

The plaintiff's claim

4. In the writ of summons the plaintiff claims to have been defamed by the defendant by making the publication on Facebook (on a page/site of Samachar Darshan, which has approximately 120,000 member and describes itself as:

Fiji's leading social media, current affairs and sports news group.

and sets out the following Terms of Use:

TERMS OF USE

SAMACHAR DARSHAN is a public online forum that provides a neutral platform for its members to discuss common issues that affect them in their daily lives pursuant to section 17 of the Constitution of Fiji 2013 which promotes the freedom of speech, expression, opinion and publication. This freedom vests the responsibility on each individual to enjoy these rights within the confines of the law.)

5. The words used in the defendant's publication are not actually set out in the statement of claim, but the plaintiff alleges that whatever it was that was published was defamatory in that in their natural and ordinary meaning they meant:
- That the plaintiff was engaged in illegal and unlawful activities whilst in the employment of the Ministry of Education by causing favouritism to one particular student
 - The plaintiff is not a good person by his acts towards other students
 - That the plaintiff was a dishonest person and/or committed moral turpitude by causing favouritism to a particular student
 - That the plaintiff committed deception and/or deceit and/or made by causing and amending and/or tempering (sic) with a particular student's exam marks
 - That the plaintiff is of bad character and is biased.
6. The plaintiff demanded a retraction and apology from the defendant, and the defendant did cause a small article to be published in the Classified section of the Fiji Sun newspaper of 1st February 2020, which the plaintiff says was inadequate in that it did not refer to the true reason for the apology/
7. The plaintiff is, or was at the material time, the principal of a well-known primary school in Lautoka. He says he has suffered mental anguish, public ridicule and embarrassment in the community, among his family and in the teaching fraternity.
8. In his affidavit in support of the application for judgment the plaintiff says:
- Since 2019 he has been the principal at the Drasa Avenue School in Lautoka.
 - The defendant's son was a pupil at the school.
 - From November 2019 the defendant, under his own name, posted a number of comments on the Samachar Darshan Facebook page, which has approximately 120,00 members (including, the plaintiff says, many of his

students, their parents, colleagues, family and friends) and mostly focusses on global and local news.

- The posts consisted of the following:

School Head under investigation by Ministry of Education for allegedly altering an exam answer sheet for one of his favourite students in an internal exam. It is commonly known who the favourite student is as this teacher got this student transferred from a school where this teacher was posted last. And this particular student was in that school. A full report by an eye witness has been sent to our PM, AG, Minister Akbar and relevant authorities. Two officials from Ministry of Education visited the concerned school yesterday and has taken statements from relevant teachers in the school.

I don't see the Head Cheater anymore. Mind boggling.

Evidence that exam answer sheet tampered by HeadTeacher in Primary School #Favouritestudent to top class again ...

How cruel it is to restrict a female teacher's movement out of the school office for over an hour

How cruel it is to lock a female teacher in the school office for over an hour?

Which primary school in Lautoka has a Head Cheater LOL

Birds of same feather flock together to investigate exam results tampering in primary school in Lautoka. I rest my case

In response to a comment in a post by Kamal Narayan that *Hood one, he needs to be taken to task, also his aide from MEO*

Kamal Narayan yes his kava buddy there that's why he got promoted to HT.

Above a picture of the plaintiff:

Head teacher in Primary School in Lautoka being questioned for allegedly altering exam answer sheet for one of his fav students PM, AG, Minister and relevant authorities are aware.

9. On becoming aware of these posts the plaintiff instructed his lawyer to write to the defendant on 20 January 2020. The letter stated.

DEMAND NOTICE

We act on instructions of our client Mr Shelvin Sailesh Prasad.

We have been reliably informed that you are posting detrimental and injurious statements on social media Facebook platform against our client without any concrete evidence.

You are to refrain from posting any further comments against our client and withdraw with immediate effect any post against our client from Social Media, including Facebook. We also put you on notice to immediately apologise for such baseless and nonsensical posts on Facebook and to publish an apology in both of the Local Newspapers.

PLEASE TAKE NOTICE in any event failure on your part to take heed of this Notice within seven (7) days, we have instructions to file legal proceedings against you for defamatory post on Social Media according to Online Safety Act, without any further notice to you. Please note

that should we proceed to legal redress, we shall be seeking General damages, out of pocket expenses and costs to a higher scale.

We hope that common sense will prevail to avoid any unnecessary embarrassments.

Yours faithfully

Zoyab Mohammed Legal.

10. It is not clear if there was any response to this letter, but an advertisement was published in the Public Notices column in the Fiji Sun on 1 February 2020 as follows:

My Apologies to
Mr Shelvin
Prasad of Lautoka
regarding my posts.
Ronald Singh
Lautoka

11. In his affidavit the plaintiff says, without providing any particulars, that the defendant *continues to act in the same manner despite advising him on several occasions*. It is not clear from this whether the conduct complained of has continued even after the apology was published, and if so when, and how. In the absence of this information I will confine this decision to the complaints for which the plaintiff has provided evidence, as set out above.

The law

12. In **Street on Torts** (2015) 4th Ed. Oxford University Press the following passage appears under the heading Elements of Defamation:

*The tort of defamation protects a person's interest in his reputation. Reputation is important in communal life. It expresses a judgement about a person in terms of his worthiness for membership of the community. This judgement is made by reference to the values ostensibly shared by 'right-thinking members of society'. Improper injury to reputation threatens continued full membership of the community, which harms both the individual **and** his community, and provides a reason for the law to intervene. Whether a defamation action is framed in libel or slander, the claimant must always prove that the statement (whether encompassing words, pictures, gestures, etc) was defamatory. The claimant must also show that the statement refers to him and that it was published to third persons.*

13. The classic definition of a defamatory statement stated in **Parmiter v Coupland** (1840) 6 M&W 105, at 108 is one *which is calculated to injure the reputation of another, by exposing him to hatred, contempt or ridicule,* and although this test has attracted some criticism (among other things it is not susceptible to the defence of truth, and is more protective of self-worth than reputation) it is still often used as the starting point in any analysis of whether words used are defamatory. A more recent alternative test proposed by Lord Atkin in **Sim v Stretch** [1936] 2 All ER 1237 at 1240 is whether the words complained of *tend to lower the claimant in the estimation of right-thinking members of society generally*. The author of **Street** (p.527) suggests that all of the tests should be understood in the following way:

If a substantial and respectable proportion of society would think less well of a person then the statement will be construed as defamatory, provided their reaction is not plainly anti-social or irrational.

14. It is clear that the words complained of must be construed in their ordinary meaning, that words found to be defamatory are presumed to be false, until proved to be true, and that 'publication' means *making known the defamatory matter ... to some person other than the person of whom it is written*. It is also clear that in libel cases at least, which is what we are concerned with here, damage to reputation is assumed and need not be proved.
15. Finally in this section, the Defamation Act 1971 provides in sections 4 & 5 the opportunity for a defendant to mitigate damages by apologising, or to defend a claim for libel on the basis that the publication was made without malice or gross negligence, and that the defendant apologised at the earliest opportunity. Section 4 of the Act (dealing with mitigation) provides:

Evidence in mitigation of apology

4. *In any action for defamation it shall be competent to the defendant (after notice in writing of his or her intention to do so duly given to the plaintiff within a reasonable time before trial of such action) to give evidence in mitigation of damages that he or she made or offered an apology to the plaintiff for such defamation before the commencement of the action ...*

Analysis

16. In the absence of a notice of intention to defend, or any statement of defence, the plaintiff is entitled to judgement in his claim for damages for defamation. In my view this is a matter covered by Order 13, rule 2 of the High Court Rules, which provides:

Claim for unliquidated damages (O.13, r.2)

2. *Where a writ is indorsed with a claim against a defendant for unliquidated damages only, then, if that defendant fails to give notice of intention to defend, the plaintiff may, after the prescribed time, enter interlocutory judgment against that defendant for damages to be assessed and costs, and proceed with the action against the other defendants, if any*

A claim for defamation is a claim for unliquidated damages, and the present proceedings claim only unliquidated damages. I am unsure in the absence of reasons given for that decision why Ajmeer J felt otherwise, such that he set aside the default judgment issued by the court on 16 July 2020, but in any case the plaintiff has not been disadvantaged, because this decision as to quantum would in any case have been necessary.

17. In respect of the amount of damages counsel's submissions were not particularly helpful. The plaintiff has claimed \$100,000 for damages, but I note that in the solicitor's letter to the defendant referred to above (paragraph 9) the plaintiff appears to be saying that he would be happy with a published apology. Although the offer made in the solicitor's letter seems not to have been accepted by the defendant in the terms it was offered (the apology was apparently published only

once in the Fiji Sun and not in both papers), and so does not constitute a settlement of the claim, nevertheless the fact that an apology is all that is sought, and it was given, albeit not precisely in the terms requested, are I think matters that the court can take into account in assessing the amount of damages that would be appropriate.

18. Also a factor in arriving at an amount of damages is section 4 of the Defamation Act quoted above. Again, although section 4 does not strictly apply (the defendant has not given evidence) it is clear that an apology has been asked for and given, and this should not be ignored in the assessment of damages.
19. In its decision in **Patel v Gosai** [2014] FJCA 37 the Court of Appeal (inter alia) reviewed the award of damages awarded to a local body politician after he had been defamed in a council meeting. In the High Court the plaintiff had been awarded \$70,000 in damages, with the judge commenting:

[86] *The plaintiff is a councillor of the Nadi town and a professional accountant. He is a person of high social standing in the society. The image of the politician and the perception among the constituents are essential tools for a politician. To be branded as a corrupt politician, abusing his office for his private gain would not auger well for a political life. There is also the direct implication of abuse of office and dishonesty and fraud in respect of public money of ratepayers.*

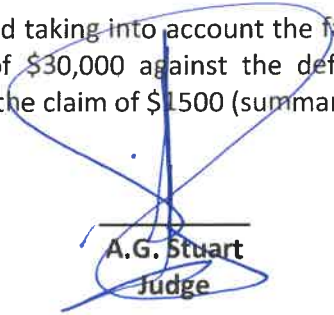
[87] *The Plaintiff says he was seriously injured in his character, credit and reputation and had been brought into public scandal, odium and contempt. He had also stated that his reputation as a Teacher, Accountant and as a Hindu Temple Official and as a reliable and decent person was gravely affected and destroyed. The embarrassment had prompted him to migrate and that no apology was made by the Appellant.*

In the Court of Appeal this award was reduced to \$50,000, following a review of other damages awards in earlier defamation cases. In its decision in **Prasad v Kelawan** [2011] FJHC 123 the High Court awarded \$30,000 to a teacher who had been subjected to a number of petty allegations that reflected on her integrity and qualities in her professional role. In that case the defendants sought to justify the assertions they had made, and there is no evidence of an apology.

20. In the present case the allegations made against the plaintiff are at one level similarly petty and trivial, but they do reflect on the integrity of the plaintiff as both a teacher and a school principal in a much more significant way than the conduct alleged in **Prasad v Kelewan** (above). Allegations of favouritism might be understandable, but the suggestion of manipulating exam results is likely to be regarded very seriously by the pupils and their parents, and by the Ministry of Education. The integrity of exams is a fundamental expectation of the school system, and essential to maintain public confidence in education and educators. The allegations of the defendant are certainly therefore likely to harm the reputation of the plaintiff in ways that are likely to be long-lasting, and difficult to counter. There is no assurance that someone who was aware of the initial comments will also have seen the defendant's apology.

21. The fact that the defendant is apparently the parent of another pupil at the same school suggests the possibility of other motivation for his comments. Given that there is no evidence from the defendant in explanation of his conduct, and that he has apparently readily apologised for his comments, there is nothing to relieve the impression that the remarks were published knowing them to have been false, simply for the purpose of causing harm to the plaintiff. However, he did apologise, when asked to do so.
22. In the circumstances, and taking into account the factors referred to above, I award the plaintiff damages of \$30,000 against the defendant. The defendant is also ordered to pay costs on the claim of \$1500 (summarily assessed).




A.G. Stuart
Judge

At Lautoka this 3rd day of March, 2021

SOLICITORS:

S Nand Lawyers, Lautoka for the plaintiff