

IN THE SUPREME COURT OF SEYCHELLES

Reportable  
[2022] SCSC 168  
CS64/2019

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In the matter between:

**Doctor Sharif El Masry**  
(rep by F Elizabeth)

**Plaintiff**

and

**Miss Joana Pierre**

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

(rep by D Cesar)

**Lavwa Lalyans Newspapaer**

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

(rep by D Cesar)

**Lalyans Seselwa**

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

(rep by D Cesar)

**Printec Press Holdings Ltd**  
(rep by G Ferley)

**4<sup>th</sup> Defendant**

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**Neutral Citation:** *Doctor Sharif El Masry vs Jonan Pierre and ors* (C64/2019) [2022] SCSC (25<sup>th</sup> February 2022).

**Before:** Govinden C J

**Summary:** Plaintiff dismissed; plaintiff failed to prove the faute of writing words with intent to wound religious feelings

**Heard:** 22<sup>nd</sup> March 2021.

**Delivered:** 25<sup>th</sup> February 2022

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**ORDER**

[1] The court fails to see any faute being caused by the acts of the Defendants in this case and accordingly dismiss the Plaintiff.

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## JUDGMENT

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GOVINDEN CJ

### Background

- [2] The 1<sup>st</sup> Defendant is the Editor of a popular newspaper with widespread circulation in Seychelles, namely Lavwa Lalyans, ISSN; 1959-7427. The 2<sup>nd</sup> Defendant is a political newspaper published and circulated in Seychelles. The 3<sup>rd</sup> Defendant is the publisher of the said newspaper and the 4<sup>th</sup> Defendant the Printer. On or around the 24<sup>th</sup> of May 2017, the 1<sup>st</sup> Defendant published or caused to be published in the 2<sup>nd</sup> Defendant a front page article in bold lettering entitled “DON’T JUST STOP CONSTRUCTION WORKS DEMOLISH THIS BUILDING!” showing a picture of a building under construction on the Plaintiff’s property.
- [3] The Plaintiff avers that the said article referred to a prayer room built on his private property at Ma Josephine, La Misère, Mahe and that the 1<sup>st</sup> Defendant who is an employee, servant, or agent must have trespassed on the Plaintiff’s property in order to take the picture.
- [4] The Plaintiff avers that the article with quotes from the neighbours is malicious, morally reprehensible and vindictive and was intentionally designed to rupture the multi-racial, multi-cultural, multi-religious, and social harmony that exist in the country.
- [5] The Plaintiff further avers that the article is xenophobic, racist and discriminatory as it targets him on the basis of his race, ancestry and Muslim faith.
- [6] He avers further that the Defendants actions in writing, publishing, printing, distributing and circulating the said newspaper with the offensive article is intended also to incite violence against him and is unlawful as it calls for the destruction of private property.

[7] As a result he claims that the actions of the Defendants amount to a “faute” for which they are jointly and severally liable to make good to him.

[8] He particularised his loss and damages as follows;

- i. Moral damage for pain and suffering , SCR1000,000.00;
- ii. moral damage for mental anguish and trauma SCR1000,000.00;
- iii. moral damage for embarrassment, humiliation and inconvenience SCR1000,000.00;
- iv. moral damage for trespass on private property SCR1000,000.00;
- v. damages for discrimination, hatred and malice SCR1000,000.00 and
- vi. punitive damages SCR1,000,000.00;

which comes to the grand total of SCR6,000,000.00.

[9] The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants did not contest the content and the publication of the article save to say that it was made in the public interest ; not malicious or defamatory on matters of purely public interest in good faith and without malice. Further, they denied trespass and put the Plaintiff to proof of how many neighbours there are in the neighbourhood and the multi -racial and multicultural composition of such neighbourhood.

[10] The 4<sup>th</sup> Defendant, on the other hand, admits only the fact that it is the printer of the 2<sup>nd</sup> Defendant and denies the rest of the case of the Plaintiff. It also raised up a plea in limine litis that the averments in the Plaintiff does not amount to a “faute” in law.

### **The evidence**

[11] The Plaintiff’s brother testified that the Plaintiff lives at La Misère and he holds a power of Attorney for the Plaintiff. He confirmed that his brother is a businessman; entrepreneur and a prominent citizen of Seychelles. He stated that the 1<sup>st</sup> Defendant is the Editor of a popular newspaper with widespread circulation in Seychelles and that the 2<sup>nd</sup> Defendant is

a political newspaper and is circulated in this country, whilst the 4<sup>th</sup> Defendant is the publisher and Printer of the Newspaper. On the 24<sup>th</sup> of May 2017, the 1<sup>st</sup> Defendant published or caused to be published in the 2<sup>nd</sup> Defendant a front page article in bold lettering entitled “DON’T JUST STOP CONSTRUCTION WORKS DEMOLISH THIS BUILDING”. He produced a copy of this article. The prayer room is found on the property of the Plaintiff. Nobody asked permission to take the photograph. The development had received planning approval and the permission was produced in evidence. A Letter of Demand was produced by the witness, being a demand from the Plaintiff to the 1<sup>st</sup> Defendant in the sum of SCR 6 million. In this document the Plaintiff claimed that the article was malicious, morally reprehensible; vindictive and intentionally designed and intended to rupture the multi-racial, multi-cultural and multi religious harmony that exist here and that it is xenophobic, racist and discriminatory and targets the Plaintiff on the basis of his race ancestry and Muslim faith. It is inciting violence against him and is unlawful and consist of a faute, which makes all of the Defendants collectively liable in the sum quoted in the Plaint.

[12] He testified that the Defendants refused to retract and apologise for the publication and that the article had affected his brother, who stayed home for two months and it affected his reputation and business.

[13] The case proceeded ex parte against the 4<sup>th</sup> Defendant as a result of default of appearance and as far as the other Defendants are concerned their counsel informed the court that they will not be calling evidence and that they stood by their pleadings and submit themselves to the decision of the court.

### **The law**

[14] The Plaintiff has sued the Defendants for committing a faute under Article 1382 and 1383 of the Civil Code. He has not sued in defamation based on the English common law under Article 1383(3) of the same Code for damages caused by libellous accusation of the Defendants. He has alleged instead that they have committed a faute consisting of writing; editing and publishing in a newspaper that was intentionally malicious; morally

reprehensible and vindictive and design to rupture the racial; cultural and religious fabric of this society and which had caused psychological harm to the Plaintiff.

- [15] For there to be a faute as alleged by the Plaintiff, the underlying act must be legally reprehensible and contrary to public policy in order to make it come as an exception to the freedom of expression, otherwise the court might be intruding on the right to free speech under Article 22 of the Constitution. One of these exceptions is law founded under Sub Article 2 (b) of the same provision, which allows for laws necessary in a democratic society to be made for protecting the reputation, rights and freedom or private lives of person. The law is found in the provisions of Section 126 of the Penal Code which provides as follows;

**Writing or uttering words with intent to wound religious feelings**

*128. Any person who, with the deliberate intention of wounding the religious feelings of any other person, writes any word, or any person who, with the like intention, utters any word or makes any sound in the hearing of any other person or makes any gesture or places any object in the sight of any other person is guilty of misdemeanour and is liable to imprisonment for one year.*

- [16] Accordingly, I find that a person who deliberately and intentionally wound the religious feelings of another with words commit a faute under our law and it is on this premise that the cause of action in the Plaint is founded.
- [17] The second element of the faute is the alleged trespass unto the property of the Plaintiff in order to take the photograph of the building that accompanied the article.
- [18] Faute relating to intentional insult to religious sentiment has been adjudicated upon in France and the intent to insult was similarly upheld to be a core element of the faute. In 2005, the *Girbaud* case attracted a lot of media attention in France. The subject of argument was a billboard of Marithé François Girbaud, a brand of women's clothing. The billboard - 40 metres long by 11 metres wide - was placed on a building on the Avenue Charles-de-Gaulle in Neuilly-sur-Seine in March 2005. The poster depicted a parody on the Last Supper by Leonardo da Vinci and was a wink to the novel *The Da Vinci Code* by Dan

Brown. The apostles and Christ were replaced by women wearing clothes by Marithé and the only man of the group was the person on Christ's right side. The Da Vinci Code expounds the theory that on the painting Mary Magdalene is placed in this position. A hand holding a dove, the traditional symbols of the Father and the Holy Ghost, figured between the women's legs.

- [19] L'Association *Croyances et Libertés* requested the prohibition of the poster in summary proceedings. The judge's reasoning is almost identical to the reasoning in the Ave Maria case. The poster constituted an insult to Catholics that was disproportional to its commercial nature. It was beyond discussion that the poster was 'une oeuvre de création', but 'because of its nature – merely intended to promote the selling of clothes – the poster did not, like a literary or cinematographic work would do, form part of a debate of ideas, was gratuitously offensive and thus insulting.' The judge prohibited the placement of the poster in all public spaces. *TGI de Paris (ord.réf.) 10 March 2005, Recueil Dalloz n°20 2005, p.1326-1327, annotation P. Rolland*
- [20] The decision was upheld in appeal in April 2005. The judge considered that the separation of the church and the state did not obstruct the application of the law when a religion is insulted, because La loi de 1881 penalizes the insult of a group of people on the ground of their religion. Again, the commercial nature and the forced cognizance of the expression formed important criteria. In addition, the choice to publish the poster just a week before Easter increased the insulting character. *Cour d'appel de Paris 8 April 2005, Recueil Dalloz n° 20 2005, p.1327-1328, annotation P. Roll*
- [21] In November 2006, la cour de cassation had annulled the decision of la cour d'appel. La cour de cassation considered that the parody merely represented the Last Supper in a different form and was not intended to insult Catholics or offend their honor. The poster did not constitute an insult, because it was not a personal and direct attack on a group of people on the grounds of their religion. *Cour de cassation, 14 November 2006, Légipresse n°238 January/February 2007, p.11.*

### **Analysis and determination**

[22] I find that the Plea in Limine litis raised by the 4<sup>th</sup> Defendant to have accordingly no merits in this case and I dismissed it in its entirety as such faute does exist in law in Seychelles. On the merits, the 4<sup>th</sup> Defendant has also raised a defence of mere denial, after considering the facts and circumstances of the case as a whole, especially the evidence of Nabil Elmasry. However, I find proven all the averments in the Plea when it comes to the different acts and omission averred against those Defendants, subject to what is held below. I find that the article was published in the 2<sup>nd</sup> Defendant Newspaper, of which the 1<sup>st</sup> Defendant was its editor. I further find that the said newspaper was owned by the 3<sup>rd</sup> Defendant and that its Printer was the 4<sup>th</sup> Defendant. I note that though Mr El Masry was not cross-examined by counsel for the Defendants his testimony was cogent and truthful. The fact that the Defendants have chosen not to appear and testify has further strengthened the veracity of the Plaintiff's evidence.

[23] On the other hand the 1<sup>st</sup> to 3<sup>rd</sup> Defendant have raised the following defences; that the allegation was made in the public interest and without malice, though these defences are put forward as defences to defamatory remarks, effectively in the context of this case, they also can be read to be saying that the writing; editing; printing and publication of the article did not constitute an insult because it was not a personal attack directed on a group of people on the ground of their religion. In other words, they are saying that it was not deliberately intentional. This is a defence to the suit raised by the Plaintiff.

[24] I have read the article and the evidence that shows the context of its publication. Having done so I find that that it was not made with the deliberate intention to insult the Muslim faith and with the intention to rupture the multi-racial, multicultural and multi religious and social harmony in Seychelles. The article wants "a building to be demolish" not a mosque, however the building happened to be a mosque or in the word of the plaintiff "a prayer room". Accordingly, there was no intentional targeting of a religion or faith or the group of people who holds that faith on the ground of that faith. It would have been totally different if they had incited the demolition of a mosque or prayer room of the Muslim faith because of the fact that the Mosque or prayer room was being used by people of the Muslim faith, including the Plaintiff.

[25] Moreover, the issue relates to an alleged development being contrary to a Development Permit as the caused for demolition, not religious intolerance. The allegation is that an extension was made which had not received planning permission.

[26] Although Article 1383 (3) of the Civil Code says that a faute does not need to be intentional, the nature of the one before the court has intention at its core and this is the element that is shown lacking on the facts of the case.

[27] As far as the alleged trespass to land is concerned, the Plaintiff has not managed to adduce evidence to show that the impugned photograph was taken by the Defendants or their agents whether through direct or circumstantial evidence. I therefore prove this allegation also not proven on a balance of probabilities.

[28] As a result, this court fails to see any faute being caused by the acts of the Defendants in this case and I accordingly dismiss the Plaintiff.

Signed, dated and delivered at Ile du Port on day..... of February 2022



Govinden CJ