2018*

*Asy*

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Pillay J