

IN THE HIGH COURT OF FIJI AT SUVA
CIVIL JURISDICTION

Civil Action No. HBC 59 of 2018

BETWEEN

JOSAIA VOREQE BAINIMARAMA of New Wing, Government Buildings,
Suva, Prime Minister of the Republic of Fiji.

FIRST PLAINTIFF

AND

AIYAZ SAYED-KHAIYUM of Suvavou House, Victoria Parade, Suva,
Attorney-General, Minister of Economy, Civil Service and
Communications of Fiji.

SECOND PLAINTIFF

And

AMAN RAVINDRA-SINGH of Tukani Street, Lautoka, Fiji,
Barrister and Solicitor.

DEFENDANT

Counsel : Mr. Sharma D. with Ms. Fatima G. for the Respondents
Mr. Aman Raveendra-Singh in person

Date of Hearing : 29th June 2020

Date of Ruling : 24th July 2020

JUDGMENT

(On Assessment of Damages)

- [1] The respondents (plaintiffs) instituted these proceedings against the applicant (defendant) seeking the following reliefs:
- (a). Damages for libel and slander;
 - (b). Punitive, Exemplary and aggravated damages;
 - (c). An order that the defendant within 7 days render in writing a public retraction and apology in prominent print to the plaintiffs to be published in a daily newspaper circulating in Fiji;
 - (d). An order that the defendant immediately remove the subject article from his Facebook Page and be restrained from publishing or printing such similar article in any form of social media;
 - (e). Pre-judgment and post-judgment interest on any award of damages;
 - (f). Cost of this action on a substantial-indemnity basis inclusive of VAT; and
 - (g). Such other and further relief as this court may deem just.
- [2] The respondents filed the affidavit of service of the Writ of Summons and the Statement of Claim on 18th October 2018. The applicant filed the Acknowledgement of Service on 31st October 2018 but he did not file his statement of defence and the court entered

interlocutory Judgment ordering the defendant to pay \$320.60 as costs and damages to be assessed.

- [3] On 28th November 2018 the plaintiff filed summons for assessment of damages and with the leave of the court it was served on the defendant by registered post.
- [4] The defendant then filed an application to have the interlocutory judgment vacated and after hearing the parties the court refused the application.
- [5] At this stage I will not embark upon the exercise of discussing whether the material posted by the defendant in his Face Book profile are defamatory since the court has already entered judgment against the defendant.
- [6] I will below reproduce the entire text of the article posted on the Face Book by the defendant:

Regime Dirty Politics.

I am sickened at the recent series of temples around Fiji. I cannot help but wonder how in an election year in the past three months at least 6 temples have been desecrated. Someone surely wants all the attention.

These criminals were well organised and I am even assumed that they went out of their way to buy red paint which was later used when they committed these crimes.

Even during the worst days of racial, religious and ethnic tensions in 1987 and 2000, we never had six temples desecrated within a period of three months.

These series of desecrations appear to be part of a grand plan and not some random acts of stupidity and misled thoughts as we have seen in the past.

Notice how Korrupt Kaiyum & Commissioner of Police conveniently appear at temple open forums and promise safety and security. These promises are further

propped by the regime's number 1 print propaganda machine the Fiji Sun which runs the headlines: "We Will Keep You Safe" & "We Won't Tolerate These Acts".

The plan all along has been to:

Phase 1: desecrate these temples,

Phase 2: create a climate of fear with the community,

Phase 3: show up and promise security.

Stop the desecration of temples in Fiji for cheap political gains. These sick and despicable crimes were organised by Korrupt Kaiyum, Violent Voreqe & their henchman.

- [7] These allegations are very serious in nature. One does not make allegations of this nature unless they are true and have very strong grounds to justify them. The 1st plaintiff is the Prime Minister of Fiji who were elected to that post by the people of Fiji. The people would not have voted for him if they did not have confidence and trust in him that he would discharge his duties honestly and efficiently. The people who read the above article would certainly have lost faith in the 1st plaintiff because he is referred to in the said article as Violent Voreqe. The 2nd plaintiff who is the Minister of Economy and the Attorney General, was also elected by the people of Fiji to be a member of the Parliament. Without any reasonable ground he has been referred to as Korrupt Kaiyum. People have various political affiliations but one must not defame the character of another for his own political gain. This is what exactly has happened in this case. No court will have sympathy towards people who violate the rights of others in the guise of exercising their rights guaranteed by the Constitution.
- [8] The learned counsel cited various authorities on the issue of assessment of damages in defamation cases.

[9] In **John v MGN Ltd** [1996] All ER 35 it was held:

The successful plaintiff in a defamation action is entitled to recover, as general damages, such sum as will compensate him for the wrong he has suffered. That sum must compensate him for the damage for his reputation; vindicate his good name and take account of the distress, hurt and humiliation which the defamatory publication has caused. In assessing the appropriate damages for injury to reputation the most important factor is the gravity of the libel; the more closely it touches the plaintiff's personal integrity, professional reputation, honour, courage, loyalty and the core attributes of his personality, the more serious it is likely to be. The extent of publication is also very relevant: a libel published to millions has a greater potential to cause damage than a libel published to a handful of people.

In **Kiam v Neil** TLR 26.7.96 p.33 C.A. –

The libel jury could properly take into account the prominence of the plaintiff's reputation when deciding what figure was required to vindicate it. They were also entitled to take account of fact that it struck at the core of his life's achievements....

In the case of **Reynold v Times Newspapers Ltd & Others** [1999] 4 All ER 609 it was held:

Lord Nicholas of Birkenhead said at p.622; -

“Reputation is an integral and important part of the dignity of the individual. It also forms the basis of many decisions in a democratic society which are fundamental to its well-being: whom to employ or work for, whom to promote, whom to do business with or to vote for. Once besmirched by an unfounded allegation in a national newspaper, a reputation can be damaged forever, especially if there is no opportunity to vindicate one's reputation. When this happens, society as well as the individual is the loser. For it should not be supposed that protection of reputation is a matter of importance only to the affected individual and his family. Protection of reputation is conducive to the public good. It is in the public interest that the reputation of public figures should

not be debased falsely. In the political field, in order to make an informed choice, the electorate needs to be able to identify the good as well as the bad. Consistently with these considerations, human rights conventions recognize that freedom of expression is not an absolute right. Its exercise may be subject to such restrictions as are prescribed by law and are necessary in a democratic society for the protection of the reputations of others".

As stated by **Duncan and Neillon on Defamation** (1978 Edition) at page 130 for compensatory damages, the 'basic rule of common law is that in civil action damages are awarded as compensation for injury, not as punishment for wrongdoing'. (18.03). The authors go on to state: "The purpose of an award of compensatory damages is to restore the plaintiff, as far as money can do so, to the position he would have been in if the tort had not been committed. This principle of restitution in integrum was stated by Lord Blakburn in *Livingstone v Rawyards Coal Co* as follows:

'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".

- [10] For the reasons set out above and the principles enunciated in the decisions cited the act of the defendant must be considered very seriously and the court is of the view that the defendant should be ordered to pay the plaintiffs \$120,000.00 as damages.
- [11] The plaintiffs also sought exemplary damages.
- [12] In **Rookes v Barnard** [1964] AC 1129 the House of Lords (Lord Devlin) held that if A has committed a tort, exemplary damages can be awarded against him if:

- (1) A was a servant of the government' at the time he committed his tort and he acted in an 'oppressive, arbitrary or unconstitutional' manner in committing that tort;
- (2) A committed his tort because he figured that he would make more money committing that tort than he would have to pay out in damages to the victim of that tort; or
- (3) statute law authorises an award of exemplary damages to be made against someone who has committed the kind of tort that A committed.

[13] In **Cassell & Co. v Broom & Anor** [1972] AC 1027 the House of Lords discussed the binding effect of the decision in **Rooks v Barnard** and said:

That the decision in *Rooks v Barnard* was not arrived at per incuriam, that in the hierarchical system of the English courts it was not, in any event, open to the Court of Appeal to direct judges of first instance to ignore a decision of the House and further (Viscount Dilhorne dissenting) that *Rooks v Barnard* was not inconsistent with any earlier decision of the House of Lords.

In **Broome v Cassell & Co** [1972] 2 WLR 645 it was held:

The only practical way is first to look at the case from the point of view of compensating the plaintiff. He must not only be compensated for proved actual loss but also for any injury to his feelings and for having had to suffer insult, indignities and the like. And where the defendant has behaved outrageously very full compensation may be proper for that. Then if it has been determined that the case is a proper one for punitive damages the tribunal must turn its attention to the defendant and ask itself whether the sum which it has already fixed as compensatory damages is or is not, adequate to serve the second purpose of punishment or deterrence. If they think that sum is adequate for the second purpose as well as for the first they must not add anything to it. It is sufficient both as compensatory and as punitive damages. But if they think that sum is insufficient as a punishment they must add to it enough to bring it up to a sum sufficient as

punishment. The one thing which they must not do is to fix sums as compensatory and as punitive damages and add them together. They must realise that the compensatory damages are always part of the total punishment.


[14] The court has decided above to order the defendant to pay the plaintiffs \$120,000.00 as damages. In my view this amount is sufficient both as compensatory and punitive damages.

ORDERS

1. The defendant is ordered to pay the plaintiffs \$120,000.00 as damages (\$60,000.00 to each plaintiff) within 30 days from the date of this judgment.
2. The defendant is ordered to render in writing a public retraction and apology to the plaintiffs in prominent print which is to be published on his Face Book page and in all local daily newspapers.
3. The defendant is ordered to remove the subject article from his Face Book page immediately.
4. The plaintiffs are entitled to 6% interest on the sum awarded from 07th March 2018 to the date of the judgment.
5. The defendant is also ordered to pay the plaintiffs \$8,000.00 as costs (summarily assessed) of this action within 30 days from the date of the judgment.



24th July 2020


Lyone Seneviratne

JUDGE