

IN THE SUPREME COURT OF SEYCHELLES

Reportable/Not Reportable / Redact

[2019] SCSC-1017

CS No. 28/2018

In the matter of :

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**WAVEL CHARLES RAMKALAWAN**

*Plaintiff*

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**AND**

**ALLEN CAMILLE**

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

*(rep by Mr. B. Hoareau)*

**JOHAN LOZE**

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

*(rep by Mr. B. Hoareau)*

**DAWOOD DUGASSE**

*3<sup>rd</sup> Defendant*

*(unrepresented)*

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**Neutral Citation:** *Ramkalawan Wavel Charles v Camille Allen & Ors* (CS 28/2018) [2019]

**SCSC 1017 (18<sup>th</sup> November 2019).**

**Before:** Andre J

**Summary:** Defamation in general and via social media: the tests applicable; damages: the appropriate amount for damages to be awarded by a balance of competing interests.

**Heard:** 15 July 2019

**Delivered:** 18 November 2019

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## ORDER

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### The following Orders are made:

- (i) The plaintiff's plaint is granted in relation to the first defendant;
- (ii) The plaintiff's plaint is dismissed in relation to the second defendant;
- (iii) The first defendant is to pay to the plaintiff the sum of Seychelles Rupees Fifty Thousand S.R.50,000/- in damages;
- (iv) Costs and interest of the suit to be paid by the first defendant.

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## JUDGMENT

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ANDRE J

### Introduction

- [1] The question for determination in this matter is whether Mr. Allen Camille a singer and songwriter ("first Defendant") and Mr. Johan Loze a moderator in a group on Facebook known as *Nouvel Anba Langar* ("second Defendant") have defamed Mr. Wavel Ramkalawan ("the plaintiff"), and if so, whether they should be ordered to pay damages for the prejudice suffered by the plaintiff as a result.

### The factual background

- [2] As a brief factual background to the plaint, the plaintiff is the Leader of the Opposition of Seychelles, an executive member of the *Linyon Demokratik Seselwa* ("LDS") and an Anglican priest. He alleges that the first and second defendants have defamed him by virtue of their involvement in the uploading of a video clip of a song on the Facebook page of a group called *Nouvel Anba Langar* ("NAL") on 20 February 2018, and in respect of the first defendant by the distribution of a musical CD with the same song on

it. The plaintiff seeks damages of One million Seychelles Rupees(SR. 1,000,000) from the defendants for the prejudice he claims to have suffered.

- [3] The song at the center of this case is *Lalit Pou Assumption* (“the song”). It concerns the Seychelles Governments’ dealings with the Indian Government in respect of the Island of Assumption, which has been a source of much political controversy.
- [4] The first defendant, Allen Camille, is a songwriter and wrote and sang the song. The second defendant was a moderator of the NAL Facebook group at the time that the video clip of the song was posted on the NAL Facebook group page though his knowledge of this fact at the relevant time is contested. The NAL Facebook had around ten thousand (10,000) members at the relevant time.
- [5] At the hearing on 15 July 2019, the plaintiff withdrew the case against the third defendant. The third defendant subsequently appeared as a witness for the plaintiff.

### **The Plaintiff**

- [6] The plaint dated 28 February 2018, identifies the first defendant as a songwriter and the second defendant as an administrator and or moderator of the NAL Facebook group.
- [7] The plaint alleges that the first defendant ‘circulated and published’ a song written by the first Defendant in Creole through the NAL Facebook group page and by the distribution of a video and musical CD. The second defendant is also identified as having circulated, published and distributed the song, presumably as a result of his role as an ‘administrator and or moderator’ of the NAL Facebook group.
- [8] The plaint avers that the song defames the plaintiff. The plaint submits that the lyrics of the song refer to the plaintiff either by virtue of the words’ natural and ordinary meaning or by innuendo. The plaint further avers that the words of the song, in their natural and ordinary meaning or by innuendo, ‘are understood to mean that the plaintiff is dishonest, a criminal, a traitor to his country and a fraudster who sold assumption island to the Indian Government’.

[9] The plaint goes on to state that the *'said statements are false, malicious and calculated to expose the plaintiff to public ridicule, odium and hatred and constitute grave libel'*. It further alleges that: *'By reason of the circulation, the publication and the distribution of the said statements and song by the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants (withdrawn), the plaintiff has been severely injured in his credit, character and reputation and has been brought into public ridicule, hatred and contempt generally and by his colleagues, friends and political supporters'* and that he has suffered prejudice in his capacity as the Leader of the Opposition, a member of the LDS, a priest and as a husband and father.

[10] ~~The plaintiff estimates that the prejudice suffered by him to be One million Seychelles Rupees. He therefore seeks an order from the court that the defendants are liable to pay him this amount, with interests and costs to the plaintiff. He also seeks a permanent injunction, preventing the further publication of the song and video.~~

### **The Defence**

[11] The Statement of Defence dated 10 July 2018 filed by the first defendant admits that he is a singer and songwriter and that he wrote and sang the song in question. However, the first defendant rejects the allegation that he circulated and published the song. He further avers that he did not authorize nor instruct any person to republish the song on the NAL Facebook page. Rather, he alleges that he has no connection with the NAL Facebook group and is unaware that the group published the song and video on 20 February 2018. He furthermore rejects that the words of the song refer to the plaintiff and that they hold the meaning referred to by the plaintiff. He seeks that the plaint is dismissed with costs.

[12] The second defendant by his Statement of Defence dated 10 September 2018 avers that 'he is neither an administrator nor a moderator of the facebook group known as *Nouvel Anba Langar*. He further denies knowing that the video of the song was shared on the NAL Facebook page on 20 February 2018, and denies the remainder of the plaint. He seeks that the plaint be dismissed with costs.

### **The Evidence**



### Plaintiff's case

[13] The Court was provided with a copy of the song (on CD) and the video (on Pendrive).

[14] The lyrics of the original Creole version of the song are as follows (Exhibit P3):

*Pa bezwen al kasyet konmela, espere  
I annan ankor keksoz pou deklare  
La nou pe al komans ek Asompsyon  
Pou sa 50milyon apre kontinyen rode bann-la pou donn malere  
Ekout byen*

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*Ler nou ti komanse tou bann zil ti pou Seselwa  
Me la ki'n arive nou pov pti Asompsyon  
Bezwen vann nou zil e met larzan dan zot pos gran fon  
Fer malere konnen ki pe arive ek nou zil Asompsyon  
Ki kote kot nou'n al mal  
Sa ki'n vann nou zil silvouple kan zot pou rann kont  
Wi, ki kote, kot nou'n al mal  
Kan malere pou ranmas larzan nou zil*

*Zot in vann deor*

*Sa gro 50 milyon pa dir nou zot pe al met dan en fon  
Sa ti en donasyon pou partaz avek malere  
Kontinyen rode bann larzan ki zot in vole  
Nou malere nou pe desann pou vin rekolte  
Eskobar pe asiz devan nou, zot pe vol nou vivan  
Me tasyon en zour zot vomi nou bann ta milyon*

*Nou larzan malere sa  
Ki kote kot nou'n al mal  
Kot nou malere konmsi nou ki zot lesklav*

*Wi Ki kote kot nou'n al mal  
Kan malere nou pou ganny morso larzan*

*Pa krwar nou pa o-kouran  
Sa ki'n al dan Lenn n'al aste fanmiy  
Sa ki'n ganny 150 mil pou met en gro bouke fler dan zot gro likou  
Pa krwar nou pa o-kouran n'al aste malbar  
Pou vin vot kont nou pou al conquer nou Assompsyon  
E nou malere nou fer zot konnen,  
Nou Seselwa nou fer zot konnen*

*Sa i nou patrimwann nasyonnal, nou pa pe donn malbar  
pou vin debout lo sa zil  
Nou pa pe allow malbar pou vin la lo sa zil  
Tourne laba, troun dan Lenn, dir malbar nou pa oule  
Malbar, nou pa oule ou pran Lasompsyon  
Nou Seselwa, nou dir sorti, troun dan Lenn  
Nou pa pou donn zot Lasompsyon  
Assompsyon i pour Seselwa e pa pe vann*

*Ki nou pe dir?*

*Ki mannyer tou etranze i vin Sesel, i vey nou pirat, i vey nou lanmer  
Ni en kwiye later, ni en lapel later zanmen zot demande  
Akoz ou malbar oule nou zil Asompsyon  
Savendir pou ganny eleksyon zot in fini pran larzan dan Lenn  
Pou ganny eleksyon, pou blok malere ankor*

*Ki nou pe dir?*

*Nou Seselwa nou patrimwann nasyonnal nou pa pe vann  
Assompsyon is not for sale*

Assompsyon i pa pour sa bann gro boug ki dan Lasanble  
 Ki pa pou zanmen ariv o-pouvwar  
 Nou fer zot konnen, nou pa pe donn zot Assompsyon  
 Bouze, troun dan Lenn, bez retourn Bombay, donn malere en lape  
 Si zot oule aste fanmiy, bez demerd zot, Assompsyon pa pou vann  
 E nou Seselwa nou pe fer zot konpran  
 Ler in vin 4mil malbar i fer 5mil piti, i fer 20mil zot  
 Prezan ki pou arive?  
 Ler tou Seselwa pou realize, pa pou kapab tir zot sa bann malbar pou troun dan Lenn  
 Bez troun dan Lenn, les malere ki mannyer i ete  
 Nou zil pa pe vann  
 E nou fer zot konnen la sa bann larzan ki zot in gannyen  
 Sa ki'n vole, ki'n bann tyek tyek par deryer ledò pou bez Montanny Posée  
 E nou fer zot deklare avan le 29 Zen ankor enn fwa nou fer zot konnen  
 Malere i ankor pe dir,  
 Rann sa larzan ki zot in vole kot Assompsyon  
 Rann sa larzan ki ..... lo Assompsyon  
 Rann tou sa bann larzan e malbar nou pe dir ou, nou pe dir zot,  
 nou Seselwa nou pe dir zot troun dan Lenn  
 Les nou Assompsyon trankil  
 Assompsyon pa pou vann  
 Nou pa pou vann malbar pou ganny eleksyon  
 Sa ki nou pe dir malbar al ferfout  
 Si zot krwar zot pou vann Assompsyon  
 Pou fer kanpany pou mont State House  
 Ki zot pe araze avek State House  
 Pankor ler pou zot mont State House  
 E nou malere nou pe dir zot pa pe monte State House  
 Pa krwar zot pe pran sa larzan  
 Al ferfout, ki zot pe araze pou al State House  
 Malere ki pe al State House, pa zot

*E nou malere, nou pa pou vot pour zot  
Sirtou bann gro latet, nou pe dir zot  
Zot pa pou ale State House  
Nou pa pou les zot pran larzan Assompsyon  
Pou blanm malere pour zot mont State House – ferfout*

*Ki kote kot nou'n al mal  
Sa ki'n vann nou zil  
Silvouple kan zot pou rann kont*

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*Wi, Ki kote kot nou'n al mal*

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*Kan malere pou ranmas larzan nou zil  
Zot in vann deor  
Ki kote kot nou'n al mal  
Kot nou malere konmsi nou ki zot lesklav  
Ki kote kot nou'n al mal  
Kan nou malere nou pou ganny morso larzan*

- [15] The English translation of the lyrics as provided by the plaintiff (*Exhibit P3*) are as follows:

*Don't go into hiding now – wait  
There are more things to declare  
We are going to start with Assomption  
About the 50 million, then continue searching guys to give to the poor*

*Listen carefully*

*When we started, all the islands were for Seychellois  
Now what's happened to our poor little Assomption  
Had to sell our island and put the money in their deep pockets  
Make the poor know what's happening to our island Assomption*

*Where did we go wrong*

*Those who sold our island, please when will you answer to us*

*Yes, where, did we go wrong?*

*When will the poor get money for our island?*

*They have sold it overseas*

*Don't tell us they are going to put the big 50 million in a fund*

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*This was a donation to share with the poor*

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*Continue searching for money that they stole*

*We, the poor are coming down to collect our dues*

*Escobars are seated in front of us, stealing from us in broad daylight*

*But beware, one day they might vomit all those millions*

*It's the money of the poor*

*Where did we go wrong*

*As if we the poor were their slaves*

*Yes, where did we go wrong*

*When will the poor get some money?*

*Don't believe we don't know what's happening*

*Those who have gone to India to buy themselves a family*

*Those who have got 150 thousand to have a big bouquet placed around their big neck*

*Don't believe we are not aware they went to bribe Indians*

*To come and vote against us to conquer our Assomption.*

*And we the poor we are letting you know*

*We Seychellois are letting you know*

*that our national patrimony we will not give to Indians*

*to come and stand on that island.*

*We will not allow Indians to come there on that island.*

*Go back, go back to India,*

*Tell the Indians we don't want Indians*

*We don't want you to take Assumption.*

*We, Seychellois, we say get out, go back to India.*

*We will not give you Assumption.*

*Assumption is for Seychellois and is not for sale.*

*What are we saying?*

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*How come all foreigners come to Seychelles,*

*they watch out for our pirates, they keep watch on our seas*

*They never ask for a spoon or a spade of earth*

*Why do you Indians want our Assumption*

*Which means to win the elections they have already taken money from India*

*To win the election, they will deprive the poor again.*

*What are we saying?*

*We Seychellois we are not selling our national patrimony*

*Assumption is not for sale.*

*Assumption does not belong to these big guys in the Assembly*

*Who will never be in power*

*We are letting you know we will not give you Assumption.*

*Move, go back to India, hell, go back to Bombay,*

*Give the poor a break*

*If you want to buy a family, to hell with you*

*Assumption will not be sold*

*And we Seychellois we are letting you know.*

*When 4,000 Indians arrive, and they produce 5000 children, this makes 20,000 of them*

Now, what will happen?  
 By the time all Seychellois realise,  
 it will be impossible to remove these Indians to send them back to India  
 Hell, go back to India, leave the poor as they are  
 Our island is not for sale.  
 And we are letting you know that all the money you got  
 Those who stole and got cheques underhand will be condemned to Montanny Posée  
 And you will have to declare by the 29<sup>th</sup> June,  
 Once again we are letting you know  
 The poor are still saying  
 Give back the money that they stole on Assomption  
 Give back the money that ..... on Assomption  
 Give back all the money and the Indians we are saying to you, we are saying to you  
 We Seychellois we are saying to them go back to India.  
 Leave our Assomption alone.  
 Assomption is not for sale.  
 We are not going to sell it to Indians to win the election.  
 What we are telling the Indians is to fuck off.  
 If they believe they will sell Assomption  
 To campaign to go to State House  
 What is this obsession for State House?  
 It is not yet time to go to State House.  
 And we the poor, we are saying to you, there is no going to State House.  
 Don't think you are taking the money.  
 Fuck off! what is this obsession to go to State House?  
 The poor are going to State House, not them.  
 And we the poor will not vote for them,  
 Specially for those big heads  
 We are saying to them, they will not go to State House  
 We will not let them take the Assomption money  
 To blame the poor for them to go to State House – Fuck off!

*Where did we go wrong*

*Those who sold our island, please when will you answer to us*

*Yes, where did we go wrong?*

*When will the poor get money for our island?*

*They have sold it overseas*

*Where did we go wrong*

*As if we the poor were their slaves*

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*Yes, where did we go wrong*

*When will the poor get some money?*

[16] The video clip of the song provided on Pendrive, which was allegedly posted on the NAL Facebook page, contains several images of the plaintiff from when he was in India and in Seychelles, including one image with the Indian High Commissioner to Seychelles. The video clip also contains a photo of Assumption Island.

[17] The plaintiff provided several exhibits in support of his case.

- a. Exhibit P2 appears to be a printout of the NAL Facebook group page at the relevant time (*around February 2018*). The image indicates that the group has around 10,000 members and that the group is a 'closed group'. The 'Admins and Moderators' of the Facebook page are listed as: Masin Koltar (Admin), Lerwa Sat (Admin), Dawoud Dugasse (Moderator); and Johan Loze (Moderator). The following page (3) shows a post from a 'Masin Koltar' on the NAL Facebook page. The post, which is undated (*'Yesterday at 11.30pm'*), contains a Youtube video clip of the song along with the following comment:

*Wavel la ou bred.*

*Track allen camille masiv.*



*Alor ou ti gany 150 mil pou al met bouke fler dan ou gro likou.*

The image shows that the post received various comments: at the time the image was taken, the post had received 32 reactions, 82 comments (most of which are in Creole), and 1 share.

b. Exhibit P5 is a copy of the receipt of the CD 'Chaos' by Allen Camille on 7 March 2018 from Dara Plus.

c. Exhibit P6 is a copy of a page from the Seychelles Nation newspaper of 1 March 2018. The heading is: 'Salient features of the Agreement between the Government of the Republic of Seychelles and the Government of the Republic of India on the Development, Management, Operation and Maintenance of Facilities on Assumption Island, Seychelles'. From this, it is clear that the Government of Seychelles (GS) has entered into an agreement with the Government of India (GI). The preamble refers to 'GS's request of support and cooperation to GI for GS to realise the said desires by developing the Facilities as part of the promotion of the bilateral cooperation on defence and security between them, and the acceptance on the part of GI to assist GS in the development of the Facilities for the realization of GS' said desires.' The purpose of the agreement is stated as (cl 3.1) 'to provide a framework for assistance by GI to GS for the development, management, operation, utilization and maintenance of the facilities on Assumption Island, Seychelles. The Facilities will comprise of aviation, maritime, communication and surveillance and miscellaneous infrastructure and facilities on a part of the Island ...' Clause 3.2.1 makes it clear that 'the Facilities will be owned by Seychelles'. Clause 3.6 provides the 'The Facilities will be jointly managed and administered by GS (through DFS) and GI'. Clause 3.6.9 provides that: 'The laws of Seychelles will apply at the facilities and to all personnel, vessels and aircraft proceeding to, or stationed on, the Island...'. Clause 3.10.2 stipulates that: 'The Agreement will be for a term of 20 years from its entry into force with an option for renewal for further periods of 10 years at a time'.

- d. Various further documents were produced as exhibits regarding the plaintiff's visit to India in January 2018 and speaking to his Indian heritage (Exhibits P7-P15).
- e. Exhibit P16 is a printout of a post on the NAL Facebook page by a 'Toya Sesel' in Creole. The post was apparently from 2 March 2018. The message has not been translated. *There is an image of the plaintiff.*
- f. Exhibit P17 is another post from the NAL Facebook page in Creole by a 'Masin Koltar'. The post was apparently also from 2 March 2018. The post includes a photograph of the plaintiff and the Island of Assumption.
- g. Exhibit P18 is a printout of a post of the first defendant. It appears to be a Facebook post, but it is not clear on what page / group. The post had received 7 reactions at the time the image was taken.
- h. Exhibit P19 is a printout dated 15 July 2019 of the NAL Facebook group 'about' page. It shows that the group has 13,099 members. As at that point, the group has no moderators but two administrators: a 'Nouvel' and a 'Kaka'.
- i. The final Exhibit, P20, relates to the process of adding a moderator to a Facebook group.

[18] The plaintiff gave evidence on his own behalf. He expressed the view that the song and video clip which is the subject of the plaintiff intended to convey that he was corrupt, and specifically that he took bribes to collaborate with the government to sell the Island of Assumption to the Indians. He considered that the song defamed him by saying (1) that he had gone to India to claim relatives there; (2) that he had been bribed with US\$150 000; and (3) that he got this money in India so that he could bribe people to vote for him so that he wins the elections. He initially saw the song and video on the NAL Facebook page after he asked his driver to show it to him. He considered that it was 'obvious'

that the song was about him from the lyrics. He gave evidence that he was upset when he heard the song and saw the video.

- [19] The plaintiff explained that his trip to India was not for the purposes suggested in the song, but rather to explore his family history that connected him with India. He referred to Exhibit P7, a newspaper article from the Indian Express dated 9 January 2018, which explains that ‘his great grandfather left the Indian shores over a hundred and thirty years ago and now Seychelles leader of the opposition, Wavel Ramkalawan is all set to undertake an emotional journey.’
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- [20] As regards the defendants, the plaintiff explained during cross-examination that the administrator and moderators for the NAL Facebook group have changed since the impugned post in 2018. He referred the Court to Exhibit P2 which shows the administrators and moderators at the relevant time (in 2018). It was his view that the second defendant would have known that he was a moderator of the group because he would have received a notification of the ‘invitation’ and would have had to accept this. He explained the current process for adding a moderator to a Facebook group. Exhibit P20 shows how moderators, if added today, are listed on the group’s ‘about’ page if they do not accept an invite to be a moderator.
- [21] The plaintiff also called the former third defendant, Mr. *Dugasse*, to give evidence. Mr. *Dugasse* gave evidence that ‘*Masin Koltar*’ and ‘*Lerwa Sat*’ (the administrators for the NAL Facebook page) are in fact the same person namely, a Tony Esparon from Praslin. Mr. *Dugasse* acknowledged that he was a moderator of the NAL Facebook page at the relevant time, along with the second defendant, Mr. *Loze*. He noted that ‘*Masin Koltar*’ ‘*aka Tony Esparon*’ made both him and the second defendant moderators. On cross-examination he agreed that he was added as a moderator without his consent or knowledge by the administrator.
- [22] Counsel for the plaintiff also called Mohamad Japhar, a taxi driver, to give evidence. Mr. Japhar explained his understanding that the song was saying that the plaintiff sold

Assumption Island for an amount of money to the Indians. The song, in his opinion, treated the plaintiff as 'a traitor'. He gave evidence that he was concerned about the contents of the song because he knew that the plaintiff had recently made a trip to India. He deponed during cross-examination that he was 'unable to make a conclusion' as regards the truth or otherwise of the song. To resolve his doubts about the truthfulness of the allegations in the song, he went to speak to the plaintiff about the song. He gave evidence that he considered that the plaintiff seemed upset and depressed about the song when he saw him.

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- [23] ~~Mr. Bristol, the senior driver at the office of the leader of the opposition, also gave~~ evidence for the plaintiff. He confirmed that, on the instruction of the plaintiff, he purchased the CD with the song on it on 7 March 2018 (receipt as Exhibit P5). He explained that around that time, the song was playing widely and for several days, including at the clock tower in Victoria over a loudspeaker. He also gave evidence that he heard it playing at Marine Charter where Mr. Camille, the first defendant, was playing it. He gave evidence that the plaintiff, on hearing the song and seeing the clip, seemed upset and angry.

#### **First and second defendants' case**

- [24] The first defendant did not give evidence.
- [25] The second defendant confirmed in Examination in Chief that he is a member of the National Assembly as a member of United Seychelles and a frequent user of Facebook. With regards to the NAL Facebook group, he denied being a moderator 'consciously' or with his consent when the video of the song was uploaded onto it in February 2018.
- [26] He spoke to the difference between administrators and moderators in Facebook groups. He explained that the moderators are not the same as administrators, and that the concept of the moderator was introduced in May 2016, prior to which there were only administrators. Administrators create the group, and often add moderators to assist with

moderating the debate on the group's page. In his view, the administrator has responsibility for the group's operation and have 'the final say in the group'.

- [27] He testified that he did not know that he was a moderator of the NAL Facebook group when the video of the song was posted on its page. The second defendant testified further that, prior to the time of the alleged post, Facebook did not send notifications that an individual had been made a moderator of the Facebook page. He understood that, only later in 2018, were nominated individuals notified about this. It was therefore possible, in his view, to be a moderator without consent or knowledge before this change as in his case.

- [28] The second defendant gave evidence that he did not know who Masin Koltar or Lerwa Sat is. He denied ever moderating the group or conversations on its page. The second defendant gave evidence that he only became aware that he was a moderator of the group when he became aware that the plaintiff intended to sue him. It was at this point that he removed himself as moderator of the NAL Facebook group. The second defendant could not produce evidence that he did not consent to being made a moderator of the Facebook group.

- [29] In regards to the song and video post in question, the second defendant testified that he did not publish or take part in the publication of the video of the song. He admitted to having seen the video on the NAL Facebook page, but not to watching or listening to it. He testified that he did not consider that the song was detrimental to the character of the plaintiff as it made no reference to the plaintiff. He acknowledged that, if the song was with reference to the plaintiff, then the song lyrics would be detrimental to his reputation.

#### **Analysis and findings on the evidence**

- [30] The Court makes the following findings on the evidence.
- [31] Though the first and second defendants contested the accuracy of the translation in their Statements of Defence, counsel for the defendants did not contest the translation provided by the plaintiff when it was admitted as evidence during the hearing. The Court specifically asked counsel: 'You are not contesting the English version?', to which

counsel for the defendants responded: ‘Well I will not say it is a hundred percent translation, but the gist is there.’ The translated text was then admitted as evidence with no objection. The defendants did not provide the Court with an alternative translation. The translation is therefore taken as admitted by the defendants. (See: *Seychelles Broadcasting Corporation v Barrado (1993-1994) SCAR 308*).

[32] As regards the involvement of the first defendant, the Court considers that the evidence shows that he promoted the distribution and sale of the audio version of the song, published on his CD ‘Chaos’. The first defendant denied in his Statement of Defence that by ‘distribution of a video and music I c.d., inter alia, the 1<sup>st</sup> defendant circulated and published a song written by the 1<sup>st</sup> defendant, translated in Kreol’. However, it is clear from the CD provided, which is by Allen Camille (*‘All rights reserved by the Artist Allen Camille’*) and which has his image on the cover, that the first defendant at the very least authorized the production of a CD with the song on it. The cover specifically notes that the CD: ‘Represent: *Lalit Pou Assumption*’. Further, the senior driver of the plaintiff in evidence averred that he saw Mr Camille, the first defendant, playing the song at Marine Charter. The plaintiff also provided a printout of a Facebook post in which the first defendant promotes the CD (Exhibit P18). The first defendant did not give evidence to counter the evidence presented by the plaintiff and his witnesses. The Court therefore finds that the first defendant has published and distributed the audio version of the song.

[33] However, the Court concludes that there is insufficient evidence to support a finding that either the first defendant or the second defendant was responsible for posting the video of the song on the NAL Facebook group. The post was made by one *Masin Koltar*. No evidence has been presented to the Court that either the defendant is behind this profile. Rather, the third (former) defendant gave evidence that the profile belongs to a third party not involved in these proceedings. The Court also finds that neither the first or second defendants were involved in the creation of the video posted on the NAL Facebook group. As regards the role of the first defendant, while he has accepted that he wrote and sang the song in the video clip, no evidence has been provided that he was involved in the creation of the video that appeared on the NAL Facebook page. The

second defendant is a member of the group and was a moderator at the relevant time, but no evidence was provided to suggest that he produced the video clip.

- [34] As regards the role of the second defendant, the evidence supports a finding that the second defendant was in fact a moderator of the NAL Facebook group when the song and video were posted. The second defendant eventually admitted this during cross-examination, but the Court notes that his evidence was inconsistent. In response to the question: 'Were you at any point in time a moderator of that group' during his examination in chief, he answered: *'Not consciously, not through my consent either. No'.* However, in cross-examination, he accepted that he was factually the moderator of the group at the time, though he reiterated that it was not with his knowledge.' The Court finds that the second defendant was a moderator of the NAL Facebook group at the time the video of the song was posted. The statement in the written submissions by the plaintiff that the second defendant 'admitted he was the administrator and moderator at the time of the incident' is however incorrect. There is no evidence that the second defendant was an administrator at any time. The remaining issue therefore is whether the second defendant consented to or had knowledge that he was a moderator at the relevant time.
- [35] The Court was presented with conflicting evidence as regards the process prior to February 2018 for the appointment of moderators for Facebook groups. This gives rise to improbabilities as to the knowledge of the second defendant as regards his role at the relevant time. The plaintiff gave evidence that, when an individual is appointed a moderator of a Facebook group, they receive a notification requesting their consent for this appointment. He claimed that this was also the process in 2016. He was therefore of the view that the second defendant would have known at the relevant time that he was a moderator of the NAL Facebook group when the relevant post was made. The second defendant conversely averred that Facebook changed its process and that, when he was made a moderator of the NAL Facebook group, he did not receive a notification – nor was he required to consent. His evidence was that the notification and consent process for appointing moderators was only introduced later in 2018. The Court considers that neither the plaintiff nor the second defendant was in a position to give reliable evidence

on Facebook's processes and updates. Unfortunately, neither party provided expert evidence as regards the processes of Facebook at the relevant time. Nevertheless, the evidence of the former third defendant, who appeared as a witness for the plaintiff, was consistent with the evidence of the second defendant. He noted during Examination in Chief that he and the second defendant were 'placed' as moderators by *Masin Koltar*. In cross-examination, the former third defendant confirmed that he was added as a moderator without his consent or knowledge. The former third defendant went on to say that he functioned as a moderator after he was placed in that role. I do not consider this having any bearing on whether the second defendant also did in fact function as a moderator and no evidence was provided on this point. I therefore find on the evidence that it is indeed possible that the second defendant was not aware that he was a moderator of the group at the relevant time.

- [36] The second defendant accepted that he 'saw the video' but did not admit to viewing it or listening to the song. The Court nevertheless finds, on the balance of probabilities, that the second defendant did in fact view the video clip. The second defendant admitted to being a frequent user of Facebook and having seen the post. I consider it most unlikely that on seeing the post, he did not go further and view it. This is particularly so given he agreed that he was a 'militant or an activist' for the United Seychelles party and the video concerned the Leader of the Opposition. This finding is not *prima facie* inconsistent with the above finding regarding the second defendant's knowledge as to his role as moderator.

### Legal analysis

- [37] The law of defamation has been subject to close scrutiny in local case law. As stated in the case of (*Savy v Afif* [2019] SCSC 702),

*Defamation can be defined as the intentional and unlawful publication of defamatory matter by someone about another person. Whatever has been published must be shown by the victim to have caused damage to his reputation. The publication must therefore have caused the victim to suffer prejudice to his reputation and/or social standing and/or have caused him to endure ridicule.*



- [38] Article 1383(3) of the Civil Code of Seychelles stipulates that the law of defamation in Seychelles is governed by English law. (*Mullery v Stevenson-Delhomme* (1955) *SLR* 283; *Moulinié v de Comarmond* (1972) *SLR* 83; *Renaud v Arnefy* (1974) *SLR* 98; *Kim Koon v Wirtz* (1976) *SLR* 101; *Biscornet v Honoré* (1982) *SLR* 451; *Didon v Leveillé* (1984) *SCAR* 164; *Seychelles Broadcasting Corporation v Barrado* (1993-1994) *SCAR* 308; *Mancienne v Vidot* (1995) *SCAR* 225; *Talma v Henriette* (1999) *SLR* 108; *Prea v Seychelles Peoples Progressive Front* (2007) *SLR* 108; *Gappy v Barallon* (2006-2007) *SCAR* 229). The case law indicates that the law of defamation in Seychelles is English law as of 1 January 1976 when the Civil Code came into effect (*Biscornet v Honoré* (1982) *SLR* 451). However, this is subject to Seychelles constitutional law regarding freedom of expression and right of access to official information (*Lalanne v Regar Publications* (2006) *SLR* 101).
- [39] The Constitution recognizes the right of everyone to dignity (Article 16) and privacy (Article 20). It also protects peoples' political freedom (Article 23) and guarantees free purpose of this article this right includes the freedom to hold opinions and to seek, receive and impart ideas and information without interference'. This right has express limitations, including 'for protecting the reputation, rights and freedoms or private lives of persons'. The law of defamation therefore seeks to balance these competing rights: i.e. the right to protect one's reputation, against the community's interest in the protection of free speech and political freedom.
- [40] To succeed in a defamation action, the plaintiff must prove that:
- a. The statement is defamatory;
  - b. It has been reasonably understood to refer to the plaintiff, and
  - c. It has been published to a third person.
- (*Esparon v Fernez* (1980) *SLR* 148; *Pillay v Regar Publications* (1997) *SLR* 125)
- [41] If the above is proven, the defendant may justify the statements by raising a valid defence, such as truth or fair comment. The onus is on the defendant to prove on the balance of probabilities the elements of the relevant defence.

- [42] Before analyzing whether the plaint is made out, it is necessary to make a comment on pleadings. Counsel for the defendants in his written submissions referred the Court to various authorities regarding the importance of pleadings in civil proceedings. Section 71(d) of the Seychelles Code of Civil Procedure provides that the plaint must contain ‘*a plain and concise statement of the circumstances constituting the cause of action and where and when it arose and of the material facts which are necessary to sustain the action.*’ This is necessary to give fair notice to the defendant(s) as to the case that must be met: (See *Galant v Hoareau* [1988] SLR 122; *Tirant & Anor v Banane* [1977] SLR 219). The Court of Appeal in the case of (*Monthy v Seychelles Licensing Authority & Anor* (SCA 37/16) [2018] SCCA 44 (14 December 2018) highlighted the need to plead all the material facts which are necessary to sustain the action. As will be noted below, the plaint lacked certain material facts. This is fatal to the cause of action in relation to the second defendant.

#### Was the statement defamatory?

- [43] The question on the present facts is whether the words of the song, in their natural and ordinary meaning or by innuendo, convey a meaning that the plaintiff is ‘dishonest, a criminal, a traitor to his country and a fraudster who sold assumption island [sic] to the Indian Government’. A defamatory statement is one which injures the reputation of another by exposing them to hatred, contempt, or ridicule, or which tends to lower them in the estimation of right-thinking members of society generally by making them shun or avoid them, or by causing them to be regarded with feelings of hatred, contempt, ridicule, fear, dislike, or disesteem: (*Regar Publications v Pillay* (1998-1999) SCAR 131; *Talma v Henriette* (1999) SLR 108).
- [44] The Court considers the salient parts of the English translation of the words of the song to be the following:

*Those who have gone to India to buy themselves a family/Those who have got  
150 thousand to have a big bouquet placed around their big neck / Don't believe  
we are not aware they went to bribe Indians / To come and vote against us to  
conquer our Assumption. ...*

*Why do Indians want our Assumption / Which means to win the elections they  
have already taken money from India ...*

*If you want to buy a family, to hell with you ...*

*We are not going to sell it to Indians to win the election / What we are telling  
the Indians is to fuck off. / If they believe they will sell Assumption / To campaign  
to go to State House / What is this obsession with State House ...*

*When will the poor get money for our island? / They have sold it overseas //*

*Where did we go wrong / As if we the poor were their slaves*

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- [45] It is the view of the Court that some of the lyrics of the song are, by their ordinary meaning, defamatory. Specifically, the comment about bribing Indians ‘to come and vote against us’. In addition, some of the words are defamatory by innuendo, specifically, that the Island of Assumption has been sold to assist in winning the upcoming presidential elections. The reference to getting US\$150,000 in exchange for a bouquet of flowers also, by innuendo, suggests that they have received secret money, or engaged in devious dealings with the Indian Government. The images in the video clip that accompanied the Facebook post do not have additional defamatory meaning, but are relevant to the identification of the plaintiff addressed below.

**Is it reasonably understood to refer to the plaintiff?**

- [46] It is necessary here to deal with the audio version of the song separately from the video clip of the song.
- [47] The claim against the first defendant is limited to the song as there is no evidence that the first defendant had any role in producing the video. As the song does not refer to the plaintiff by name or position, it is necessary to consider whether the song can reasonably be considered as referring to the plaintiff. As established in *(Cesar v Scully (2012) SLR 190, (CS 242/2011) [2012] SCSC 25 (28 June 2012))*, if the plaintiff is not named in the publication, the plaintiff must set out an innuendo which connects the plaintiff with the alleged defamatory statement. The plaintiff filed certainly would have benefitted from

more clearly stipulating the factors connecting the statements with the plaintiff. However, the Court considers that the lyrics and surrounding context in this case are sufficient. Notably, the reference to the elections and State House, and the trip to India which the plaintiff was widely known to have made prior to the release of the song. In many jurisdictions, this would not be a sufficient connection. However, the nature of Seychelles' political environment and size means that it is reasonable to identify the plaintiff from these lyrics even without the images in the video. This was supported by the witnesses called by the plaintiff who acknowledged that they knew that the song referred to the plaintiff when they heard it. The audio version of the song therefore sufficiently identifies the plaintiff.

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- [48] The case against the second defendant meanwhile concerns the video clip of the song posted on the NAL Facebook group. The images in the video reflect the lyrics, and are almost exclusively of the plaintiff. The video clip therefore makes it very clear that the statements in the song refer to the plaintiff.

**Has it been published to a third person?**

- [49] As noted in Gatley on Libel and Slander (12 ed., published 2013): 'In order to constitute publication, the matter must be published by the defendant to (communicated to) a third party, that is to say, at least one person other than the claimant'. Counsel for the defendant, in his written submissions, suggested that the action brought against the first defendant is limited to the NAL Facebook group post. This is not however the case. The plaint expressly refers to the distribution of a video and musical CD by the first defendant. Publication by the first defendant in this manner is supported by the evidence. The first defendant wrote and sang the song, and recorded a CD with the song on it. Recording a song on a cassette tape is not publication without a broadcast: (*Derjacques v Louise* (1982) *SLR* 175). However, evidence was provided that the first defendant distributed the CD and played the song in public. This was not countered by the first defendant, who did not appear to give evidence. Furthermore, the first defendant expressly promoted the sale of his CD with the song on it to the public via Facebook (Exhibit P18). The Court does not consider it relevant that he claims in his post that he did not write the songs on the CD, but rather that God 'gave' him the lyrics. The Court

thus finds that the first defendant has published that impugned material to a third person, and beyond.

- [50] Moreover, though the Court finds that there is insufficient evidence to link the first defendant to the relevant NAL Facebook group post, there is no dispute that the audio on the clip is the song, written and sung, by the first defendant. An original publisher is liable where the repetition or republication of the words to a third person was the natural or probable consequence of the original publication (*Speight v Gosnay* (1891) 60 LJQB 231). As explained in *Gatley on Libel and Slander* (12 ed., published 2013): *'Whether the repetition is the natural and probable consequence of the original publication is a question of law, the determination of which must depend on the circumstances of each particular case.'* Here, the first defendant put the song into the public domain. It was the 'natural and probable result of the original publication' that the song would be shared on the internet, including social media (See: *Speight's case*).

- [51] In the case of (*Ramkalawan v Gill* (unreported) CS 111/2013), delivered on 26 November 2015, the defendant alleged that he had not published the impugned words directly to the blog in question, but rather that they had been copied from his public Facebook profile and pasted to the blog. Judge McKee found that the defendant had in fact published the words directly to the blog. Nevertheless, he explained (emphasis added):

33. *In the present matter, on the Defendant's version, I would have had to find that he was the author of the statements, wrote them on to his Facebook page and hence had published them on his own Facebook page. On his evidence his Facebook page was in a public setting. The entry was hence in the public domain. A third party could read it, hare any entry with friends or colleagues or copy and paste it on to a public blog. The defendant would not have succeeded in a defence in view of the public nature of his Facebook page since he could not show that he had taken reasonable care in relation to its publication and that he had no reason to believe that he had contributed to the publication of defamatory material*

- [52] The Court thus finds the first defendant has published the audio version of the song to a third person, via both the CD and the NAL Facebook group.
- [53] The situation is more complicated in relation to the second defendant. The second defendant has not directly published the material. A certain 'Masin Koltar' posted the video clip on the NAL Facebook page. The allegation thus appears to be that, as a moderator of the NAL Facebook page, the second defendant has effectively published the material by omission i.e. by not removing the impugned post when he ought to have done so. This is not, however, stipulated in the plaint. In fact, there are no material facts in the plaint concerning how the second defendant has published the defamatory material. The Court recalls the reason for making each party state clearly and intelligibly the material facts on which it relies, ie. So that the defendant knows in advance of the case that needs to be met: (*See: Monthy case*). While this is reason alone to deny the plaint as it pertains to the second defendant, I will nevertheless proceed to consider the claim in light of the novel issues concerning defamation law.
- [54] Defamation via social media or other online fora is an evolving area of jurisprudence. Courts around the world are increasingly being presented with defamation claims that require applying principles of English common law to new and novel situations. Although foreign case law is not binding on Seychelles courts, such case law can provide guidance in the present circumstances. A brief review of case law from common law jurisdictions indicates support for the position that, in certain circumstances, owners or managers of internet platforms (including Facebook) may be liable for defamatory material posted on that platform, even if the material is posted by third parties (see *Oriental Press Group Ltd v Fevaworks Solutions Ltd* [2013] HKCFA 47 (Hong Kong); *Murray v Wishart* [2014] NZCA 461, [2014] 3 NZLR 722 (New Zealand); *Van Nes* [2016] BCSC 686 (Canada)). For reasons set out below, this is also the case under the law in Seychelles however the current facts are insufficient to find that the second defendant has published the material in question.
- [55] A publisher for the purposes of defamation includes not just the person that initially published the defamatory material, but also the author, publisher, seller and so on. To soften the strictness of this rule, English courts developed the common law defence of

innocent disseminator (*Emmens v Pottle* (1886) 16 QBD 354; *Vizetelly v Mudie's Select Library Ltd*[1900] 2 QB 170). The defence of innocent dissemination applies to subordinate publishers. For instance, when a librarian or bookseller innocently circulates or sells books that contain defamatory statements. As noted in *Gatley on Libel and Slander* (Sweet and Maxwell, 11<sup>th</sup> ed).

*The person who first spoke or composed the defamatory matter (the originator) is of course liable, provided he intended to publish it or failed to take reasonable care to prevent its publication. However, at common law liability extends to any person who participated in, secured or authorized the publication (even the printer of a defamatory work) though this is qualified by [the common law defence of innocent dissemination].*

- [56] The Court finds that the second defendant is not the same as an innocent disseminator of defamatory material. There is no evidence that the second defendant played any role in the publication of the defamatory material nor did he create the NAL Facebook group. Recalling the distinction between an administrator and a moderator, a moderator has the task of 'moderating' the discussion on the profile, with powers commensurate to this task notably to remove members and comments from the profile's homepage.
- [57] There is however another line of case law that applies where the person was not in any sense assisted or participated in the original defamatory publication but may, owing to the circumstances, turn into a publisher. For instance, where defamatory material is posted on a notice board (or a wall on which notices can be affixed) without the knowledge of the owner of the notice board/wall, or where a defamatory statement is written on a wall of a building without the knowledge of the building owner. In such circumstances, the owner while not initially a publisher might become one if they see the statements and fail to remove the statements in a reasonable amount of time (*Byrne v Deane* [1937] 1 KB 818). The foundational test of publication by omission is expressed by Greene LJ in *Byrne's case*, as follows (at 837-838):

*It may very well be that in some circumstances a person, by refraining from removing or obliterating the defamatory matter, is not committing any*



*publication at all. In other circumstances he may be doing so. The test it appears to me is this: having regard to all the facts of the case is the proper inference that by not removing the defamatory matter the defendant really made himself responsible for its continued presence in the place where it had been put?*

[58] In relation to the facts of that case, Green LJ noted (at 838):

*The defendants, having the power of removing it and the right to remove it, and being able to do it without any difficulty at all, and knowing that members of the club when they came into the room would see it, I think must be taken to have elected deliberately to leave it there. The proper inference, therefore, in those circumstances it seems to me is that they were consenting parties to its continued presence on the spot where it had been put up. That being so it seems to me that they must be taken to have consented to its publication to each member who saw it.*

[59] In the present case, it is therefore necessary to consider whether the second defendant has become a publisher of the defamatory material posted on the NAL Facebook page by virtue of his knowledge of the post and control over the defamatory material. As noted above, the Court finds that the second defendant had knowledge of the impugned post, including its content. However, having found that it is not proved on the balance of probabilities that the second defendant knew that he was a moderator, he did not have (or at least did not know that he had) the necessary control for a finding of liability. It would be unreasonable for the Court to find that he should have removed the post if he was not in fact aware that he had the power to do so. The conclusion might have been different if the second defendant, being aware of his role as moderator, had been alerted to the defamatory material on the NAL Facebook group, for instance, by the plaintiff and yet failed to take the post down within a reasonable amount of time.



- [60] For completeness, the Court does not accept that the second defendant was in the same position as a newspaper editor as suggested by the plaintiff during his Examination in Chief. The plaintiff averred:

*...the minute the person has posted, they [a moderator] have the responsibility to assess and if it is defamatory, just like an editor of a newspaper, somebody can send a letter to the newspaper but the editor which is in that case either the administrator or the moderator has the responsibility to delete any post which is defamatory and can also warn the member and even go so far as to delete the member from the group. This is the enormity of the task of either an administrator or a moderator. It is not a responsibility that is to be taken lightly because you are publishing stuff and writing about people.*

- [61] A newspaper editor is generally treated as a main or primary publisher. They are accordingly strictly liable for any defamatory statements published in the relevant newspaper. Treating a Facebook moderator as occupying the same position as a newspaper editor would mean that the former is automatically liable for any defamatory material posted on the Facebook group which he or she moderates with no further consideration as to the surrounding facts. Such a finding would be a significant stretch of the law concerning publication of defamatory material, and would appear out-of-step with the realities of how the public use and interact with social media.

### **Defences and justifications**

- [62] Neither the first defendant nor the second defendant has raised any defences. Regardless, the Court does not consider that any defences would be available on the facts. The defendants have not sought to prove that the statements in the song are true. The defence of truth is for the defendant to prove (*Bastienne v Ernesta & Another* (CS 108/2016) [2018] SCSC 663 (11 July 2018) para 29. (Applied in *Savy v Pillay* case). The defence of fair comment has also not been

pleaded. Nor has the defence of qualified privilege (*Esparon v Fernex (1982) SCAR 106*).

## Damages

- [63] The Court finds that the plaint in respect of the first defendant is made out. The first defendant, by distributing to the public his CD with the song *Lalit Pou Assumption* on it, has defamed the plaintiff. The Court does not, however, find that the plaint in respect of the second defendant is made out. Damages are therefore only relevant as regards the defamatory actions of the first defendant.
- 
- [64] The plaintiff seeks Seychelles Rupees One million (SR. 1,000,000) with interests and costs. He also seeks a permanent injunction to prevent the printing of any further publications of the defamatory material.
- [65] Damages depend on all the circumstances of the case including ‘the conduct of the plaintiff, his position and standing, the nature of the defamation, the mode and extent of the publication, the absence or refusal of any retraction or apology and the whole conduct of the defendant’: (*Prea v Seychelles People Progressive Front & Anor (CS7/2004) [2007] SCSC 10 (28 September 2007)*), with reference to (*Derjacques v Louise (1982) SLR 175*). These factors are considered in light of the present facts.
- [66] The high status and public profile of the plaintiff is not in question. The relevance of this to the assessment of damages is, however, subject to differing views. Counsel for the plaintiff has directed the Court to the case of (*Pillay v Regar Publications 1997 SLR 125 (CS 11/1996) [1997] SCSC 2 (22 January 1997)*) in which the Court stated that: ‘The higher the plaintiff’s position the heavier the damages’. However, the Court in ‘*Prea case*’ qualified this in the following manner:

*It is truism that in the assessment as to quantum of damages, the principle, namely "the higher the plaintiff's position the heavier the damages" generally applies to all, who fall under different categories of position at different levels of the social ladder whether he or she is educated or uneducated, professional or non-professional, rich or poor, celebrity or a commoner, politician or a non-*

politician. However, this principle should not be indiscriminately applied, especially when the person is a public figure (See: *Barrado case*), and (*Regar Publications (Pty) Ltd and others Vs. Maurice Lousteau-Lalanne SCA No: 25 of 2006*). In fact, when a person takes up a career, profession, job or occupation of his/her choice, which involves an element of public interest or public concern or public duty then, that person by virtue of the very public nature of the position he or she holds, is bound to be within the focus of public scrutiny, attack and criticism by all concerned including the Fourth Estate. In actual fact, damages in the case of such public figures are assessed at a conservative rate on account of law's preoccupation to render them accountable in the exercise of their public duties: (See: *Lousteau-Lalanne supra*, *Affair Lingens c. Autriche*, *Arrêt du 8 juillet 1986 série A no. 103*; p404, *Vincent Berger, Jurisprudence de la Cour Européenne des Droit de l'Homme*, 5eme édn.)

- [67] As a member of the National Assembly and the Leader of the Opposition, criticism of the plaintiff is therefore to be expected. In the recent case of (*Savy v Affif (CS99/2015) [2019] SCSC 702*), the need to balance competing interests was highlighted at para. 208:

*While it is important to try and ensure that persons in the political arena do not make unsubstantiated claims against public officials, it is essential that awards of damages not be excessive so as to have the chilling effect of inhibiting healthy criticism. In a young democracy like Seychelles, it is necessary for public officials to be held to account through public debate and censure, to ensure transparency and accountability. But it is still important to caution the makers of unsubstantiated and damaging claims*

- [68] In this regard, it is also necessary to take into consideration the means by which the defamatory statements were made. The Court is cognizant of the importance of not impinging on peoples' rights to engage in political commentary through diverse mediums in an effort to protect peoples' right to privacy and reputation. Artistic expression is worthy of protection in a free and democratic society and

political freedom is protected by the Constitution though the Court acknowledges that spreading falsehoods does not assist in furthering these values.

[69] The defamatory statements were of a relatively serious nature including allegations of corruption. However, the absence of a direct reference to the plaintiff in the audio of the song makes it less likely that all listeners made the connection to the plaintiff reducing the damage to the plaintiff. Further, while witnesses for the plaintiff confirmed that they had questioned the character of the plaintiff after hearing the song, one of the witnesses confirmed that he did not completely believe the allegations in the song. This limits the damage caused by the defamation.

[70] The mode and extent of the publication were wide. The audio of the song was played in public for several days and the CD sold on the market. The video of the song also circulated widely on the internet with countless people viewing the clip. The extent of publication on the internet was considered in (*Ramkalawan v Gill (unreported) CS 111/2013*). In this case, Judge McKee referred to US Supreme Court in (*Renov v ACLU in 1997*) in which it was stated: ‘Through the use of chat rooms, any person with a chat line can become a town crier with a voice that resonates farther than it could from any soapbox’. This enhances the damage caused by the defamatory lyrics.

[71] Finally, as regards the effect of the defamation on the plaintiff, it is clear that he has suffered as a result of the defamation. In addition to his personal testimony that he was upset after hearing the song, his senior driver and an acquaintance confirmed that he was evidently distressed by the statements made in the song. This evidence was not countered by the defendants. To the Court’s knowledge the first defendant has not apologized to the plaintiff nor made any attempt to remedy the alleged damage to the plaintiff. It is relevant, however, that the defamatory statements do not appear to have affected the plaintiff’s position as Leader of the Opposition, or had any other professional consequences for him.

[72] Turning to the *damages* sought, the plaintiff seeks an order for damages of SR 1.000.000. This amount is considered grossly exaggerated. In the case of (*Ramkalawan v Parti Lepep & Anors (CS 458/2006) [2017] SCSC 445 (30 May 2017)*) the Court ordered damages of (SR 100,000). In the case of *Savy v Afif case (supra)*, this Court awarded (SR 50,000) for damages to the reputation of the plaintiff (who also sought (SR. 1,000,000). In *Prea v Seychelles People Progressive Front & Anor (CS 7/2004) [2007] SCSC 10 (28 September 2007)*, also involving a Member of the National Assembly, damages of (SR. 70,000) were awarded. In the case *Ramkalawan v Gill (above)*, the magnified publication of the defamatory statements via social media contributed to a finding of greater damages amounting to (SR200,000). In that case, the defamation involved allegations that the plaintiff was involved in drug trafficking.

[73] For completeness, the Court also refers to the recent case of (*Bastienne v Ernesta & Anor (CS 108/2016) [2018] SCSC 663*), in which damages of (SR 600,000) were awarded. The Court, however, does not consider that the defamation in the present case is of the same nature as in that case. In that case, the defamatory comments were made in a popular Seychelles newspaper with a headline: ‘Nepalese businessman accuses Seychellois authorities of corruption’. The article went on to directly name the plaintiff.

[74] Taking into account all the relevant circumstances and jurisprudence, the Court considers damages of (SR. 50,000) to be appropriate in the present case. The plaintiff also requested that the Court order an injunction preventing the printing of any further publications of the song or video clip by the defendants. In (*Ramkalawan v Gill case*) the court rejected request for a permanent injunction, finding instead that the ‘matter can be dealt with satisfactorily by the award of damages.’ The Court considers that also to be the case here.

## Conclusion

[76] The Court accordingly makes the following orders:

- (i) The plaintiff's Plaint is granted in relation to the first defendant;
- (ii) The plaintiff's plaint is dismissed in relation to the second defendant;
- (iii) The first defendant is to pay to the plaintiff the sum of Seychelles Rupees Fifty Thousand (S.R.50,000) in damages;
- (iv) Costs and interest of the suit to be paid by the first defendant.

Signed, dated and delivered at Ile du Port on the 18 November 2019.

  
**S ANDRE**

