

Hafoka v Mafile'o

Supreme Court, Nuku'alofa

Ward CJ

10 Civil appeal No. 609/94

20, 27 September, 1994

Damages - defamation proved - apology

Defamation - damages - apology and reconciliation

Practice and procedure - defamation proved - damages - customary apology

20 *Tort - defamation - damages*

Evidence - inadmissibility - of scandalous matters.

On a defamation trial in the Magistrates' Court the plaintiff's case (the present appellant) had been found to have been made out; but the Magistrate then allowed a period of time for a reconciliation to be achieved, if possible. At the adjourned trial, there being no appearance on behalf of the plaintiff, the Magistrate made no award of damages.

Held:

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1. Any magistrate trying a case between neighbours or relatives must bear in mind the possibility of compromise or reconciliation. A genuine apology and acceptance may well be the best way to settle the matter both for the parties and for the community. But the more serious the case the less likely it is to be satisfactorily settled by such a reconciliation.
 2. The apology here was only at the conclusion of the magistrate's finding and was hollow.
 3. Any acceptance of apology, in any event, was by the mother of the person defamed and not the daughter herself, and a Court should look further.
 - 40 4. The appellant had brought a successful claim and was entitled to damages in the absence of clear evidence of a proper and full apology, properly and fully accepted.
 5. The appeal should be allowed and the case remitted for assessment of damages.
 6. (Obiter) Evidence was not able to be called to suggest that the Plaintiff was not a virgin.

Cases referred to : Scott v Sampson (1882) 8 Q BD 491

Hobbs v Tinling [1929] 2 KB 1

Statutes referred to : Defamation Act, s.16

Counsel for Appellant : Mr Hola

Counsel for Respondent : Mrs Vaihu

Judgement

The plaintiff brought actions for defamation against both respondents in the Magistrates Court and with the consent of the parties, the actions were heard together.

The defamation alleged was a serious slander of this young girl's reputation and suggested she had been brought back from New Zealand, where she was previously living, because she had sexual intercourse.

The respondent in the trial suggested the words they used did not carry the meaning suggested. I do not need to set them out here. The magistrate correctly found they were defamatory of the plaintiff and untrue.

Judgment was delivered on 6 May 1991 and this appeal relates to the events that then occurred.

The record shows that the magistrate concluded her judgment:

"I believe that the bad words said about the plaintiff caused the family to move from 'Atata, but despite this, they should make peace for the first defendant said that the plaintiff's mother is married to her brother. So in the interest of family unity, I hereby order the plaintiff to win the case, but they should make peace for family will continue to live together in the future.

Ct: Have you made peace regarding this case?

Both Defendants: Chairlady, we now beg the plaintiff's forgiveness on what happened.

Mother of plaintiff: I will accept.

Ct: Your apologies have been accepted and my judgment will be as follows:

"You will both pay the court fee by paying \$21.00 each, and pay it to Loloahi Hafoka of Halaleva. Pay also the lawyer fee of \$300, by paying \$150.00 each and to be paid to S. Hola of Longolongo. After one month, the trial will be called again on 30/5/94, and the lawyer will write a letter telling the Court whether there was peace made or not."

On that date, counsel for the defence (who had been absent when the judgment was given) was present but counsel for the plaintiff was not. Despite the magistrate's previous order, no letter was provided but the magistrate continued with the case. The record continues:

"Court: This case was adjourned to today to see if there was any appeasement.

S. Hola: (Not in court)

F. Vaihu: Chairlady, they have made their peace in court on 6/5/94.

Court: Yes, the court has heard the mother accepting the apologies by the defendants to the plaintiff, and the defendants will be released and not to do it again."

The plaintiff appeals to this Court on the grounds that (1) in a defamation case, there

should always be monetary damages and (2) that in Tongan custom, a true apology would have been accompanied by gifts and so the magistrate should have specified what was required. The original statement of claim had been for \$500 damages against each defendant.

110 Any magistrate trying a case between neighbours or relatives must bear in mind the possibility of compromise or reconciliation. In a case such as the present one, a genuine apology and acceptance may well be the best way to settle the matter both for the parties and for the community in which they live. At the same time, the court must bear in mind that the more serious the case, the less likely it is to be satisfactorily settled by such a reconciliation.

This was, as I have said, a serious defamation of a young girl. Despite their claim to have thought of saying sorry, the defendants gave no evidence at the hearing of repentance or apology. On the contrary, they tried to twist the words in order to suggest they meant something less. They also tried to place the blame on the girl's mother, a suggestion rejected by the magistrate. They called evidence to suggest the plaintiff was not a virgin. That evidence was totally inadmissible and was objectionable in a number of ways; (see the comments of Cave J in Scott v Sampson (1882) 8QBD 491 as explained
120 in Hobbs v Tinling [1992] 2 KB 1). Counsel should not have called it and the magistrate should not have admitted it. That it was called demonstrates the attitude of the defendants to the reputation of the girl they defamed and suggests their subsequent apology was hollow. It would seem the magistrate had every reason at that time to feel the indications of an amicable settlement were not very propitious.

Even by the end of the hearing, the defendants had not attempted to make peace. When asked, the best they could say was that they had thought of saying sorry and only then apologised and asked forgiveness. At that stage the mother was asked by the Court and said she accepted.

130 I pause there to comment that, whilst in Tongan society a mother will frequently speak for her daughter, the court should look further. The person to be asked whether she accepted the apology was the person defamed. The daughter is the person whose name has been damaged. She is the person who has had to live with the hurt and she is the one who should have decided if an apology is sufficient.

The magistrate was clearly unsure whether such an apology was sufficient to make peace because she adjourned for a month to obtain further evidence of whether or not it had been effective.

140 That was a sensible step but, unfortunately at the next hearing, she was given no more than a repetition of what occurred on the previous occasion. It would seem that, if it had been insufficient at the earlier hearing, it was still insufficient then.

This was a case where the plaintiff had brought a successful claim and was entitled to damages. The magistrate should only have allowed the matter to be settled by an apology if she considered it was a proper and full apology, properly and fully accepted. In a case as serious as this, she needed to have clear evidence that it was sufficient.

150 Slander is an insidious thing. It is all too easy to say terrible things about another. Such is human nature that critical statements are quickly and widely repeated. Even a successful claim against the person who started the gossip is unlikely to stop it because it is impossible to know how widely it has spread or how long it will be remembered.

There were insufficient grounds in this case to justify the magistrate's conclusion that this apology was a proper result even bearing in mind the relationship of the parties.

I allow the appeal and remit the case to the trial magistrate with a direction to assess damages.

In doing so, the court should bear in mind the terms of section 16 of the Defamation Act which repeats the common law rule that, where the slander imputes unchastity in a woman, there is no need to prove actual monetary loss. Damages should be based on an assessment of the loss of her reputation.