

MATATUMUA v SAMOA TIMES (APIA) LIMITED AND FA'ALOGO

Supreme Court Apia
4, 22, 24 August; 13 September 1977
Nicholson CJ

DEFAMATION (Libel) - Alleged defamatory article published in newspaper - Plea of justification - Success of plea dependent on proof of truth of material statements, or "the substance" of the libellous statement - Inaccuracies in details of statement not necessarily defeating plea where "the main charge, or gist, of the libel" is proved.

ACTION claiming damages for alleged defamatory statements published in newspaper.
Judgment for defendants with costs.

Epati for plaintiff.
Drake for defendants.

Cur adv vult

NICHOLSON CJ. The plaintiff claims \$25,000.00 general damages for libel from the first defendant, a newspaper Company and the second defendant, the paper's Managing Editor. The occasion for the suit is an article published on 25th March, 1977 by the first defendant's weekly newspaper the Samoa Times, a paper with a circulation of 5,000. At this time the plaintiff was, and now is, employed as Assistant Secretary to the Public Service Commission of Western Samoa, having transferred to this position from the post of External Affairs Officer in the Prime Minister's Department on or about 8th March, 1977. In her post in the Prime Minister's Department, the plaintiff had among her duties the task of processing applications by young Samoans for overseas training and study awards, which passed before a selection committee known as the Staff Training and Scholarships Committee.

The article complained of is headed, "Mother sobs sorry story", and deals with an application by a nursing trainee, one Winnie Fruean, who was apparently suffering from the effects of bureaucratic confusion over her eligibility to take up such an award. The article suggested that this trainee and two Congregational Christian Church scholarship students were victims of "private politics" by some civil servants, and pointed reference was made in the article and a second article in the same issue to the fact that the plaintiff's sister was the Superintendent of Nursing. This lady was quoted as denying being the cause of the obstruction of Winnie Fruean's application. The article concluded as follows:-

Elisapeta Mtaatumua (sic) is now the assistant secretary to the Public Service Commission, the post she took up about a month ago, but the Samoa Times understands that she was forced to leave the Prime Minister's Department because of two other incidents where she selected some of her own relatives to go overseas without notifying the appropriate officials.

The plaintiff alleges that the defendants falsely and maliciously printed and published this passage, that these words either expressly state or imply that:-

- (a) the plaintiff had abused her position in the Prime Minister's Department for her benefit and/or the benefit of her relatives;
- (b) the plaintiff by unlawful means advanced some benefit to her relatives regarding scholarship selection for overseas training;
- (c) the plaintiff lacked the integrity required of the position she previously held at the Prime Minister's Department;
- (d) the plaintiff was forced to leave the Prime Minister's Department.

The statement of claim alleges that this passage tends to injure or lower and has injured or lowered the plaintiff's reputation within the Public Service and as a person of standing in the community. The plaintiff also seeks an order for a published apology.

The defendants deny that the words are capable of defamatory meaning, deny malice, and deny damage to the plaintiff's reputation. As a further defence they allege the truth of the statements in substance and fact. At the hearing, however, the defendants confined their evidence to the plea of justification and made no attempt to argue that the passage in issue was not defamatory or incapable of the construction put upon it by the plaintiff.

The plaintiff gave evidence that in the Prime Minister's Department she had the administrative responsibility for staff training and scholarships matters, deputising for the Secretary to Government. The procedure was for her section to receive offers of scholarships or training awards. She would then circulate the Government Departments concerned or, in the case of scholarships, advertisements would be published. Applications were then received, and in the case of training awards, included nominations from the Government Departments concerned. A sub-committee of the full Staff Training and Scholarships Committee would then screen the applications, conduct interviews and make recommendations to the full Committee. The full Committee would make the final selection. Thereafter, the plaintiff prepared the applications to the various educational or training institutions offering the awards. She would then despatch them and receive replies from the institutions and submit the list of accepted candidates to the full Committee for confirmation. This process was normally a yearly one for the bulk of awards, designed to comply with the academic year of the educational institutions offering awards.

The plaintiff denied the truth of the allegations contained in the passage in question. To begin with, she said she was not forced to leave the Prime Minister's Department. She had transferred to the Public Service Commission to take up her present post after winning a Public Service Appeal. The appeal decision was given on the 8th February, 1977 and she agreed to stay on in the Prime Minister's Department to train a successor. She moved to her new post on the 8th March, 1977. She denied being told that she must leave. She further denied any knowledge of the two incidents referred to in passage and denied giving any advantage to any relative in matters of selection of awards. The plaintiff was questioned concerning five specific instances where the defendants suggest her conduct of her duties was suspect. I list them for convenience.

- (1) An application by the plaintiff's sister, the Superintendent of Nursing, to attend a conference in Geneva.
- (2) The application by Winnie Fruean for a nursing award.
- (3) An award to Hinauri Petana of a scholarship to the University of the South Pacific at Suva.
- (4) An application by Agnes Masoe for a nursing award.
- (5) An application by the Congregational Christian Church for Government sponsorship of three aspirants to

university places in New Zealand.

The plaintiff denied all knowledge of the first application and the defence was unable to adduce any evidence to establish even the existence of such an application, much less any impropriety concerning it.

The second allegation was abandoned by the defendants during the course of the hearing.

As to the third matter, concerning Hinauri Petana, the plaintiff acknowledged that Hinauri was her niece and that she had been accepted privately by the University of the South Pacific, the Staff Training and Scholarships Committee (hereinafter called "the Committee") subsequently approving a scholarship for her after the applicant had already begun her academic year. She admitted this was not normal procedure, but explained that Hinauri, when she originally applied along with other applicants, had been declined because there were insufficient awards. However, the University of the South Pacific had subsequently advised that another award, from the Canadian Government, was available and the plaintiff had tentatively put Hinauri's name against this award subject to the Committee's confirmation. As the Committee had no other suitable applicant, it had confirmed the award to Hinauri. She said she had advised the University of the South Pacific of the award to Hinauri, subject to the Committee's approval, and that this was often done to meet date deadlines set by institutions. She explained that at the meeting of the Committee on 3rd March, 1977 the question of confirming Hinauri's award was deferred and not finally given until the May meeting. She said it was deferred to ascertain whether the University of the South Pacific would accept Hinauri. She denied having any conversation with Mrs Tufuga of the Education Department in which she stated her intention to write to the Commonwealth Fund for Technical Co-operation to obtain sponsorship for Hinauri without first obtaining the Committee's authority.

The next allegation related to Agnes Masoe. The plaintiff denied the defence allegation that Agnes was placed first on merit by the sub-committee out of five candidates for nursing awards. She said there were five awards available and therefore there was no need to place them in order of merit. She agreed that Agnes did not obtain an award when the other four did but said this was because Agnes had filed her application papers late and was consequently accepted for a New Zealand nursing intake later in the year than the four other applicants.

The last complaint concerning the Congregational Church applicants appears to have revolved around the procedure used by the Church to obtain Government support for the candidates. The plaintiff says she protested at the Government sponsoring these candidates as she felt the Committee had been circumvented and she said so in correspondence. The defence allegation against her is unclear, but apparently it is suggested that the plaintiff was deliberately obstructive. The plaintiff says there were complaints of her use of the word "circumvented" in correspondence, but the defence has not adduced any evidence to suggest that the plaintiff behaved in anything other than proper fashion in her dealings with this matter.

The defence called a number of witnesses the first of whom was the journalist who composed the article. He said his information on the matter was by word of mouth and he had checked it and consulted the second defendant before publishing. He was aware of the plaintiff's successful public service appeal which resulted in her gaining her present position, but he believed that there was an attempt by the Prime Minister's Department to retain her services by increasing her salary, an attempt which was discontinued when the complaints were made. He admitted that his sources of information were within the Prime Minister's Department itself.

Mr Muller, the Chairman of the Public Service Commission gave evidence that there was an attempt to retain the plaintiff in the Prime Minister's Department by increasing her salary, but the Commission decided to implement her transfer out of the Prime Minister's Department when these complaints were made, so that a proper investigation could be

made. The Commission then conducted an investigation and the ensuing report was presented to the Attorney-General for consideration. No further action has been taken. He confirmed that nobody holds delegated authority from the Committee to select applicants for particular awards. He said that at the Committee meeting of 3rd March, 1977 accusations were made that the plaintiff had altered the priority of the five nursing awards, and she was questioned about Winnie Fruean and the Congregational Christian Church applications. He could not recall any accusation that the plaintiff had favoured her relatives. He conceded that to say the plaintiff was forced to leave the Prime Minister's Department was not consistent with what in fact occurred. He also agreed, however, that when the Commission decided to implement the plaintiff's transfer, allegations concerning the favouring of relatives had been made to Commission members and had an effect on the Commission's decision.

Mr K. Enari, a practising solicitor and a former Secretary to Government from 1969 to 1975, said it was not possible for any individual to select a candidate for an award unless the Secretary to Government did this himself. However, he agreed it was not unusual for the Secretary to send on a name to an institution for an award, subject to Committee approval, to meet a deadline. He said it was normal for officers in the Prime Minister's Department to sign letters "for Secretary to Government."

The Acting Director of Health, Dr Tapeni, told the Court that there was a complaint that the priority of nursing awards fixed by the Committee had not been implemented by the plaintiff.

Mr Tamati, Director of Education, stated that even where an institution imposed a deadline, there was no authority for any individual to put forward candidates as had been done in Hinauri Petana's case. In such cases the sub-committee, of which he was Chairman, should be consulted. He said that no priority was fixed for the five nursing awards, but he recalled commenting in a meeting attended by the plaintiff that Agnes Masoe was the outstanding candidate, and he was surprised to learn later that she had not received an award at the same time as the other four candidates.

Mrs Tufuga, Senior Inspector of Schools in the Education Department and a member of the Committee in the absence of Mr Tamati, said that as a result of information she received from the University of the South Pacific she checked departmental records regarding Hinauri Petana and found that her application for an award had been declined. She then rang the plaintiff, who told her that Hinauri had been given a New Zealand award, but was found not to qualify for it as she had previously had a New Zealand award and failed to complete her course. Mrs Tufuga said the plaintiff told her she was going to write to the Commonwealth Fund for Technical Co-operation to see if sponsorship for Hinauri could be obtained. Mrs Tufuga asked who authorised this approach and the plaintiff replied that nobody authorised it. Mrs Tufuga then warned the plaintiff that this would be improper procedure, and that a memorandum on the topic should be put to the Committee for its decision. She attended the meeting when covering approval for Hinauri Petana's Canadian award was sought. Mrs Tufuga said general concern at the procedure adopted by the plaintiff was expressed at the meeting and eventually the Committee, faced with a fait accompli agreed to endorse the Canadian award to Hinauri Petana at its meeting in May, 1976.

The remaining defence witnesses were unable to assist the Court in the issues before it.

Of the five matters raised against the plaintiff, I am satisfied there is no evidence of any substance in four. The Fruean matter has been abandoned and the question of the plaintiff's sister attending a conference in Geneva has no foundation at all. Having inspected the Government files in relation to the Agnes Masoe affair and the Congregational Christian Church candidates affair, I can find no evidence either in those files or in the testimony before me to establish any improper conduct on the part of the plaintiff.

In the case of Hinauri Petana, however, the situation is different. When one puts together the course of correspondence on the subject of this award, commencing with her letter of application of 9th February,

1976 and ending with the letter of the Secretary to Cabinet to the Secretary to Government dated 10th May, 1976, the train of events is clear. Hinauri's request was initially declined because it was believed all awards were taken up. Then on 15th March, 1976 the plaintiff submitted to the Committee that a New Zealand award was now available through the default of another student, which could be taken up by Hinauri, (who had already entered the University of the South Pacific as a private student). The New Zealand High Commission advised that Hinauri was ineligible for a New Zealand award, but on 26th March, 1976 the plaintiff received a letter from the University of the South Pacific, which revealed to her that an award from the Canadian Government had been allocated to one Iosefa Afele from Western Samoa. That same day, without any further consultation with the Committee, the plaintiff cabled the University of the South Pacific stating that the vacant New Zealand award should be allocated to Iosefa, and that the Canadian one should go to Hinauri Petana. The text of this cable is all important and I quote it:-

To Registrar USP Suva.

For J.H. Illingworth from Matatumua Thank you for your letter 19 March re allocation our 1976 Third Country Scholarships stop Confirm official approval scholarship for Hinauri Petana stop Her award should be the Canadian one stop Iosefa Afele should receive NZ award Letter following.

MALO.

To me, the obvious meaning to be attached to that cable was that official approval of the Western Samoan Staff Training and Scholarships Committee had been given to Hinauri receiving an award. The cable does not suggest that her name was being put forward subject to the Committee's approval. The cable was misleading and, indeed, untruthful.

On 29th March, 1976 the plaintiff followed up the cable with a curiously worded letter to the University of the South Pacific, which first of all listed Hinauri Petana's name against the Canadian award under a heading, "outlined below should be the list of the allocation of awards as approved by the Scholarship Committee." The letter went on in its relevant parts:-

The selection of students to a particular Third Country Award have to be approved by the Scholarship Committee. Furthermore we also have to get the approval of the donor countries on the students who will use their awards. All these have been confirmed except Hinauri Petana . . . As Iosefa Afele should receive a New Zealand award, we would appreciate it if you would give the Canadian award to Hinauri Petana. Now that she has obtained a Canadian award we should be grateful if reimbursement of her air fare can be arranged

In fact, approval of the Committee was not sought by the plaintiff until the meeting of 1st April, 1976 when the Committee deferred its decision on the matter and expressed concern over the procedure adopted.

In addition to what the correspondence reveals, the Court has the evidence of Mrs Tufuga, which I can find no reason not to accept, of the plaintiff's apparent readiness to proceed in an unauthorised fashion to obtain sponsorship from the Commonwealth Fund for Technical Co-operation for Hinauri Petana. I consider that on the balance of probabilities it has been established by the defence that Hinauri Petana was receiving a form of preference at the hands of the plaintiff, who was her relative. Certainly, the plaintiff took it upon herself to place Hinauri in the way of an award without the prior approval of the Committee, and, moreover, I find her correspondence to the University of the South Pacific was sufficiently misleading for that institution to assume that the Committee had given its blessing to Hinauri's Canadian award at a time when that Committee had apparently not even been made aware of the availability of the Canadian award. Her actions, as Mrs Tufuga suggested, put the Committee in the situation where it was

faced with a fait accompli so that eventually at the May meeting it approved Hinauri's award.

I turn now to the newspaper passage in issue. I have no difficulty in finding it is defamatory in its nature. As to the plea of justification, there is no doubt that the passage is inaccurate. It is imprecise to classify the plaintiff's transfer as being "forced" to leave the Prime Minister's Department. Again, the case of Hinauri is the only one involving a relative, and it is inaccurate to say that the plaintiff selected her to go overseas. Hinauri had already entered the University of the South Pacific as a private student, and what the plaintiff did was to put her in the way of a belated award of a scholarship.

I refer to Gatley on Libel and Slander, 6th Edition, p. 170, paragraph 361 where, on the subject of justification as a defence, the learned authors observe:-

It is not necessary to prove the truth of every word of the libel. If the defendant proves that "the main charge, or gist, of the libel" is true, he need not justify statements or comments which do not add to the sting of the charge or introduce any matter by itself actionable. "It is sufficient if the substance of the libellous statement be justified; As much must be justified as meets the sting of the charge,"

The sting of the charge here is that the plaintiff had selected two relatives for overseas awards, had not informed the appropriate official committee of what she had done, and that as a result she was forced to leave the Prime Minister's Department. I find on the evidence adduced by defence witnesses that the plaintiff did, by irregular procedure, personally and deliberately select one relative for an overseas award without first apprising the members of the Committee of what she proposed and without their prior approval, and that normal procedure required that she inform the Committee and obtain its prior approval. I find this procedure could not be classified as normal to meet a deadline in that the correspondence the plaintiff conducted did not clearly state that the nomination of Hinauri was subject to the Committee approval, but on the contrary suggested that approval had already been obtained for Hinauri. I further find from the evidence of Mr Muller that when unfavourable allegations, including favouritism to her relatives, were made against the plaintiff, negotiations to retain her in the Prime Minister's Department were broken off, and the plaintiff was immediately moved to another Department as had been originally intended. I conclude that these findings establish the main sting of the charge contained in the passage in question. Accordingly, the defence of justification is successful. I express concern that the evidence of the author of this article reveals that his sources of information were within the Prime Minister's Department. No doubt such improper and premature disclosures of Departmental matters will be a source of concern to Government also, and I trust that proper steps are being taken to detect and deal with the individual or individuals responsible for such irresponsible behaviour.

Judgment is entered for the defendants with costs and witnesses' expenses to be fixed by the Registrar.