

SUPREMECOURT OF SEYCHELLES

Reportable/Not Reportable / Redact
[2020] SCSC 816
CS 98/2017

In the matter between:

MARTIN AGLAE
(rep. by Alexandra Madeleine)

Plaintiff

and

GERVAIS HENRIE
(rep. by Anthony Derjacques)

1st Defendant

XPRESS PRINTING
(Herein represented by its Director
Roger Mancienne)
(rep. by Anthony Derjacques)

2nd Defendant

Neutral Citation: *Aglae v Henrie and Anor* (CS 98/2017) [2020] SCSC 816 (30th September 2020)

Before: Pillay J

Summary: Defamation

Heard: 25th May 2019, 25th June 2019, 8th November 2019 and 14th February 2020

Delivered: 30th September 2020

ORDER

[1] On the basis of the above I find that the article under the head of “Elements of Criminality” and “Questionable Funds” published by the Defendants was defamatory to the Plaintiff. I accordingly enter judgment in favour of the Plaintiff as against the Defendants.

[2] The Defendants shall jointly and severally pay the Plaintiff the sum of SCR 10,000.00 with interests and costs.

[3] A permanent injunction is further issued, preventing the Defendants from printing any further publications defamatory to the Plaintiff.

JUDGMENT

PILLAYJ

[4] By way of a Plaint dated 29th September 2017, the Plaintiff claims that the Defendants falsely and maliciously printed and published and/or caused to be printed and published an article headed “*Martin Aglae, Stuff it*” which are defamatory to the Plaintiff.

The Plaintiff

[5] The Plaintiff claims that the article falsely and maliciously stated in respect of the Plaintiff inter alia that:

5.2 *“He scored a miserable 73 votes even when the main opposition party, the Seychelles National Party (SNP) was absent from the race.”*

5.3 *“Despite his claim that he has inside knowledge of the SNP’s executive affairs. Aglae was never involved with Wavel Ramkalawan on a leadership level.”*

5.4 *“He was dismissed from the party for breach of trust and giving confidential information to Parti Lepep (PL) such as a letter addressed to the Chairperson...”*

5.5 *Under a subheading “Element of Criminality”, “Aglae was jailed for six months for the offence of unlawful wounding contrary to section 224 (a) of the Penal Code (Cap 158)...” “The conviction related to an incident that took place on the 14th January 2014 at Castor Road, English River, in which he assaulted a Police Officer, Yannick Benstrong.”*

5.6 *“The Court also found him guilty on two other charges namely resisting arrest and wilfully obstructing three police officers (Stephen Joseph,*

Freddy Leon and Yannick Benstrong) whilst in the due execution of their duties.”

5.7 *“He still has a pending case in court in which he is appealing against the payment of a fine of R 25, 000 which should have been paid the date he was released from prison. Failure to do so could result in a further three months jail sentence”...it could mean he will face another prison sentence that could disqualify him to stand as an election candidate.”*

5.8 *Under sub-heading “Questionable Fund” “Aglae was reportedly trying to bank a large sum of money estimated at R300, 000 during the past weeks” “A source from a local bank told LHS that he was having difficulty to bank the money due to failure to prove the source of the funds.” “The FIU should investigate his reason for having such a large sum of money which can only be either from criminal activities, breach of Political Parties Act and the Elections Act.”*

[6] The Plaintiff claims that the said article and words was circulated and shared and/or widely circulated across Seychelles and the first Defendant’s social media network, Facebook with over 6, 424 followers.

[7] The Plaintiff further claims that the said article and words in their natural and ordinary meaning or by innuendo, referred and were understood to refer to the Plaintiff, and included a photographic image of the Plaintiff. That the said article and words in their natural and ordinary meaning or by innuendo, are understood to mean that the Plaintiff is dishonest, a criminal, a traitor and a fraudster. That the article and words complained of are false, malicious and calculated to expose the Plaintiff to public ridicule, odium and hatred and constitute grave libel by both 1st and 2nd Defendants.

[8] In a joint Defence, both Defendants denied the claim and averred that the article “Martin Aglae, Stuff it.” is true, factual and fair comment, based on facts in that the Plaintiff was never involved with the Party Leader in relation to leadership, was dismissed for breach of trust and was investigated, charged and convicted for criminal offences.

- [9] The Defendants further denied that the article and words are false, malicious and calculated to expose the Plaintiff to public ridicule, odium and hatred averring that the distorting and exaggerating the interpretation of the articles which are bona fide, fair and that it was published in the public interest to be kept informed and to maintain transparency and accountability.
- [10] The Defendants also deny any liability in law and further denied that the articles caused any prejudice and damage to the Plaintiff.

Plaintiff's Evidence

- [11] The Plaintiff testified that he is the leader of the political party Linyon Sanzman which was registered on 5th April 2016. He is also the Managing Director of Marpol Security, a security service provider. He got approval from the Police Commissioner on 5th January 2016 and got the licence the same month. It was his testimony that the first Defendant, Gervais Henrie is the Editor of the Le Seychellois Hebdo and the second Defendant is the printing agency for Le Seychellois Hebdo. Le Seychellois Hebdo is a weekly newspaper circulated around the island Mahe, Praslin and La Digue as well as on social media. On 15th April 2016 published an article on the front page of the newspaper based on an image of the Plaintiff. The Plaintiff was a district representative for Baie Lazare. It was his testimony that on 15th April 2016 when the article was published he did not have any pending case before the Court and his appeal had been withdrawn. It was his testimony that the article was clearly meant to tarnish his reputation as a leader of Linyon Sanzman.
- [12] The Plaintiff further testified that he never tried to bank SCR 300, 000. It was his testimony that he applied for a loan with the Small Business Financial Authority for the sum of SCR 300, 000. He initially received approval for SCR 25, 000.00 which was disbursed by way of a cheque. He then appealed to the Ministry of Finance and he later received SCR 275, 000.00 again by way of cheque which he banked at the Seychelles Credit Union.
- [13] The Plaintiff produced the newspaper article in question, PE6.

[14] In cross examination the Plaintiff accepted that he was not a member of the Executive Committee of the Seychelles National Party, nor was he part of the policy group that drafted the manifesto and he wasn't part of the leadership structure.

Defendant's Evidence

[15] The first Defendant testified that he is a journalist by profession and the editor of Les Seychellois Hebdo newspaper. The newspaper is published in Seychelles, weekly with an approximate circulation of 2500. He is responsible for the contents and planning the newspaper and ensuring its publication every week. He is also an elected member of the National Assembly for the constituency of Mont Buxton. He testified that he knows the Plaintiff. The Plaintiff was not an executive member of the Seychelles National Party whereas the first Defendant is an executive member of the Seychelles National Party. The first Defendant stated that he had firsthand knowledge of the Plaintiff being terminated for breach of trust. The decision was taken by the executive committee after the leader informed the committee that he had given a letter to the Plaintiff to deliver to Aarti Chambers to the Electoral Commission and a picture of the letter appeared on the front page of the People.

[16] It was the first Defendant's testimony that it is true that the Plaintiff was convicted for unlawful wounding by Her Ladyship Judge Samia Andre. He went on to state that he now realized that they had made a mistake. It was evidence that the two documents he had was a sentence without the name of a victim and a charge with three counts on it. It was his testimony that

Submissions

[17] By way of submissions dated 22nd May 2020 the Learned counsel for the Plaintiff submitted that the Plaintiff's case as made out in evidence satisfy all three elements of the tort of defamation. She further submitted that "it remains uncontradicted that the cases that the Defendant sought to rely upon in support of their articles had been manipulated to justify their article." It was her submission

that the case were “either dated after the publication of the said article or referred to court cases that had been dismissed against the Plaintiff and could not have supported the contents of the article.”

[18] The Plaintiff grounded his claim on Article 1383 (3) of the Civil Code of Seychelles and further relied on the cases of **Esparon v Fernez and Anor (1980) SLR 148, Pillay v Pillay (unreported) [2013] SCSC 68, Ramkalawan v SPPE [2017] SCSC 445** as well as **Pillay v Regar Publications and Ors (unreported) CS 11/1996** in support of the Plaintiff’s position.

[19] For his part Learned counsel for the Defendant submitted that the article was true and at least fair since the evidence shows that the Plaintiff received less than 73 votes in a National Assembly election and further that he worked as both an activist and district representative with duties related to distributing pamphlets in one district so was not in a leadership position.

[20] Learned counsel submitted that the Plaintiff was convicted, imprisoned, released, charged, appended. It was his submission that on that basis the Plaintiff was and remains a criminal and convict with no character nor reputation therefore no damage could be caused.

[21] It was further his submission that the Plaintiff disclosed that he needed to raise the sum of SCR 300, 000.00 for his security business so the article was justified. He submitted that on the evidence before the Court the article remains probable and fair comment, not injurious to the Plaintiff’s character.

[22] It was Learned counsel’s position that the Plaintiff has failed to prove the action with the two defences available; truth and fair comment having been established.

The Law

[23] Article 1383 (3) of the Civil Code of Seychelles provides that:

“The provisions of this article and of article 1382 of this Code shall not apply to the civil law of defamation which shall be governed by English Law.”

[24] In **Bouchereau v Guichard(1970) SLR 33**,Souyave CJ confirmed that the question of publication is an important factor to be taken into account in a libel action. It was his finding that “under the English law of defamation, which is applicable here, publication of the defendant’s words in a public place is not essential. What is necessary to constitute publication is that the words were published to a third party, i.e. a person other than the person defamed.” Though the stated case concerned a case of slander the rule would apply similarly to a case of libel.

[25] Sauzier J confirmed this in the case of **Esparon v Fernez and anor (1980) SLR 148** in which he succinctly 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.”*

[26] He expanded on the law of defamation in **Biscornet v Honoré (1982) SLR 451**, stating that what the plaint 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.

[27] The above cases were relied on by the Court of Appeal in the case of **SBC v Beaufond & Ors (SCA 29/2013) [2015] SCCA 21 (28 August 2015)** to overturn a finding that the Appellant had defamed the Respondent.

[28] **In the case of Pillay v Pillay (unreported) [2013] SCSC 68** Dodin J simplified the requirements by setting down the five essential elements that a Plaintiff must prove to establish defamation as being:

(i) the accusation is false;

(ii) it impeaches the subject's character;

(iii) it is published to a third person;

(iv) it damages the reputation of the subject; and

(v) the accusation is done intentionally or with fault such as wanton disregard of facts or with malicious intention

Analysis

Have the elements of defamation been proved?

[29] Firstly the Defendants admitted to publishing the article. There is no need therefore for the Plaintiff to provide proof of this element and this Court finds this element proved.

[30] With regards to the first two paragraphs of the article the Plaintiff's answer in cross examination at page 35 of the proceedings of 25th May 2019 more or less explains the rapport between himself and Mr. Ramkalawan "he did not really share every single information with me for example he would tentatively told me about his running mate. For example when Mr. Prea was sick at the hospital there was a thing that has to do with the raffles so these are the sorts of things that he would discuss with me."

[31] The Plaintiff was a district activist at the most, by his own admission he distributed Vision (the party newspaper). In the circumstances it cannot be said that that part of the article was false.

- [32] As for the votes the Plaintiff stated that he got less than 73 votes, so the reporting was wrong. Indeed the reporting may be wrong but it cannot be argued that overstating the number of votes he got is defamatory.
- [33] With regards to his dismissal for breach of trust, Mr. Ramkalawan testified that the Plaintiff was not really employed with the Seychelles National Party. He was given an “allowance of SCR 6, 000/- and he did a number of things”. Before the elections of 2015 he was asked to stop coming to the office because it was obvious he was giving information to the rival political party. This came to light when he was given a letter for delivery to the Election Commission and that letter found its way to the Parti Lepep. Mr. Ramkalawan spoke to Mr. Gappy, who was the chair of the Electoral Commission, and came to the realisation that the Plaintiff was the source of the information.
- [34] The Plaintiff denied being terminated for breach of trust but accepted that he was given a letter to deliver to Mr. Gappy, the Electoral Commissioner.
- [35] I accept the evidence of the defence on this issue, that there was a leak of information from the Seychelles National Party and that leak was traced back to the Plaintiff. In my view it was fair for the Defendants to make the assertions they did.
- [36] The charge against the Plaintiff that the Defendants rely on as being evidence of the truth of the statements contained in the article is dated 28th January 2013 and registered as CR34/13 and reads as follows: “*Martin Aglae, residing at Anse Gaulette, Mahe, on the 2nd September 2012, at Baie Lazare, Mahe unlawfully wounded Jacques Augustin.*”
- [37] The Plaintiff was sentenced to an immediate term of 6 months imprisonment in addition to a fine of SCR 25, 000.00 on 11th February 2014. The Plaintiff appealed against the said sentence by way of an appeal to the Supreme Court registered as CA 12/14 which was subsequently withdrawn on 6th March 2015.

- [38] The evidence also shows that the Plaintiff faced charges of assaulting a police officer, resisting arrest and obstructing police officer before the Magistrates Court. The particulars of the charge of assaulting police officer read as follows: “*Martin Aglae unemployed residing at Baie Lazare, Mahe, on the 14th January 2014, at Castor Road, Mahe assaulted Police Officer namely Yannick Benstrong by means of slapping him.*” However there were no convictions entered on the basis of those charges.
- [39] The Plaintiff not having been convicted of unlawfully wounding Police officer Yannick Benstrong and not having any pending case before the Court on 15th April 2016 when the impugned article was published the article is clearly false.
- [40] Indeed banks and financial institutions are required to query source of funds when a client seeks to bank in excess of SCR 10, 000/-. In as much as the first Defendant as a journalist may rely on sources for information he has a duty to verify the information he receives. There is no indication of any other monies the Plaintiff may have banked round the time in question. I find no reason to disbelieve the Plaintiff that he received a loan to start his business which was paid by cheque and the said cheque and loan agreement confirms same. A journalist simply getting information that a person was requested to show source of funds cannot seek to protect itself with the defence that it was in the public interest. It is in the public interest to know the truth, the facts.
- [41] In the circumstances I find that the accusations in the article with regards to the criminal convictions and suspect financial transactions of the Plaintiff false.
- [42] By the manner in which the article was phrased the intent was to damage the reputation of the Plaintiff and was calculated to cause ridicule and odium to the Plaintiff.
- [43] On the facts it is not in doubt that the accusations made against the Plaintiff were done with wanton disregard of the facts. The accusations are totally contrary to the facts.

- [44] In order to escape liability the Defendants raised the defences of truth, fair comment and public interest.
- [45] In view of the findings at paragraph 37 above, the defence of truth fails.
- [46] With regards to the defence of fair comment, “this defence implies that every person has a right to express an opinion honestly and fairly on matters, which are of public interest.” However “the defence of fair comment cannot be maintained if the comment was made without factual basis.” “The defence of fair comment is therefore not available where the publisher was actuated by malice, in the legal sense, which is the lack of honest belief, and publication with reckless disregard of the truth when circumstances existed for proper investigation.” (**Lalanne v Regar Publications Pty Ltd and Ors CS 226/2002 [2006] SCSC 94 (23 October 2006)**)
- [47] There was no factual basis for the comments made under the headings of “Elements of Criminality” and “Questionable Funds”. The article directly links the “unlawful wounding” conviction to an incident on 14th January 2014 involving a police officer and further charges involving police officers which just was not the truth. It was within the realm of possibility for the Defendants to confirm the information that had been given to them. With that said the defence of fair comment also fails.
- [48] With regards to the defence of public interest, according to the case of **Lalanne v Regar Publications** above, “In brief, the test (as to public interest) was whether the public was entitled to know the particular information. It was held that where the public interest requirement was satisfied, the Publishers had to satisfy the test of responsible Journalism, and that where an ingredient of the Article was complained of as being defamatory and untrue, its inclusion might be justifiable so long as the thrust of the Article was true.”
- [49] Indeed the public was entitled to know information relating to the Plaintiff’s criminal record. However, though the Plaintiff had been convicted for an offence of unlawful wounding and had in fact been charged with assaulting a police officer

at some point, it cannot be said that the thrust of the article was true. The Plaintiff had been convicted of unlawfully wounding a private person and the charge of assaulting a police officer had been withdrawn which unless the contrary is proved he is innocent of those charges until proven guilty.

[50] In the circumstances the defences raised by the Defendants fail and I find that the article under the head of “Elements of Criminality” and “Questionable Funds” was defamatory.

[51] Having found that defamation has been proved the next issue then in damages.

[52] In the case of **Talma and Ors v Printec Press Holdings PTY LTD (SCA37/2017) [2020] SCCA 8 (21 August 2020)**; Twomey CJ referencing the case of **Talma v Henriette (CS 338/1996) [1999] SCSC 12 (28 October 1999)** and the remarks of Perera J (as he then was) wherein he stated that :

“English law recognizes four types of cases which are actionable per se, without proof of special damages. They are:

1. Where the words impute a crime for which the plaintiff can be made to suffer physically by way of punishment.

2. Where the words impute to the plaintiff a contagious or infectious disease.

3. Where the words are calculated to disparage the plaintiff in any office, profession, calling, trade or business held or carried on by him at the time of publication.

4... [W]here the words impute adultery or unchastity to a woman or girl (Emphasis added).

found that “As set out above, the law of defamation as existed in the English law of defamation in 1975 comprised the principle of presumed damages. These damages are available per se, that is without proof of special damage in the specific categories detailed by Pererea J. The Appellant in the instant case was a petitioner at the time of publication, that is, a private person, although, he had been a public servant with over twenty years’ service in the Department of Social Services. As a

private person, he fell outside the social categories enumerated above and it was incumbent on him to prove the damages as these could not be presumed.”

- [53] In the case of **Bouchereau** above Souyave CJ found that “In an action for slander actionable per se as in this case, no special damage need be proved by the plaintiff for the law presumes in such a case general damages, that is, that he has suffered damages resulting from the slander. Although this is the position in law, the assessment of such general damages must obviously depend on the circumstances of the case.”
- [54] The position in my view is the same for libel.
- [55] Clearly on the above, of importance is the standing of the Plaintiff in society in addition to the particular circumstances of the case. He is in the business of providing security services and a politician.
- [56] The Plaintiff testified that the article had given him a bad image as well as his political party. It affected him and it got people to look at him in a different way, as if he had no respect for people in uniform. On that basis the Plaintiff is claiming SCR 1, 000, 000.00.
- [57] In the case of **Ramkalawan v Parti Lelep and Anor CS458/2006 [2017] SCSC 445 (30th May 2017)** Chief Justice Twomey comprehensively explained the manner in which a Court should come to a decision on quantum in a defamation case. In the said case the Plaintiff claimed a sum of SCR 1, 000, 000.00 on the basis that he had suffered prejudice in his capacity as the Leader of the Opposition and the Leader of the Seychelles Party and as a member of the clergy. He was awarded the sum of SCR 100, 000.00 on consideration of his high position as leader of the opposition being fifth on the protocol list, as a clergyman, and the nature of the publication.
- [58] In comparison the Plaintiff in the case at hand was a fairly newcomer to politics having registered the party Linyon Sanzman and started his security business in the same year as the article was published, in 2016.

[59] In view of the above I find that the appropriate award is a sum of SCR 10, 000.00

Conclusion

[60] On the basis of the above I find that the article under the head of “Elements of Criminality” and “Questionable Funds” published by the Defendants was defamatory to the Plaintiff. I accordingly enter judgment in favour of the Plaintiff as against the Defendants.

[61] The Defendants shall jointly and severally pay the Plaintiff the sum of SCR 10, 000.00 with interests and costs.

[62] A permanent injunction is further issued, preventing the Defendants from printing any further publications defamatory to the Plaintiff.

Signed, dated and delivered at Ile du Port on 30th September 2020



Pillay J