

MALIFA (POROTESANO) & LIMA (IETI) (Samoa Observer)
v TAUILIILI (UILI)

Court of Appeal Apia
Morling, Ward, Muhammad JJ
November 1992, 9 March 1993

LIBEL AND SLANDER - assessment of damages for defamation - trial verdict replaced by Court of Appeal verdict.

HELD: Appeal and cross-appeal resulted in the same \$20,000 verdict for defamation but on a different ground to that found by the trial judge.

L R Va'ai, A S Va'ai for Appellants
K M Sapolu for Respondent

Cur adv vult

The Appellants are the proprietors of the Samoa Observer, a newspaper circulating in Western Samoa and American Samoa. On 22 September 1989 the appellants published the following article in their newspaper:

" STUDENTS CALLING FOR INQUIRY INTO UNIVERSITY "

1. The students of the three-year BA course at the National University of Samoa are calling for an investigation into the university's administration.
2. They claim that mismanagement has taken place pointing out that they have not been paid their annual allowances of \$1,400 a head for this year.
3. Other sources say that the New Zealand government has cut off financial assistance to the university since the beginning of the year because of questionable transactions in the administration.
4. Stories of questionable activities began surfacing when the Vice Chancellor, Tauiiili Uili, sacked the head of the Samoan Language and Culture programme, Professor Aiono Fanaafi, three weeks ago.

5. Dr Aiono has since been reinstated on a ruling by the Supreme Court. And Dr Aiono's reinstatement apparently had a direct bearing on the students allowances complaint.
6. The reported \$26,000 that would have been saved from Dr Aiono's salary had her dismissal been final was to be used for the BA student's allowances.
7. The plan was to give the 30 students about \$860 each for the remainder of the year from the \$26.000 that would have been saved.
8. When Dr Aiono was reinstated, however, the plan backfired and the students were told that there would be no more allowances.
9. What has not been explained is the whereabouts of an amount of US\$40,000 given as a grant by the Canadian government specifically to pay the BA students their books and travel allowances.
10. The Secretary of the BA student body, Rev Fosi Tuumatavai, told the Observer yesterday that they had not been given their allowances for this year. Last year, the allowances were paid up.
11. He said early in the year when they enquired about the allowances, Tauiliili informed that the university council had cancelled them but the allowances for the university preparatory year (UPY) students were still being paid.
12. In July, Rev Tuumatavai and others met with Tauiliili in the presence of the Minister of Education, Patu Afaese and were told that it had not been a council decision to cancel the allowances.
13. At that meeting, the Minister instructed Tauiliili to start paying the allowances and to prepare a proposal for Cabinet to approve.
14. Later, the students were informed that their allowances would be paid but instead of the full amount of \$1,400 each, only \$860.00 would be given.
15. Inside sources said the problem started when New Zealand cut its aid to the university at the beginning of the year. This was because the New Zealand government was not satisfied with the university's administration.

16. And caught without that injection of funds part of which went into the UPY's student allowances, the administration dipped into the Canadian grant of US\$40,000 inside sources are claiming.
17. Other stories are that a company in town has refused to do work for the university until a debt owing is paid up.
18. Also, returning from a trip to American Samoa recently where he stayed for two days, a senior university administrator claimed expenses of \$US1,000.
19. The teachers who had accompanied him over had been given only \$100 each.
20. Because they did not have enough for expenses they returned after one day, the sources said."

For ease of reference, we have numbered the paragraphs in the article. Those numbers did not, of course, appear in the article as published.

The Respondent was at all relevant times the Vice Chancellor of Le Iuniversite Aoao o Samoa (hereafter referred to as "the University"). Claiming that the article defamed him, he sued the Appellants for damages for defamation. In his amended Statement of Claim he alleged that in their natural and ordinary meaning the words of the article meant that:

- (i) The Plaintiff conducted the administration of the university in a dishonest, deceitful and incompetent way, or that it was reasonably to be suspected that he had, that it warrants an inquiry.
- (ii) The Plaintiff has deprived the University of the benefit of financial assistance from the New Zealand Government because of his dishonesty and/or incompetency in his administration of the University.
- (iii) The Plaintiff misappropriated the US\$40,000.00 allegedly given by the Canadian government to finance BA students' books and travel allowances.
- (iv) The Plaintiff devised the sacking of Professor Aiono Fanaafi so that monies saved from her salary can be used to make up for money misappropriated and hence to pay the students allowances.
- (v) The Plaintiff lied to the students that the University Council had cancelled the allowances.

- (vi) The Plaintiff lied to the students that they would be paid allowances of \$860.00.
- (vii) The Plaintiff is creating a bad image for the University and giving it a bad credit standing by not paying the University's debt.
- (viii) There is an obvious shortage of funds in the University because of mismanagement on the part of the Plaintiff and as a result of senior university administrator and a number of teachers were short paid on a trip to American Samoa.
- (ix) The Plaintiff lacks integrity.

After the lengthy trial, Ryan CJ found a verdict for the Respondent and awarded him \$20,000 damages. His Honour was of the opinion that the article defamed the appellant in two respects: first, as to his administrative and management abilities; and secondly, as to his honesty and integrity. He made no specific findings on the Respondent's claims that the words in the article had the meanings attributed to them in the amended Statement of Claim. However, it is plain from his reasons that he took the words of the article in their natural and ordinary meaning to convey that the Respondent "was involved in some financial skulduggery, that he was misappropriating University funds and that he was a dishonest person" and was "dishonest and a thief".

It is not apparent from his Honour's reasons which words in the article he found defamed the Respondent as to his administrative and management abilities. However, this is of little significance because it is common ground that the words of the article in their natural and ordinary meaning conveyed, at the least, that the Respondent was guilty of incompetence and mismanagement in the discharge of his duties as Vice Chancellor.

His Honour upheld a submission made on behalf of the Appellants that even if the words in the article did defame the Respondent in respect of his administrative and management abilities, a defence of justification was established in that respect. Although his Honour did not say so in terms, it is apparent that he found the allegations of incompetence and mismanagement to be true in substance and in fact.

The Appellants have appealed, the substantial ground of their appeal being that the natural and ordinary meaning of the words used in the article are incapable of bearing the meaning that the respondent was personally dishonest in any of the respects alleged in the amended Statement of Claim or found by his Honour. The Respondent has cross-appealed on the ground that the damages awarded by His Honour were inadequate. A further ground of

appeal that his Honour erred in upholding the defence of justification was abandoned at the hearing of the appeal.

It is first necessary to determine whether, in its entirety, the article is defamatory of the Respondent and, if so, in what respect. We agree with the submission made by senior counsel for the Appellant that only one cause of action is pleaded in the amended Statement of Claim and that the article must be considered as a whole.

As we have said, it is common ground that, taken as a whole, the natural and ordinary meaning of the words in the article convey that the Respondent was guilty of incompetence and mismanagement in discharging his duties as Vice Chancellor and that accordingly the article defamed him in that respect. The real question is whether the article contains imputations going beyond incompetence and mismanagement.

A reading of the whole of the article leads us to conclude that in their natural and ordinary meaning the words used in it are not capable of bearing the meaning that the Respondent was personally dishonest in a financial sense, or was a thief, or was involved in financial skulduggery, or was misappropriating University funds.

In our opinion, the closest the article goes to using words conveying any of the above meanings is in paras 3, 4, 9 and 18. But set in the context of the whole article the words of those paragraphs are not capable of bearing these meanings. The words "questionable transactions in the administration" in para 3 immediately follow a reference to "mismanagement" in para 2 and are followed by the reference in para 4 to "stories of questionable activities" which is obviously a reference to the removal of a staff member. The words in para 3 take their colour from the words in paras 2 and 4. Just as those paragraphs do not contain imputations of financial dishonesty, neither does para 3.

Further, we do not think that the natural and ordinary meaning of the words in para 9 convey an imputation that the respondent had misappropriated all or any part of the amount of US\$40,000 granted by the Canadian Government. The imputation in this paragraph is that the grant had, or may have been, misapplied in the sense that it had not, as at the date of the article, been applied towards payment of students' book and travel allowances. But this is not an imputation that the grant moneys had been stolen.

Nor do we think the words of para 18 are capable of bearing the meaning that the Respondent was involved in any form of personal financial dishonesty. At most the words are capable of conveying that the expenses claimed by him on an overseas visit were unreasonably high.

It follows from what we have so far said that we do not think his Honour was correct to find the imputations which he did. But that is not the end of the matter. The imputations alleged in paras. (iv), (v) and (vi) of the amended Statement of Claim relate to matters more serious than administrative incompetence and mismanagement and less serious than theft and misappropriation of the University's funds: see particularly imputation (iv) to the effect that the respondent "devised the sacking of Professor Aiono Fanaafi so that monies saved from her salary can be used to make up for money misappropriated and hence to pay the students's allowances". We think the natural and ordinary meaning of the words used in paras 4-8 of the article are well capable of conveying this imputation. To say of a Vice Chancellor that he had a plan, which back fired, to sack a professor on invalid grounds so as to make up a shortfall of funds caused by incompetent administration is to accuse him of disgraceful administrative conduct. Such an accusation conveys dishonesty and deceit in the administration of University affairs rather than incompetence and mismanagement.

The reference in para 5 of the article to Professor Fanaafi being "reinstated on a ruling by the Supreme Court" adds particular sting to the imputation of administrative deceit and dishonesty. We think the reader of the article would infer from the reference to the Supreme Court's order reinstating the professor that she had been sacked by the Vice Chancellor on illegitimate grounds.

Being of the opinion, as we are, that the words in the article in their ordinary and natural meaning are capable of bearing the meaning that the Respondent acted dishonestly and deceitfully in his administration of the University's affairs, we must then address the question whether we ourselves should determine whether the words do have that meaning or whether we should send the matter back for retrial. A new trial would necessarily involve the parties in considerable further cost and delay. We think the preferable course is for us to determine whether the words do bear the meaning which we have found they are capable of bearing.

We think that, taken as a whole, the article does contain the imputation, inter alia, that the Respondent conducted himself deceitfully and dishonestly in the administration of the University's affairs.

We have examined the evidence given at the trial to see whether the defence of justification was made out in respect of this imputation. We do not think it was. Accordingly the Respondent was entitled to a verdict, although not on the basis of the imputation found by the trial judge.

We now turn to consider the cross-appeal. Had the imputations found by His Honour been made out, we would have thought it proper to increase the damages awarded to the Respondent. To say, in a newspaper of wide circulation, that the Vice Chancellor of the University is a thief and guilty of financial skulduggery would call for a verdict larger than \$20,000. But we have found that the defamation of the respondent was much less serious than that found by the trial judge. We think the amount of \$20,000, which was the amount awarded at the trial, is an appropriate award in respect of the defamation which we have found to be established. Accordingly, both the appeal and the cross-appeal will be dismissed.

Bearing in mind that neither party has been entirely successful or unsuccessful on the appeal or the cross-appeal, we think there should be no order as to the costs of either the appeal or the cross-appeal.