

APISALOME NAMOUMOU**v**

1. **KOLINIO LULE**
2. **MAIKA NAIKAWA**
3. **MALAKAI VOFI**
4. **SISILIA VOFI**

[HIGH COURT, 1993 (Pathik CR), 17 May]**Civil Jurisdiction*****Damages-libel and slander-assessment.***

It was not disputed that the Defendants had defamed the Plaintiff, wrongfully accusing him of practicing witchcraft. The Chief Registrar assessed damages accordingly.

Cases cited:

Krishna Nand Chaudhary v Vunibobo (Civ. Action 5/91)
Livingstone v. Rawyards Coal Co (1880) 5 App. Cas. 25
Peter Lomas v. Frederick Cane (Civ. Action No. 323/78)
Pran Gopal Chanda (Civ. App. 6/80)
Shiri Raj Singh (Civ. Action 269/91)
Vijaya Parmanandam (Civ. Action no. 339/81)

Parties present in person.**Assessment of damages by the High Court.****Pathik CR:**

The Plaintiff's claim is for damages against the four Defendants for slander and for damages against the third and fourth defendants for libel.

The Writ of Summons in this action is dated 5th April, 1991 and was issued the same day by the High Court Registry.

The Defendants were duly served with the Writ and an Affidavit of service was filed.

No Notice of Intention to defend having been filed by the Defendant, a Default Judgment was entered against them on 15th July, 1991 with damages to be assessed and costs to be taxed if not agreed.

The words about which the Plaintiff complains and his claim are fully set out in the Statement of Claim as follows:

A “1. The plaintiff at all material times has been a retired school teacher and living at his village at Semo Village, Nadroga. The Plaintiff during his career as a teacher spent some 31 years before his retirement in 1980 he was a Headmaster in the schools where he taught.

B 2. The first and second defendants are brothers and are cane farmers and they live in their respective farms at Tagitagi and Vunahea at Nabau. The third and fourth defendants are husband and wife; whilst the third defendant is a Methodist lay-pastor, the fourth defendant is a deaconess within the same Methodist Congregation.

C 3. The first, second, third and fourth defendants are members of a prayer group that at the material time and date met from time to time for the purpose of praying. In particular the third and fourth defendants in the district of Nadroga in villages from Volivoli to Semo have earned themselves the reputation as prayer leaders.

D 4. On or about 26th January, 1991 at Semo Village, Nadroga the first, second, third and fourth defendants convened a meeting amongst themselves at about 9p.m at the house of one Aminiasi Namawa when the third and fourth defendants falsely and maliciously spoke and published of the plaintiff to and in the presence and hearing of Apimeleki Nailesu, Maikeli Bose, Peniasi Kurivitu, Atunaisa Navuma, Amani Naicula, Timoci Kuruivora and Tuiyau Kunatuba and others in the said village of Semo the following defamatory words:-

(3rd Defendant to the meeting)

F “I have been shown in my dreams in the course of prayers that Apisalome Namoumou is practising witchcraft and through powers acquired from witchcraft Apisalome has inflicted sickness and disease in the villages amongst the people”.

G 5. In a letter dated 5th March, 1991 signed by both the Third and Fourth defendants and published widely in the village of Semo the third and fourth defendants said of the plaintiff in Fijian.

“E na neirau i tutu vakalotu ko Malakai Vovi e i Vakatawa kei au, Sisilia Vovi, au Dikonesi, sa ka dredre kina vei keirau me keirau cakitaka na veika e a vakaraitaka mai vei keirau na Kalou ko Jiova,

ka sega ni keirau rerevaka na tamata, baleta na veika e vakaraitaki mai vei keirau, kevaka keirau na sega ni vakaraitaka ena laki tarogi keirau tale kina na Kalou e na gauna ni Veilewai Levu mai muri”

A

(Translation)

“In our capacities as office bearers in the church, with Malakai Vovi as lay pastor and I, Sisilia Vovi as a deaconess, it is therefore difficult for us to deny the things shown and revealed to us by God and in this regard we are not afraid of men because what has been revealed to us in dreams, if we refuse to reveal and show it to others, God will question us on this matter at the day of Judgment”

B

6. On the night of 26th January, 1991 at Semo Village, Nadroga at about 9p.m. at a village meeting convened at the house of one Aminiasi Namawa the first and second defendants, and in the presence and hearing of the third and fourth defendants falsely and maliciously spoke and published of the plaintiff to and in the hearings and presence of Apimeleki Nailasu, Atunaisa Navuma, Amani Naicula, Timoci Kuruivora, Tuiyau Kunatuba and divers others in the said village of Semo the following defamatory words;

C

D

1st Defendant to the Plaintiff:

“We note that you do not get involved with us as you used to do before. You appear to shy away and work on your own”.

E

Plaintiff in reply in the presence of others:

“Yes I work on my own now after my name was taken off the Vola ni Kawa (Register of Natives with the Native Lands Commission) of Tokatoka Namara”.

F

1st Defendant to the Plaintiff:

“Are you bitter about the fact that your name has been officially taken off from Tokatoka Namara”.

G

Plaintiff in reply in the presence of others:

“No I have no bitterness or regrets”.

1st Defendant to the Plaintiff in the presence of others:

“You must be bitter”

Plaintiff in further reply:

A “How do you know that I am bitter? Why should this concern you”

2nd Defendant intervened:

B “You are hurt and bitter about your deregistration. You have turned to witchcraft for supernatural power and strength. My family and I are being afflicted by sickness and disease which your practice of witchcraft has inflicted on us. You are practising witchcraft (Ko iko ko qaravi tevero tiko)”

Plaintiff further denial:

C “No, that allegation of witchcraft is not true. I don’t practice any witchcraft. How can you prove this witchcraft allegation?”

2nd Defendant in further reply:

D “It was revealed at our prayer meeting that you are practising witchcraft and for this reason, people are getting sick”.

Plaintiff further denial:

“No, that allegation of witchcraft is not true. I don’t practice any witchcraft. How can you prove this witchcraft allegation?”

2nd Defendant in further reply:

E “It was revealed at our prayer meeting that you are practising witchcraft and for this reason, people are getting sick”

1st Defendant adding in support :

F “You are practising witchcraft do not deny it because this has been revealed through prayers”

G 7. By the said words the first, second, third and fourth defendants meant and were understood to mean that the Plaintiff practised witchcraft for the purpose of inflicting sickness and diseases on people who are opposed to him. In addition, the plaintiff is the type of person who survives on the miseries and discomforts of others by the use of supernatural power obtained through the practice of witchcraft.

8. The Plaintiff has in consequence been gravely injured in his character, credit and reputation and has been brought into the public scandal, odium and contempt.

9. Unless restrained by this honourable Court, the Defendants will further publish the said or similar slanders upon the plaintiff.”

A

At the hearing of the Assessment of Damages the Plaintiff was present and he testified but he did not call any witnesses to testify on his behalf.

The first Defendant testified and called three witnesses but the other Defendants did not wish to give evidence.

B

In his evidence the Plaintiff said that he claims \$2500 as damages from each of the four defendants. He said that as a result of what the defendants have said against him he feels ashamed of himself; he denied practising witchcraft. Because of this allegations about 80% of the villagers are not on talking terms with him. Prior to this the relationship with them was good.

C

He said that he was a school teacher for 31 years but lives in retirement now. He was also a lay-preacher. Since retirement he has lived in the village for about 12 years.

Because of the allegations he says, his character, credit and reputation has been severely damaged.

D

The First Defendant testified that this action would not have instituted had the first and second Defendants had “particularly” gone to the Plaintiff to present the tabua. He said that the tabua was accepted by the Plaintiff’s brother. Since this was already done on 26.1.91 and before the receipt of a letter from Mr. Fa to go and present a tabua he did not think it was necessary to go again. The First Defendant is asking as to why should the presentation be done the second time.

E

The Defendants did not file any Defence. Even during the hearing of the assessment of damages only the First Defendant testified and he did not deny the allegations. Hence there was no dispute as to liability at any time since the action commenced.

F

On the evidence before me I find that the words (both written and oral) are defamatory of the Plaintiff. All the essential ingredients of the law of defamation including proof of publication have been proved to my satisfaction. The Plaintiff is therefore entitled to damages for both libel and slander as claimed.

G

In an action for libel or slander general damages are at large and it is not necessary to ask for any specific sum. Krishna Nand Chaudhary v Berenado Vunibobo & Attorney-General (Suva Civ. 591/91). Here the Plaintiff is asking for \$2500 from each of the four defendants. I am of the view that the claim is extravagantly out of proportion to any possible injury to his reputation which the Plaintiff may have suffered.

A Before I fix the actual amount of damage I should comment on a matter that was raised by the First Defendant in his evidence and that is that on 26th January 1991 a tabua was presented to the Plaintiff's brother at a meeting at which the Plaintiff was present. The first Defendant is therefore saying that he has apologised. Also the Defendants except the fourth Defendant in their cross examination of the Plaintiff put to the Plaintiff that they had apologised but the Plaintiff denied that this was done.

B I am not satisfied on the evidence before me that Defendants had actually apologised; if the Plaintiff's brother had accepted the tabua then he should have been called as a witness for he seems to be the only one who could have thrown some light on the subject.

C The Defendants I find have been too lax in this matter. They took no appropriate action when they were served with the Writ either by way of filing a Defence or coming out with a proper apology acceptable in law. Although an apology is no defence, they could have done as stated in s.4 of the Defamation Act Cap 34 which provides:-

D "In any action for defamation it shall be competent to the defendant (after notice in writing of his intention to do so duly given to the plaintiff within a reasonable time before the trial of such action) to give in evidence in mitigation of damages that he made or offered an apology to the plaintiff or such defamation before the commencement of the action, (f) or as soon afterwards as he had an opportunity of doing so, where the action had been commenced before there was an opportunity of making or offering such apology."

E As a general rule in actions for defamation the damages are to be assessed on a compensation basis for injury, not as punishment for wrong doing. In Livingstone v. Rawyards Coal Co (1880) 5 App. Cases 25 at 39 Lord Blackburn said:

F "Where any injury is to be compensated by damages, in settling the sum of money to be given for reparation of damages you should as nearly as possible get at that sum of money which would put the party who has been injured, or who has suffered, in the same position as he would have been in if he had not sustained the wrong for which he is now getting his compensation or reparation."

G In the case before me I am of the view that any damage to be awarded has to be reasonable and moderate bearing in mind the facts surrounding the case.

In Pran Gopal Chanda (FCA civ. App. 6/80) the sum of \$200 awarded for libel by the lower Court was upheld; in Shiri Raj Singh (Civ. Action 269/91

Sup Ct) the sum of \$100 was awarded for libel; in Vijaya Parmanandam (Civ. Action No. 339/81 Sup Ct) the sum of \$250 was awarded for libels. In Peter Anthony Lomas v. Frederick Cane (Civ. Action No 323/78 Sup Ct) where damages was assessed at \$1000 because the defamatory statements (slander) were of serious nature and called for an award of substantial damages.

A

I assess damage against each of the defendants as follows:

First Defendant \$250 for slander;

Second Defendant \$250 for slander;

Third Defendant \$250 for Slander and \$200 for libel total \$450;

Fourth Defendant \$250 for slander and \$200 for libel total \$450;

B

I also order that the defendants pay the Plaintiff's costs, to be taxed if not agreed upon.

(Damages assessed)

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