



concerning the Plaintiff, whether in written, verbal or digital form, including on social media platforms such as Facebook, Tiktok or any other forum;

- (ii) The Defendant forthwith upon service of this Order remove or cause to be removed defamatory posts, videos, statements concerning the Plaintiff previously published on any public or private platform, including but not limited to Facebook, Tiktok, and any associated media pages or forums under the Defendant's control.
- (iii) The Defendant be restrained from threatening, harassing or assaulting the Plaintiff in a manner whether physically, verbally or electronically;

2.0 The Applicant's application is followed by an Affidavit together with a Writ of Summons which was earlier issued by the Court.

3.0 The Claim arise from a post by the Respondent/Defendant on her Facebook page on 25 April 2025 referring to the Applicant/Plaintiff as the Duavata Editor and stating that he was '*unqualified*' and to complete his degree, *poop cleaner, engage in dishonest and deceptive business practices, emotionally unstable* and on 20 April 2025, on her facebook page, posted that the Applicant/Plaintiff was a *tax fraud*.

4.0 The actions of the Defendant/Respondent are alleged to be imputed to cause defamation, with malice and aggravation and impacting a wide cross-section of the community.

5.0 Applicant is seeking for damages, permanent injunction and a public apology from allegations of dissemination of defamatory material concerning the Plaintiff on various social media platform.

### **Affidavit**

6.0 In their Affidavit, the Applicant/Plaintiff deposes that on the day on which the Writ was served, the Defendant/Respondent and her partner approached and verbally threatened the Applicant/Plaintiffs and physically assaulted him.

7.0 A police report was lodged for assault.

8.0 Consistent posts of the same was loaded on her facebook page, further comments by members of the public have caused the Applicant/Plaintiff fear, anxiety for personal security and for professional career damage. The posts was as follows::

*“Dauvata News Editor crosses all lines and came to my house while ago trespassing into my compound with a guy. I had to call my husband who had to follow them call 919 and confronted him at grace road navua n he started recording us further. I’m literally done with this...despite reporting him to the police previously nothing has been done....This guy has been recording my Tik Tok my lives and making news of it to defame me publically to even coming to my property today. I have 3 small children, they are frightened. Where is the law and order?”*

9.0 The application seeks to restrain the Defendant from repeated alleged defamatory posting and to minimize the risk and harm to his personality, professional and business reputation and also his livelihood.

## **Law and Analysis**

10.0 The Applicant/Plaintiff relies upon Order 29 of the High Court Rules that provides procedures for the application of an ex-parte injunction. This has been complied with by the Applicant/Plaintiff.

11.0 When considering whether or not to grant an application for interlocutory injunction, the Court is guided by the principles in Bornard -v- Perryman [1891] 2 Ch 269 which has withstood the test of time that requiring the court in the judgment of Lord Coleridge, C.J (where Lord Esher MR and Lindly, Bowen and Lopes, L.JJ concurring ). In the said judgment at p 284 it was held,

'.....But it is obvious that the subject matter of an action for defamation is so special as to require exceptional causation in exercising the jurisdiction to interfere by injunction before the trial of an action to prevent an anticipated wrong. The right of free speech is one which it is for the public interest that individuals should possess, and, indeed, that they should exercise without impediment, so long as no wrongful act is done; and unless an alleged libel is untrue, it is not clear that any right at all has been infringed; and the importance of leaving free speech unfettered is a strong reason in cases of libel for dealing most cautiously and warily with the granting of interim injunctions. We entirely approve of, and desire to adopt

a our own, the language of Lord Esher, MR., in **Coulson v. Coulson** (3 Times L.R. 846)" to justify the court in granting an interim injunction it must come to a decision upon the question of libel or no libel, before the jury have decided whether it was libel or not. Therefore the jurisdiction was of a delicate nature. It ought only to be exercised in the clearest cases, where any jury would say that the matter complained of was libelous, and where, if the jury did not so find, the Court would set aside the verdict as unreasonable." In the particular case before us, indeed, the libelous character of the publication is beyond dispute, but the effect of it upon the Defendant can be finally disposed of only by a jury, and we cannot feel sure that the defence of justification is ne which, on the facts which may be before them, the jury may find to be wholly unfounded; nor can we tell what may be the damage recoverable. Moreover, the decision at the hearing may turn upon the question of the general character of the Plaintiffs; and this is a point which can rarely be investigated satisfactorily upon affidavit before the trial, on which further it is not desirable that the Court should express an opinion before the trial.' (reference added)"

12.0 In Datt -v- Fiji Television Limited [1997] FJHC 20; HBC 214.2007 Singh J analysed these principles and held that:

" [17] The court went on to give its reasons why a higher threshold of proof was required in defamation cases than in breach of confidence or of privacy. Those reasons are that first in an application for interlocutory injunction in defamation cases it is difficult to assess chances of a party's success which often depends on credibility of witnesses and consideration of documents. Secondly, a reason which is not applicable to Fiji, that issues of justification are considered by a jury and it is impossible to know in advance how a jury would react to witnesses. Thirdly that damage to reputation of an individual can be adequately compensated if he succeeds at the trial. In contrast, in breach of confidence cases, the confidentiality of the documents will be totally lost if injunction against directive is not given.'

13.0 The Applicant/Plaintiff has filed together with their Affidavit, appendages of the recordings of social media posts, verbal conversations alleged to be from the Defendant and materials alleged to have imputed disrepute to the Applicant/Plaintiff.

14.0 The Applicant/Plaintiff has also alleged that together with these verbal exchanges and uploads on social media, is the Defendant's alleged physical assault and verbal barrage to him. He has lodged a complaint with the police which is currently under criminal investigation.

15.0 The definition of defamation and how it was applied in uploading of posts on facebook was discussed in great length in the case of Nawaikula -v- Khaiyum [2024] FJSC 23; CBV00016.2022 (28 June 2024) Temo CJ, Callanchini JA and Goddard JA. The Supreme Court overturned the decision of the Appellate Court and found that the statements in the petitioners Facebook sufficiently met aspects of the test that it was not defamatory as it was based on materially true facts that were known to the petitioner at the time he uploaded the post when being a member of parliament; and there is no reason to doubt the petitioner did not genuinely believe in the views he expressed in his post at the time of its publication.

16.0 In Sharma -v- Biumaitotoya [2024] FJSC 17; CBV 0001.2023 (28 June 2024) Temo A/CJ, Goddard JA and Young JA considered:

“[28] Whether a statement is defamatory depends on the meaning of the words used. This is determined by the trier of fact objectively, by reference to what an ordinary person would take from the alleged defamatory statement when considered in the context of the surrounding circumstances, including the mode and style of its publication. As well, there are two particular aspects of **defamation** practice that warrant mention: (a) Word of abuse or insult are not usually construed literally.<sup>[10]</sup> Dr Biumaitotoya’s email was something of a rant and, for this reason, unlikely to be read literally. (b) Statements are defamatory only if they relate to the reputation of a person. So, while a statement that disparages the goods a person supplies may give rise to a claim for slander of goods or malicious falsehood, a claim for **defamation** will not usually lie in respect of it.<sup>[11]</sup> The same principle must also apply to the supply of services. For instance, that a landlord chooses to lease mid-range commercial premises does not mean that he or she is a worse person than a landlord who only leases premium commercial premises. So, to say of a landlord that the premises he or she leases out are not as good as premises available elsewhere is not defamatory of the landlord.”

17.0 The Application seeks the Court to wield its powers to restrain the Respondent/Defendant from posting social media comments that the Applicant says is defaming to his reputation, business and discredits his personal life.

- 18.0 When considering the application, the Court is mindful of the delicate balance of the right of freedom of speech of an individual entrenched in the Constitution 2013 and the exceptions which curtail those rights.
- 19.0 I concur with the Honorable Chief Justice Coleridge in Bonarad -v- Coleman (Supra) that there must be exceptional circumstances that move this Court to grant an injunction fettering an individual from exercising their freedom of speech where there is sufficient evidences by affidavit to establish the claim for libel and slander.
- 20.0 The allegations for which the Applicant/Plaintiff relied upon refers to the inaction by the police to assist her. It does not in any way undermine the act of the Applicant/Plaintiff and his Bailiff in serving her with the documents. She only alleges trespass. Her comments have attracted attention given the wide reach of her post. But this is inevitable for her facebook, given the number of people she has invited to be-friend and view her posts. Her comments have not referred to his work, business or his reputation nor referred to his qualification.
- 21.0 The Applicant/Plaintiff has already lodged a complaint with police for the assault on him at the neighboring eatery.
- 22.0 At this juncture, the Court finds there are no exceptional circumstances to grant that an interim injunction be exercised against the Defendant/Respondent.
- 23.0 This application is therefore dismissed.

### **Orders**

25. The Court Orders:

- (1) The application for interim injunction (ex parte) be dismissed;
- (2) No order as to costs.



  
Ms Senileba L.T.T Waqainabete-Levaci  
Puisne Judge, High Court of Fiji, Suva.