

**IN THE HIGH COURT OF FIJI**  
**AT SUVA**  
**CIVIL JURISDICTION**

**Civil Action No. HBC 72 of 2017**

**BETWEEN: SARAS PATI** of Makita Street, Omkar Road, Nasinu, Self-Employed.

**1<sup>ST</sup> PLAINTIFF**

**AND: RAJESH PRASAD** of Makita Street, Omkar Road, Nasinu, Self-Employed.

**2<sup>ND</sup> PLAINTIFF**

**AND: SATYA NARAIN** of Makita Street, Omkar Road, Nasinu, Employment unknown to the Plaintiffs.

**1<sup>ST</sup> DEFENDANT**

**AND: FARID ISLAM KHAN** of Makita Street, Omkar Road, Nasinu, Employment unknown to the Plaintiffs.

**2<sup>ND</sup> DEFENDANT**

**AND: KAMLA WATI** of Makita Street, Omkar Road, Nasinu, Employment unknown to the Plaintiffs.

**3<sup>RD</sup> DEFENDANT**

**AND: NUNIA NIULEVU** of Makita Street, Omkar Road, Nasinu, Employment unknown to the Plaintiffs.

**4<sup>TH</sup> DEFENDANT**

**AND: PRAVINA SINGH** of Makita Street, Omkar Road, Nasinu, Employment unknown to the Plaintiffs.

**5<sup>TH</sup> DEFENDANT**

**AND: ANA VULA** of Makita Street, Omkar Road, Nasinu, Employment unknown to the Plaintiffs.

**6<sup>TH</sup> DEFENDANT**

**AND: MOHINI LATA** of Makita Street, Omkar Road, Nasinu, Employment unknown to the Plaintiffs.

**7<sup>TH</sup> DEFENDANT**

**AND: CYNTHIA NIVASHNI CHAND** of Makita Street, Omkar Road, Nasinu, Employment unknown to the Plaintiffs.

**8<sup>TH</sup> DEFENDANT**

**AND: RAMBHA DEVI** of Makita Street, Omkar Road, Nasinu, Employment unknown to the Plaintiffs.

**9<sup>TH</sup> DEFENDANT**

**AND: UMESH CHAND** of Makita Street, Omkar Road, Nasinu, Employment unknown to the Plaintiffs.

**10<sup>TH</sup> DEFENDANT**

**AND:** **ALVIN VICKY CHAND** of Makita Street, Omkar Road, Nasinu, Employment unknown to the Plaintiffs.

**11<sup>TH</sup> DEFENDANT**

**AND:** **AKSHAY SONAL CHAND** of Makita Street, Omkar Road, Nasinu, Employment unknown to the Plaintiffs.

**12<sup>TH</sup> DEFENDANT**

**AND:** **Z. KHAN** of Makita Street, Omkar Road, Nasinu, Employment unknown to the Plaintiffs.

**13<sup>TH</sup> DEFENDANT**

**BEFORE:** **Hon. Mr. Justice Vishwa Datt Sharma**

**COUNSEL:** **Mr. Filipe V.** - for the Plaintiff  
**Mr. Gosai S. P** - for the Defendant

**DATE OF DECISION:** 21<sup>st</sup> January 2021 @ 9.30 am

## **DECISION**

*[Admissibility of Documentary Evidence as an Exhibit]*

**INTRODUCTION**

- [1] The Plaintiffs filed a Writ of Summons together with a Statement of Claim on 17<sup>th</sup> March 2019 against the Defendants alleging Defamation.
- [2] The alleged Defamatory Statements are contained in the letter dated 19<sup>th</sup> October 2016 written to the Ministry of Local Government, Urban Development, Housing & Environment for the purposes of investigation.
- [3] The Defendants filed their Statement of Defence on 22<sup>nd</sup> March 2016 and admitted writing the letter but denied publishing the same.
- [4] The matter proceeded to Trial on 26<sup>th</sup> of August 2020.
- [5] The 2<sup>nd</sup> Plaintiff Rajesh Prasad was testifying in Court when the Defence Counsel intercepted and objected to the admissibility of the letter dated 19<sup>th</sup> October 2016 into evidence as the Plaintiffs Exhibit.

**DEFENCE CONTENTION (SUMMARISED)**

- [6] The Grounds of Objection raised by the Defendants were-
- That the Plaintiff has not established proper grounds for tendering the documents into evidence
  - That the documents cannot be tendered into evidence by the 2<sup>nd</sup> Plaintiff, since he is not the Author of the document nor the same is addressed to him
  - That the list of documents were not discovered , and
  - The Plaintiff failed to fully understand section 3 of the Civil Evidence Act 2002 involving procedure in tendering documents into evidence.

**PLAINTIFFS CONTENTION (SUMMARISED)**

- [7] The Plaintiffs contention is otherwise and stated that it is immaterial in the present proceedings how the Plaintiffs came into possession of the letter dated 19<sup>th</sup> October 2016 especially when the Defendants are not denying, preparing, signing and delivering the said letter.
- [8] It is an issue such as the ones raised by the Defendants in this Defamation proceedings is scarce and there is hardly any case authority on it.
- [9] The Plaintiffs leave this issue to be decided by the Court at its discretion in the interests of justice.
- [10] Both parties to the proceedings furnished Court with their respective written submissions.

**DETERMINATION**

- [11] The only issue for this Court to determine is 'whether the letter dated 19<sup>th</sup> October 2016 should be admitted into evidence as Plaintiffs Exhibit?'
- [12] The Defendants in their Statement of Defence stated-

- At paragraph 2(a) admitted writing the letter to the Ministry of Local Government, Urban Development, Housing & Environment for the purposes of an investigation and enquiry but deny publishing the same.
- At paragraph 2(g) the Defendants agree to the contents of the said letter as contained in the Plaintiffs Statement of Claim. However, they deny that the letter was Defamatory in nature.

- [13] The Pre-Trial Conference Minutes confirms at paragraph A(2-5) inclusive that they wrote and signed the letter dated 19<sup>th</sup> October 2016 which was delivered and received by the Ministry of Local Government, Urban Development, Housing & Environment.
- [14] The Defendants and the Plaintiffs confirm having in their possession, custody or power the said letter dated 19<sup>th</sup> October 2016 sent to the Director of Ministry of Local Government, Urban Development, Housing & Environment.
- [15] Further, the 2<sup>nd</sup> Plaintiff Rajesh Prasad in his Oral Evidence in Court has stated that the letter dated 19<sup>th</sup> October 2016 was shown to him by the 1<sup>st</sup> Plaintiff's Witness Mohammed Dean.
- [16] On the other hand, the Plaintiffs first Witness Mohammed Dean has also confirmed in his testimony that he had shown the said letter to the Plaintiffs.
- [17] Therefore, the Affidavit Verifying List of Documents of both parties to the proceedings in fact also now confirm that the said letter in question dated 19<sup>th</sup> October 2016 have been discovered by both parties.
- [18] The Discovery of the said letter dated 19<sup>th</sup> October 2016 was completed and both parties were aware and of the knowledge of the contents of the letter dated 19<sup>th</sup> October 2016.
- [19] The Evidence Act 2002 does not act as a bar since the second limb of section 2(1)(b) does not include civil proceedings in relation to which strict rules of evidence do not apply.
- [20] I have borne in mind the current impending issue before Court regarding the objection raised by the Defence in terms of the tendering of the said letter dated 19<sup>th</sup> of October 2016 into evidence as an Exhibit of the Plaintiff.
- [21] However, unlike in any other case, the Court has to consider this issue in a different perspective, since this is an action for Defamation.
- [22] The alleged Defamatory Statements contained in the letter of 19<sup>th</sup> October 2016, cannot in any way be written by the Plaintiff.
- [23] It is simply because, if the Plaintiffs are the Author of the same letter, it cannot be Defamatory, for the reason that one cannot defend his own self.
- [24] The burden is on the Plaintiff to establish that the statements made by the Defendants are Defamatory and also the publication.
- [25] In the current case, publication is not the issue but whether the statements contained in the letter are Defamatory.

- [26] In this instance, the Defendants have admitted in their Statement of Defence and in the Pre-Trial Conference Minutes that this letter dated 19<sup>th</sup> October 2016 was written and signed by them.
- [27] The Defendants cannot now object to the tendering of this letter dated 19<sup>th</sup> October 2016 into evidence on the sole ground that the Plaintiff is not the Author of the letter therein.
- [28] If any Court is going to accept this argument and reject the document which contains alleged Defamatory Statements, no one would be able to maintain an action for Defamation.
- [29] If I may add, that this Court must have a cite and perusal of the said letter dated 19<sup>th</sup> October 2016 in order to determine the substantive pending issues in the current matter.
- [30] Furthermore, both parties have discovered this letter written on 19<sup>th</sup> October 2016 in their respective Affidavit Verifying List of Documents.
- [31] Therefore, the Defendants do not have any right to object to the letter dated 19<sup>th</sup> October 2016 being tendered into evidence as the Plaintiffs Exhibit.

#### IN CONCLUSION

- [32] Bearing above in mind, I am left with no alternative but to overrule the objection raised by the Defendants and accordingly allow the letter dated 19<sup>th</sup> October 2016 to be tendered into evidence on a proper foundation by the Plaintiff as the Plaintiffs Exhibit accordingly.
- [33] Since the objection raised by the Defendants had to be determined in terms of an Interlocutory hearing with parties furnishing written submissions, it is only appropriate that the Plaintiff be entitled to cost summarily assessed at \$500. The cost imposed to be paid within 14 days' time frame.

#### FINAL ORDERS

- i. **The Defendants objection overruled and accordingly dismissed.**
- ii. **The Plaintiff is at liberty to tender the letter dated 19<sup>th</sup> October, 2016 into evidence on a proper foundation.**
- iii. **The Defendant to pay summarily assessed costs of \$500 to the Plaintiffs within 14 days' time frame.**

Dated at Suva this 21<sup>st</sup> Day of January, 2021



  
VISHWA DATT SHARMA  
JUDGE

cc. Valenitabua Associates, Suva  
Jiten Reddy Lawyers, Suva