IN THE COURT OF APPEAL, FIJI ISLANDS
ON APPEAL FROM THE HIGH COURT OF FIJI

Civil Appeal No. ABU0061/2005
(High Court Civil Action HBC 511/2000S)

BETWEEN:

FIJI DAILY POST COMPANY LIMITED
and
RANJIT SINGH
and
MESAKE KOROI

Appellants

AND

SAKIUSA RABUKA
and
VOLAU RABUKA

Respondents

Coram: **Gallen, JA**
Ellis, JA
Scott, JA

Date of Hearing: **20 July 2006**

Counsel: **N. Lajendra for the Appellants**
R. Chand for the Respondents

Date of Judgment: **28 July 2006**

JUDGMENT OF THE COURT

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[1] In October 2000 the first Respondent was the Permanent Secretary for Justice. His wife, the second Respondent, was a

dental therapist at the CWM Hospital. The first Appellant was and remains a limited company which owns a national newspaper "the Fiji Daily Post". The second Appellant was the newspaper's publisher and the third Appellant was the newspaper's acting editor.

[2] On 22 October 2000 the Sunday edition of the newspaper (called "the Sunday Post") published an article on its front page under a prominent headline. The headline and the article were as follows:

> "EX-DIPLOMAT'S WIFE FOUND IN HOME RAID
>
> NEW YORK (Pacnews) – The wife and two sons of a former Fiji Diplomat were caught in a raid of a New York home suspected by police as the base for a migration racket.
>
> The Fijian woman, Mrs. Volau Rabuka is the wife of the former deputy head of the Fiji Mission in New York, Mr. Sakusa Rabuka. A lawyer by profession, Mr. Rabuka is now acting permanent secretary for justice in Suva.
>
> According to the Suva-based Pacific news agency service PACNEWS, Mrs. Rabuka was in the United States legally.
>
> She was in New York to visit her two sons who are continuing their studies there,: PACNEWS said.

The couple returned to Fiji when Mr. Rabuka's contract at the Fiji Mission in New York expired early this year, but the children remained behind to complete their education.

PACNEWS says Mrs. Rabuka was visiting their two sons when members of the New York Police Department (NYPD) raided the house at the New York suburb of Queens.

The house owners, former Fiji residents now residing permanently in the US were later charged in connection with an alleged green card racket.

While details of the charges could not be obtained, it is believed the couple, Ratu Seru Cavuilati and his wife, Salote Cakobau were selling green cards in the pretext that buyers could become permanent residents of the US.

The couple's Queens' home has been raided, seized by the US Government and the couple have been granted bail in the sum of FJ$500,000 (US$250,000). They will appear in court again in December.

The raid also netted in four Fijian men who were living in the house with expired visas. One of the four included a rugby player.

Arrangements are being made to deport the four home.

PACNEWS says Mrs. Rabuka and her two sons were not arrested in the NYPD raid. Mrs. Rabuka has sought assistance of the Fiji Mission in finding alternative accommodation for her children.

It is not clear whether the Fiji mission could meet such requests and if such assistance have indeed been provided.

A senior government official in Suva told PACNEWS that this is not the first time the couple have had problems with the law. The official said Salote Cakobau had similar problems in Vanuatu and Geneva while working for the United States.

She has also worked for the International Monetary Fund in Washington DC."

[3] The Appellants issued a writ and Statement of Claim in defamation in November 2000. They pleaded that in its natural and ordinary meaning, the article meant and was understood to mean, inter alia, that:

"(i) The plaintiffs were also involved in and were a party to there allegedly involved in the selling of green cards and migration racket;

(ii) That the plaintiffs being very educated and professional and ex-diplomat had criminal intentions and are untrustworthy, dishonest and

money making racketeers involved in the green card scam; and

(viii) That the statement insinuates and imputes that the second plaintiff Mrs. Volau Rabuka was caught in a raid with her children which raid also netted in four Fijian men all being raided and netted by the New York Police Department from the same house they were all accommodating involved in the green card racket".

[4] The Respondents pleaded that the allegations were false and malicious, in particular that the second Respondent was not in fact in the United States at all on the day that the raid took place, that she was never caught in any raid, that she had never sought assistance from the Fiji Mission in New York and that she had no knowledge of any green card racket.

[5] The Respondents pleaded that they had requested the Appellants to withdraw and/or apologise for the defamatory allegations made against them but that they had failed to do so. As a result of the publication of the offending article the Respondents had been "greatly injured in their credit and reputation in the society and had been brought into public scandal, odium and contempt". They sought compensatory and aggravated damages, and in addition, exemplary damages of $200,000.

[6] The Appellants, in a brief defence, admitted publishing the article in question. They, however, denied that the article conveyed the

meaning attributed to it by the Respondents or that it was defamatory. In the alternative it was pleaded that:

> "In so far as the words complained of consist of statement of fact, they are true in substance and in fact, and in so far as they consist made in good faith and without malice on the said fact which are a matter of public interest."

[7] We are moved to observe at this point that although the meaning of the pleadings is sufficiently clear, counsel drafting them might have taken rather greater care to express themselves precisely and grammatically.

[8] In Fiji, defamation actions are held by a judge sitting without a jury and on 1 September 2004 the action came on for hearing before the High Court (Pathik J).

[9] Both Respondents gave evidence. The first Respondent explained that after the publication of the article he had tried to contact the second Appellant with a view to having the article withdrawn but was not successful. On the day following the publication of the article his solicitors wrote to the third Appellant pointing out the errors which it contained and seeking an unconditional apology. No reply was received and no apology was published. The first Respondent also told the Court that the article had brought his integrity into question. His colleagues were asking whether he was fit to hold the position of Permanent Secretary for Justice. In the absence of an apology he was seeking damages.

[10] The second Respondent told the Court that she was not in the United States of America when the raid occurred. She had no knowledge of it at all but did know the couple whose home was raided: they provided accommodation and her children were staying with them. She told the Court that she was very much affected by the publication of the article. She was stunned and humiliated; the whole family was upset.

[11] No evidence was called by the Defence. Both counsel filed written submissions and judgment was delivered on 8 July 2005.

[12] The Plaintiffs' written submissions added little to the statement of claim. Mr. Chand suggested:

> "In reading the whole publication headed in the fashion and the prominence given by the [Appellants] and taking into account the whole of the publication the [Respondents] are equally implicated, as a party to the green card racket when the ordinary and natural meaning is attributed to the same. They were living there with the Cavuilati family and other illegal immigrants. The home was raided and seized by New York Police and Mrs. Rabuka and two children were found living there."

[13] Counsel for the Defendants at the trial, Mr. S. Inoke, accepted that the article was partly factually incorrect, in particular when it suggested that the second Respondent was present in the United States and involved in the raid. He however suggested that:

> "... one must read the article as a whole and not just pick parts in isolation. Indeed the [Appellants] submit that not only have [Respondents] done this, they have adopted a legalistic type interpretation, and this is the reason why the [first Respondent] has come up with the contrived interpretation that the words do refer to him and are defamatory to him and his family."

[14] Mr. Inoke also suggested that:

> "the words published by the [Appellants] which refer to the [Respondents] do not have the meaning that the [Respondents] allege, namely that they were involved in "a green card racket". The impression which an ordinary person reading the article would get is that the [Respondents] were just unfortunate to be in that particular place when the raid took place. There is nothing defamatory about that..... if anything this is nothing more than inaccurate reporting and as such is neither tortious nor actionable."

[15] The two questions which the judge appreciated that he had to ask himself were first, whether the words complained of were capable of conveying a defamatory meaning and secondly, whether they in fact conveyed such a meaning (Jones v. Skelton [1963] 1 WLR 1362; [1963] 3 All ER 952). As is clear from the judgment taken in its entirety, both questions were answered affirmatively. The first Respondent was awarded $45,000, the second Respondent $38,000. The claim for

aggravated damages was dismissed. This is an appeal both against liability and quantum.

[16] Seven grounds of appeal were filed. Their general thrust was similar to that of the written submissions filed in the High Court. Issue was not taken with the judge's careful analysis of the relevant law but rather the application of that law to the materials before him. It was argued that the judge had paid insufficient regard to a number of facts which the article made plain and which, it was submitted, nullified any prejudicial effect which the article right otherwise have had.

[17] Mr. Lajendra emphasized that the article quite clearly stated that the second Respondent had not been arrested in the raid. It also stated that she was in the United States legally. He submitted that the article, considered in its entirety, did not actually impute any dishonesty or other improper motive to either of the Respondents at all. So far as the first Respondent was concerned, while he was indeed referred to, not least in the article's headline, on an accurate reading of the article there was no suggestion of any improper conduct on his part.

[18] We consider that a remark by a former Vice President of this Court, Sir Trevor Gould in Ratu Mosese Tuisawau v. Fiji Times & Herald Ltd (1975) 21 FLR 149, 154 is apposite:

> "the difficulty is that a newspaper cannot expect to find its readers entirely logical."

[19] Mr. Lajendra suggested that the judge ought to have specified the exact words in the article which he found to be defamatory.

We do not agree. While the judge did, in fact, make it clear that he found that the most damaging aspect of the article to be the allegation that the second Respondent had been found in the raid, when in fact she was not present at all, we do not think that it was incumbent upon him to do more than fairly look at the whole article and its contents from the view point of the reasonable Fiji reader and come to a conclusion that the article either was, or was not, defamatory.

[20] It is settled law that a new trial will not be granted on the ground that the verdict of a jury is against the weight of the evidence, unless the verdict was one which a jury, viewing the whole of the evidence reasonably, could not properly find (Metropolitan Railway v. Wright (1886) 11 App. Cas. 152). The principle is not significantly modified when the case is tried by a judge alone (see Benmax v. Austin Motor Co. [1955] AC 370).

[21] In the present case the judge carefully examined the article complained of. We have the opportunity to do the same. In our view it was plainly open to the judge to come to the conclusion which he reached and accordingly the appeal against the finding of liability must fail.

[22] So far as damages are concerned Mr. Lajendra suggested that the sums awarded had been "plucked out of thin air" and were wholly excessive. He suggested that the amounts awarded should be reduced to between $5,000 and $7,500.

[23] As will be seen from the judgment, a number of factors were taken into account when the awards were being assessed.

These included the fact that the first Respondent held a prominent and highly trusted position as Permanent Secretary for Justice. Any suggestion of impropriety on his part was obviously very damaging. Secondly, the judge found that the publication of the article was irresponsible and careless. Thirdly, no correction or apology was forthcoming. Had an apology been promptly published as requested, the libel would not have been repeated in another newspaper in Fiji.

[24] The judge also took guidance from the somewhat similar circumstances in the English case of Kiam v. Neil and Anr (Times Law Reports 26 July 1996). In that case an award of £45,000 was made. The judge pointed out that the very low awards given by the Courts in Fiji in the past, amounting to merely a few hundreds of dollars, had done little to deter the media's temptation "to indulge in misreporting". Having taken all those matters into consideration he arrived at his award.

[25] Although an award of damages by a Judge sitting alone will be more readily upset than the award of a jury, damages in defamation cases are essentially a matter "of impression and commonsense" (Davies v. Powell Duffryn [1942] AC 601, 616). The Court of Appeal will not generally interfere unless the Judge has misapprehended the facts, has taken into account irrelevant factors or has applied a wrong principle of law (see e.g. Truth (NZ) Ltd v. Bowles [1966] NZLR 303).

[26] In this case we are not satisfied that it has been shown that a wholly erroneous estimate of the damage suffered has been made and accordingly the appeal against quantum also fails.

RESULT:

1. Appeal dismissed.
2. Respondents' costs assessed at $1,000.

Gallen J.A.

Ellis J.A.

Scott J.A.

Solicitors:

R. Patel and Co. for the Appellants

Ram Chand & Co. for the Respondents