

IN THE SUPREME COURT OF SEYCHELLES

JULIEN KAVEN PARCOU

PLAINTIFF

VERSUS

DAVID BENTLEY

DEFENDANT

Civil Side No 250 of 2002

Mr. S.Rouillon for the Plaintiff

Mr. C.Lablache for the Defendant

RULING

B.Renaud

The Defendant in this case raised a point of law as follows:

“The plaint does not disclose a cause of action against the Defendant and should, therefore be struck off”.

In his submissions Mr. Lablache, Learned Counsel for the Defendant contended that the plaint of the Plaintiff does not disclose a cause of action because the Plaintiff has failed to supply certain indispensable material facts to sustain the case. In his view the action being one of defamation the law applicable to such case in Seychelles is the English Law as it stood in 1952 by virtue of Article 1383(3) of the Civil Code of Seychelles. As such, a claim in defamation can be sustained only if it is lodged in Seychelles. As such, a claim in defamation can be sustained only if it is lodged in accordance with specific rules, in particular, the words alleged to be slanderous must be reproduced in the plaint. This Mr. Lablache submitted is lacking in the present plaint.

Mr. Rouillon, Counsel for the Plaintiff, in his submission emphasised that the plaint is not one of defamation but an action in "*faute*". He added that "*it is clear from the plaint that the gist of the averments is steering well away from defamation*". It is simply that the Defendant communicated to the Philippines and Seychelles authorities certain allegations about the Plaintiff which were not well founded. He submitted that whether the action of the Plaintiff is a *faute* or not would be borne out by the evidence. It is the contention of Mr. Rouillon that there is a distinction between a *faute* and defamation.

A cause of action arises when the wrong or imagined wrong for which a plaintiff is suing, is one for which the substantive law provides a remedy. If a claim is at all arguable, it should not be struck out as disclosing no reasonable cause of action. Thus, on an application to strike out a plaint, it is assumed in favour of the plaintiff that, if the action were to go to trial, the plaintiff would establish all the facts pleaded.

The point of law raised by the Defendant, as worded, is not that the plaint does not disclose a cause of action in defamation, but that the plaint in general, does not disclose any cause action at all. With respect, I do not believe that that is necessarily the case here. Article 1382 paragraphs (1) to (5) of the Civil Code, which is the civil law of Seychelles, is of relevance.

In the present case, the Plaintiff pleads that by the mere fact the Defendant wrote such a letter to the authorities concerned is a *faute*, as the effect of such a letter has caused damage to the Plaintiff. How far such contention will subsist will be borne out by evidence.

For reason given above, I therefore rule that the plea in *limine litis* is set aside as being premature at this stage, and the case shall accordingly proceed to the hearing on the merits.

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B.RENAUD

JUDGE

Dated this 17th day of May 2004