

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.

1ST PLAINTIFF

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

2ND PLAINTIFF

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

1ST DEFENDANT

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

2ND DEFENDANT

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

3RD DEFENDANT

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

4TH DEFENDANT

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

5TH DEFENDANT

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

6TH DEFENDANT

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

7TH DEFENDANT

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

8TH DEFENDANT

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

9TH DEFENDANT

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

10TH DEFENDANT

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

11TH DEFENDANT

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

12TH DEFENDANT

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

13TH DEFENDANT

BEFORE: Hon. Mr. Justice Vishwa Datt Sharma

COUNSEL: Mr. Filipe V. - for the Plaintiffs
Mr. Gosai S. P - for the Defendants

DATE OF DECISION: 26th October, 2023 @ 9.30 am

DECISION
[Defamation]

INTRODUCTION

- 1) The 1st and 2nd Plaintiffs filed a Writ of Action coupled with a Statement of Claim for 'Defamation' and sought for the following Orders:
 - (a) Damages including exemplary, special and aggravated damages for libel
 - (b) Interest pursuant to section 3 of the Law Reform (Miscellaneous) (Interest) Act Cap 27 from the date of the cause of action i.e. 4th November 2016, post-judgment interest and other costs of this action.
 - (c) An injunction restraining the Defendants and each of them, whether by themselves, their servants, or otherwise, from further publishing or causing to be published the said or similar words defamatory of the Plaintiffs and each of them.
 - (d) Costs of these proceedings to be taxed if not agreed.
 - (e) Such further orders to this Honourable Court seem fair and just.

- 2) The Defendants filed their Statement of Defence on 06th November 2018 and admitted writing a letter but denies publishing the same.

The alleged defamatory words and statements

- 3) On or about 04th November, 2016, the Defendants wrote and published or caused to be written and published, executed and delivered a letter with the following content reproduced for clarity, which are defamatory of the Plaintiff:-

"The letter is regarding Ms. Saras Pati who resides in our neighbourhood at Makita Street Omkar Road Narere. She is residing in our community for the past 8-9 years. Despite having a husband she continues to have extra marital affair with another man namely Mr Rajesh Prasad, whom she claims to be her husband's cousin brother. Mr Rajesh Prasad is originally from Tavua and he is staying in Omkar Rd for the past 2-3 years with his elder sister who is a widow.

Mrs Saras Pati and Mr Rajesh Prasad have been dating each other openly for more than years knows. Due to their unacceptable behaviour many of our teenagers and young adults have been influenced know. Furthermore, there are young children who watch this behaviour and become very inquisitive and often ask questions about this act.

Here are the members and neighbours who have signed the above partition.

Thank you."

- 4) According to the Plaintiff, the letter was defamatory, of the Plaintiff's in that objectively, it tended to lower the Plaintiffs in the estimation of right-thinking members of the Fijian society.
- 5) As a result of the defamatory words published and made known to some person other than the Plaintiffs by the Defendants concerning the Plaintiffs, caused the right-thinking members of the Plaintiff's residential area or society to shun or avoid the Plaintiffs.
- 6) The letter was prepared as pleaded herein and hand delivered to the office of the Ministry of Local Government, Urban Development, Housing & Environment. It was stamped as received by the said Ministry on 4th November 2016. At all material times the Defendants knew that the letter was likely to be opened and read by an employee or employees of the Ministry of Local Government, Urban Development, Housing & Environment in the ordinary course of business, as it in fact was received by the Receptionist and/or Secretary.
- 7) In their natural and ordinary meaning the said words meant and were understood to mean that the Plaintiffs were:-
 - (i) Having an extra-marital affair.
 - (ii) Committing immoral and sinful acts of incest between sister and brother-in-law.
 - (iii) Immoral, bad role models and influence on young adults and teenagers.
 - (iv) To secure the eviction of the Plaintiffs from the residential area because of their extra-marital affairs.
- 8) Further or alternatively, the said words bore and were understood to bear the meanings pleaded in paragraph 6 above by way of innuendo.
- 9) In consequence the Plaintiff's respective reputations have been seriously damaged, and they have suffered distress and embarrassment.

The Laws

- 10) The Relevant Laws that govern the subject matter for defamation are:
 - (a) In *Indramani v W R Carpenters & Co. (Fiji) Ltd* [1962] Fiji Law Report 38 [1962] 8 FLR 46 (9th March, 1962), the Supreme Court held that there are four (4) essentials to be established in an action for Defamation-
 - (i) *That the words complained of must be published;*
 - (ii) *It was done maliciously;*

- (iii) *That they must be defamatory; and*
- (iv) *That they must refer to the Plaintiff.*
- (b) In a case of defamation, one of the available Defences is that the words spoken or published are truth, when the Plaintiff's state that there words complained of are for truth and utterly false. The Burden is on the Defendant to prove that those publications or utterances are truth.
- (c) What is publication of Slander in Halsbury's Laws of England Fourth Edition Vol 28 at page 40 paragraph 78 as follows:
- "a person publishes a slander who speak words defamatory of the Plaintiff to or in the presence of a third person who hears them and understands them in a defamatory sense."*
- (d) Any statement which tends to lower the Plaintiffs, to whom the article refers, in the estimation of Right - thinking persons generally or driving them into hatred, ridicule or contempt is defamatory"- *Hopwood v Muirson* (1945) 1 KB, 313 at p.316 Lord Godderd C. J. said:
- "Whether or not words are capable of bearing a defamatory meaning is always for the Court and is therefore to be regarded as a question of law."*
- (e) In Gatley on 'Libel and slander', 7th Edition, at paragraph 93, the Learned author states:
- "words are normally construed in their natural and ordinary meaning, i.e. on the meaning in which reasonable man of ordinary intelligence, with the ordinary man's general knowledge and experience of worldly affairs, would be likely to understand them. The natural and ordinary meaning may also include any implication or inference which a reasonable reader guided not by any special but only by general ordinary meaning. Generally the controversy is whether the words are capable of having a libellous meaning to all, and undoubtedly it is the judge's duty to rule on that."
- (f) 'A Statement should be taken to be defamatory, if it would tend to lower the Plaintiff in the estimation of Right-thinking members of society generally, or the likely to affect a person adversely in the estimation of reasonable people generally." Lord Justice Neill in *Gillick v British Broadcasting Corporation and Anor*; 20 October 1995 the T.L.R.527 at 528.

Agreed Facts

- 11) The parties agreed that the Plaintiff's and the Defendants were all material times residing at Makita Street, Omkar Road, Nasinu.
- 12) The Defendants wrote a Letter and signed a letter dated 19th December 2016.
- 13) The Letter was hand delivered to the office of the Ministry of Local Government, Urban development, Housing and Environment.
- 14) The letter was received by the Ministry.
- 15) The Defendants prepared and issued the letter to the Ministry.
- 16) Lord Reid in the Judgment in *Lewis v Daily Telegraph Ltd* [1964] AC 234 where Lord Reid stated:

"There is no doubt that in actions for libel the question is what the words would convey to the ordinary man: it is not one of construction in the legal sense. The ordinary man does not live in an ivory tower and he is not inhibited by a knowledge of the rules of construction. So he can and does read between the lines in the light of his general knowledge and experience of worldly affairs.

What the ordinary man would infer without special knowledge has generally been called the natural and ordinary meaning of the words. But that expression is rather misleading in that it conceals the fact that there are two (2) elements in it. Sometimes it is not necessary to go beyond the words themselves, as where the plaintiff has been called a thief or a murderer. But more often the sting is not so much in the words themselves as in what the ordinary man will infer from them, and that is also regarded as part of their natural and ordinary meaning ... generally the controversy is whether the words are capable of a libelous meaning at all and undoubtedly it is the Judge's duty to rule on that."

Oral Evidence

- 17) The 1st & 2nd Plaintiff's gave evidence in Court and called one witness, whereas the defendants did not give evidence rather called 3 witnesses in support of their case. Main points of the evidence has been summarised hereunder:
- 18) [PW1] Mohammed Afzal Hassanu Dean told Court that:

He was a community worker.

Farid Islam Khan gave this letter.

It was a petition, he wanted me to sign.

Addressed to Local Government and Housing.

Purpose of letter was that Saras Pati [1st Plaintiff] and Rajesh Prasad [2nd Plaintiff] were having Extra Marital affairs which was wrong for the community and for removal of them from the community.

He was asked whether there was any truth in the statement? He said, it was False.

He was told by Saras Pati that someone insulted her and the treatment is very bad.

19) [PW2] Rajesh Prasad told Court -

Saras Pati is his sister in law and husband his cousin brother.

Living in Omkar from 2012 - 2016.

Know about letter dated 19th October 2016.

Afzal Dean gave the letter.

Then he said he got the letter from Local Government officials.

20) [PW3] Saras Pati told Court that:

There is a letter in regards to her land and she has been insulted and called a *Bajaru* [Bitch].

Afzal Dean gave her the letter.

21) [DW1] Umesh Chand told Court-

Letter was a Petition against the Plaintiff's as their concern for extra marital affairs which they were conducting very openly.

2nd Plaintiff will go to the 1st Plaintiff's house when her husband is not there.

2nd Plaintiff would show youngster his chest before going to the 1st Plaintiff's house and there will be no love bites but on his return will show them love bites on his chest.

He had not seen any love bites but told by others.

22) [DW2] Farid Islam Khan told Court that-

Letter was a Petition against the Plaintiffs.

2nd Plaintiff will show his chest with no love bite but upon return from Saras Pati's (1st Plaintiff's) house, he will have love bite marks.

He saw the love bites on his chest and neck.

The acts of the Plaintiff's was a crime.

23) [DW3] Satya Narain told Court that-

The letter was a Petition against the Plaintiffs with regards to their Extra Marital affairs.

He drafted the Petition in his capacity as the President of Omkar Road Neighbourhood Watch Zone and written to Director of Department of Housing.

Also said the Acts of 2nd Plaintiff with love bites which confirmed act of adultery on his part.

Analysis and Determination

- 24) In order to reach a final determination, I need to analyse the totality of the evidence before the Court together with the applicability of the relevant laws and case authorities that govern the subject matter herein.
- 25) The burden of proof lies upon the Plaintiff who substantially asserts the affirmative of the issue.

1st Issue

Whether or not there was a publication of Defamatory statement made by the Defendant?

- 26) A Lawsuit for Defamation has the following basic elements:
- (a) Making a false statement;
 - (b) About a person;
 - (c) To other; and
 - (d) Actual damages.
- 27) A Plaintiff who brings a lawsuit for defamation must prove that the defendant's defamatory statement was '*published*'. Published means that the Statement was intentionally or negligently communicated by the Defendant to someone other than the Plaintiff.
- 28) On the other hand, if the Defendant makes a statement directly to the Plaintiff and in private (e.g. an undictated letter sent directly to the Plaintiff), and if the statement is not revealed by the Defendant or overheard and understood, the statement is not

'published'. Such private Statement cannot harm the Plaintiff's reputation, which by definition is the esteem to which the Plaintiffs is regarded by others.

- 29) In the current case the Petition in the letter form was written to the Director of Local Government and Housing. Therefore, it would tantamount to the fact that it was published. The reason being that the material content was communicated to Director of Local Government and housing.
- 30) However, whether the material contents of the Letter/Petition was defamatory in its nature or not?
- 31) In essence the letter/petition is mentioning about an extra marital affairs between the 1st and 2nd Plaintiff.
- 32) PW1, Mohammed Afzal Hassanu Dean when asked by the Defense Counsel as to the truth of this statement, whether the 1st and 2nd Plaintiff's were having an extra marital affairs at Omkar Road, the answer he gave was that it was false.
- 33) What his answer confirmed was that there was truth in the allegation of the extra marital affairs between the 1st and 2nd Plaintiffs.
- 34) However, the allegation and words used in the Letter/Petition are not defamatory in its nature.

2nd issue

Whether or not the Defamatory Statements were regarding the Plaintiffs'?

- 35) The Letter and/or the Petition did mention about the extra marital affairs between the 1st and 2nd Plaintiffs.
- 36) The First Plaintiff in her evidence told Court that she was 'insulted and called a *BAJARU* (English translation *Bitch*). This letter was given to her by Afzal Dean. The contents of the letter was read to Saras Pati [1st Plaintiff] by her elder daughter and it was translated by her with regards to the land matters and that she was a '*Bajaru*'.
- 37) And Letter and/or Petition was written in a very plain English language and anyone reading the contents would not agree that it mention about a land on anything about the First Plaintiff being a '*Bajaru*'.
- 38) It will be noted as has been ascertained from the evidence during the trial that the Letter/Petition was meant and written to the Director of Department of Housing raising issues pertaining to the welfare of their community and its residents in terms of morality and good behaviour.
- 39) Thus, the answer to this would be in an affirmative. However, I reiterate it was not defamatory in nature.

3rd Issue

Whether the Defamatory Statement was false?

- 40) Reference is made to the oral evidence of [PW1] Mohammed Afzal Dean when he stated the purpose of the Letter and/or Petition. He told Court that Saras Pati and Rajesh Prasad were having an extra marital affair which was wrong for the community and for the removal of them from the community. In cross examination he was questioned to tell the Court whether there is any truth in that allegation of the Extra Marital Affair? His answer to the question was - 'False'. Though the witness denied the allegation, he did not say anything further to negate the allegation.
- 41) [PW2] Rajesh Prasad in his oral evidence was asked 'what about the allegation of extra marital affair, is it true?'
- 42) The answer given by him was 'False'. He was further asked - 'why would someone allege against you of extra marital affair?'
- 43) The answer was that there were some problem with my sister's land, and I came to stay with my sister in Omkar Road."
- 44) I am satisfied that the Petition and/or Letter written to the Director Housing did not have any Defamatory material content rather a simple one written in plain English mentioning about the 1st and 2nd plaintiff's extra marital affairs. There was no doubt that there was truth in the allegation of extra marital affair as confirmed by (PW1) Mohammed Afzal Dean.
- 45) I am not satisfied that the 1st and 2nd Plaintiffs have proved that by the defamatory publication of the Petition it has caused any damages to the Plaintiffs reputation and to the standing in the society they live in at Omkar Road.

4th Issue

Whether or not the Defamatory Statements had a negative impact and/or damage to the Plaintiff's reputation also has to be answered affirmatively.

- 46) The whole purpose of Defamation law is to enable the Plaintiff's to clear the allegation against them and leave no stigma on their reputation and the name.
- 47) The foundation of an action of defamation is malice i.e. desire to harm someone. It also refers to a 'wrongful intention' on carrying out an action. While it is difficult to establish malice in defamation matters, once proven, the presence of malice will defeat most defences.

- 48) In the current case, the intention of the Defendant and others when they wrote the Letter/Petition to the Director Department of Housing, their intention was to lodge a complaint against the 1st and 2nd Plaintiff's extra marital affairs affecting the community. It was not a desire with a wrongful intention or to harm someone.
- 49) The presumption is rebutted if the occasion when the words were used is privileged. The privilege destroys the presumption.
- 50) Bearing above in mind together with the oral evidence of the witness, I find that the material statements contained in the Letter/Petition and/or publication are unsubstantiated i.e. it has not been supported and/or proved by the evidence before the Court that there was truth in the content.
- 51) [PW1] Mohammed Afzal Dean testified that it was a False Statement that the 1st and 2nd Plaintiff were in fact having an extra marital affair.
- 52) I have no alternative but find that the statements and material contained in the Letter/Petition written to the Director Department of Housing was not defamatory in its nature against the 1st and 2nd Plaintiffs.

Costs

- 53) The matter proceeded to trial with a full hearing and witnesses giving oral evidence.
- 54) Written submissions were furnished to the Court for the determination of the proceedings.
- 55) It is only fair and appropriate that I allow the Defendants entitlement to summarily assessed costs of \$650 in total.

In Conclusion

- 56) The burden of prove lied upon the 1st and 2nd Plaintiffs to substantially assert the affirmative of the issue raised herein.
- 57) In my view that 1st and 2nd Plaintiffs have failed to prove the factual basis of their claim on the balance of probabilities against the Defendants.

Orders

- i. The 1st and 2nd Plaintiffs Writ of Summons together with the Statement of Claim is hereby dismissed.

- ii. The 1st and 2nd Plaintiffs to pay the Defendants a total sum of \$650 costs within 21 days timeframe.

Dated at Suva this 26th Day of October , 2023



VISHWA DATT SHARMA
JUDGE

cc. Valenitabua Associates, Suva
Jiten Reddy Lawyers, Suva