[HIGH COURT OF SOLOMON ISLANDS]

HONOURABLE ALFRED SASAKO AND ROBERT SOEKENI -V- HONOURABLE PRIME MINISTER ALLAN KEMAKEZA, PIPOL FASTAEM NETWORK AND DAVID LEEMING

Civil Case No. 290 of 2002

Honiara: Brown J

Defamation — *pleadings – statement given its natural meaning – absence of apparent defamatory meaning – statement with disclaimer – requirement to plead facts when special meaning alleged. HC O.21 r.6(2).*

Practice and Procedure — *unrepresented plaintiff – no appearance – need to balance rights of the parties with the convenience of the court – no explanation for non appearance – appropriate case to strike out on pleadings.*

In an action for defamation, lawyers for the 2nd and 3rd defendant obtained a summons seeking to strike out the cause against the 2nd defendant because it was not an entity and on hearing, there being no appearance of the plaintiffs, made application to strike out the cause on the basis that it disclosed no reasonable cause of action.

Held: *The statement of claim did not lend itself to an order for further and better particulars for on its face, there was no apparent defamatory matter. Order accordingly to strike out.*

Cases Cited: *No cases were cited*

Date of Hearing: 27th January 2003
Date of Ruling: 27th January 2003

No appearance for the plaintiffs
Mr. Titiulu for the First Defendant
Mr. A. Radclyffe for 2nd and 3rd Defendants

Reasons for Decision

The summons before me today is one by the 2nd and 3rd Defendant seeking, in effect, two things, the first is that the service of the Writ on the second defendant, "Solomon Islands Pipol Fastaem Network" be struck out, for that name is not a legal entity capable of being sued. The second thing is for this Court's order that the plaintiffs file proper particulars of their claim.

When the matter was called at 9.30am there was no appearance of the plaintiffs. I accordingly allowed time for these two gentlemen to appear but by 10am, I entered the Court and sat, even though neither plaintiff had appeared.

When asked, Mr. Radclyffe for the 2nd and 3rd defendants informed me that he had posted the summons to both plaintiff at their address for service "Robert Soekeni, PO Box 1356, Honiara." Mr. Radclyffe has undertaken to file a copy of his letter with the court, to show these two gentlemen have notice of the summons hearing today. I am satisfied, then that the plaintiffs have notice of today's hearing.

Now during Mr. Radclyffe's address to the Court, Mr. Titiulu appeared for the Honourable Prime Minister, the 1st defendant so named.

After discussion with Mr. Radclyffe about the fact that the plaintiffs were unrepresented, and the nature of his summons to seek further and better particulars from the plaintiffs of their claim against the third defendant, David Leeming, I indicated that the originating proceedings were flawed for they failed to disclose a cause of action on their face.

With that, Mr. Radclyffe made application to strike out the proceedings. The application was supported by Mr. Titiulu for the Prime Minister.

Now to strike out a plaintiff's claim without a hearing on its merits, is a power that the Court should sparingly use. In this case, however I ordered that the proceedings be struck out, since, in properly constituted proceedings, the individual rights of these two plaintiffs, to pursue a proper claim, remains unaffected.

These proceedings are not properly constituted, and are struck out for the following reasons:

1. **The Statement of Claim in the Writ of Summons is fatally flawed**

The defects could hardly be cured by further and better particulars. The sense of outrage by the plaintiffs clouds the fact that they have omitted to plead facts explaining how the words complained of, innocuous on their face, libel them. I will deal with this more fully in my later reasons.

2. **The non-appearance of the plaintiffs to attend to their litigation.**

Either one or the other could have attended court. The summons to court is, in fact, a court summons and parties ignore it at their peril, especially plaintiffs who must bear the weight of carrying on their claim. If neither was able to come, then they could have appointed a lawyer to represent them, either to seek an adjournment or argue the merits of the summons listed for hearing today.

The Court does not take easily to the fact that these two gentlemen have ignored its summons. Since the summons was mailed on the 10th December, either plaintiff could have approached the Registrar, by letter, for a fresh date, if inconvenient. Their non-appearance will not shield them, as it were, from the exercise of this Courts discretion to make orders for the proper continuation of this process, even if it means that these proceedings are struck out.

3. **The two plaintiffs interests in the litigation are not concurrent**

While the statement complained of may be common to both, their respective positions in the community and the loss they may suffer cannot be the same. Separate proceedings for these individuals are necessary, although they may be heard together.

4. **The misjoinder of the 2nd defendant**

Clearly the rules preclude proceedings against a name like this. There is no person or incorporated body. Who or what, can be made responsible for any judgment of the court? That is the basis of the rule.

5. **The inclusion of the Honourable Prime Minister as a defendant.**

Nowhere in the statement of claim do the plaintiffs assert how the Honourable Prime Minister is in any way responsible for the alleged libel.

To allow continuation of the proceedings any further against the Prime Minister would be wrong.

In the event, the proper course was to strike out the proceedings against the remaining defendant.

Pleadings in Statement of Claim

Before I come to the particular words relied upon as libelous, I want to deal with an earlier part of the statement of claim (even before the words of the alleged libel), where the plaintiffs recounted the fact that the 3rd defendant sent "their apologies to the first plaintiff on the 13th and 14th June 2002 and 18th June 2002."

The inclusion of the statement of apology in this manner is clearly intended to obviate the need to allege the libel, for the defendant, in the plaintiff's view, had clearly admitted it for the purposes of the action, by his very apology. It still remains this Courts function, however, to find a libel on the facts. The pleading of the apology, in this manner is properly objectionable. It may go to a question of extent of damage to the reputation of the 1st plaintiff, but cannot be read as proof, without anything further, of a libel.

This aspect is mentioned, for the apology may have gone quite some way to calm a sense of outrage in the plaintiff. Or it may have driven him to file these proceedings with a view to vindicate his feelings. But whatever the reason, reciting the fact of the apology (the nature or words used, have not been stated) cannot substitute for a proper explanation of the libelous meaning of the words used.

Libel

Law - a printed or written statement that says unfairly bad things about a person and may make others have a low opinion of him or her

Longman Dictionary of Contemporary English

The Statement or Words complained about.

The Statement of Claim at para. 13 says:

13. *The third defendant's article posted in the Pipol Fastaem Website contains the following words (which they claimed to be unconfirmed, uncontrolled and unreliable a source) "eight Kwaio men were killed, one held captive and 3 escaped on land and are on their way to Honiara. These are not MEF boys but Kwaio Medal seekers used by Soekeni and Sasako in Honiara."*

The words in brackets, could, in the common parlance be read as a disclaimer, for the remainder is to be read with that disclaimer in mind. In other words, it may not be factual. The plaintiffs recount this statement "eight Kwaio men etc." as, on their ordinary meaning, defaming them both. Yet, there is an absence of any defamatory meaning on the face of the statement.

Neither plaintiff has sought to explain some hidden or underlying meaning in the use of the words. On their face, the plaintiffs assert, the words libel them.

Without any further explanation, it is difficult to read anything into the words at all. They appear to be recounting a series of events, which culminated in the death of eight men, and conclude with an assertion they were not MEF boys but Kwaio Medal seekers used by Soekeni and Sasako in Honiara.

In such a case, it is necessary to read something into the otherwise ordinary meaning for the words, to support a libel.

Does some opprobrium attach, for instance, to Kwaio Medal seekers? What community understands the meaning of the phrase "Kwaio Medal seekers". Are Kwaio Medal seekers bad people? What is meant by the expression. Does that community decry the expression, Kwaio Medal seekers? Is that community one of honest, fair-minded citizens who can differentiate fact from rumour? Was there a change in community attitude after the death of these 8 men, towards Kwaio Medal seekers?

These are matters for the plaintiffs to show, matters of fact which go beyond the mere statement, facts which the plaintiff must rely on, as giving rise to the community opprobrium. Having shown the community opprobrium, the plaintiffs should go on to plead that a published statement, unfairly and untruthfully associated these two gentlemen, of good character, with such opprobrium. The association may be by way of innuendo.

The words should not be read simply as reported but seen in the light of the matters which the plaintiffs say, cause the defamatory meaning.

So it is for the plaintiffs to explain how this report shows them out in a bad light, how it has brought them to be seen as disreputable in such a fair minded community. But they have not attempted to do this.

They have boldly stated they have been defamed. But that is not enough. Order 21 r. 6(2) of the High Court Rules says:

"*In an action for libel or slander, if the plaintiff alleges that the words or matter complained of were used in a defamatory sense other than their ordinary meaning, he shall give particulars of the facts and matters on which he relies in supporting such sense*".

The plaintiffs have failed to state how these words have brought them into disrepute in the community.

The plaintiffs do, however, go on to assert, in form clearly taken from a precedent, how they see themselves hurt, the first plaintiff, for instance speaks of being discredited in his "office, trade and profession" a form of words which calls for a choice of one or the other.

The use of a defamation action seeking a large amount of money in circumstances arising out of the killings of these men may seem somewhat misguided and mercenary. It clearly seeks to benefit from the recounting, on a website, of this report about the Weathercoast killings.

Now the misguided or even mercenary nature of the claim does not stop a plaintiff, unless there is no basis for his claim.

The evidence in support of a claim may be given by affidavit, but that evidence does not stand in substitution for a properly enunciated claim in accordance with established practice and procedure. This is a court of record, it should be regulated by proper procedures to ensure fairness to all parties, and plaintiffs who institute claims must comply with the procedure. I have not read any affidavits filed by any of the parties, for those affidavits are properly read on the substantive hearing. It is the state of the pleadings which interest me here.

In this case, on the strength (or really lack of it) of the plaintiff's pleading, procedural fairness requires the Court to stop these proceedings at this juncture.

Not only have the plaintiffs failed to comply with High Court Rules concerned with particulars, but also the manner, (which I have touched on) in couching the statement of claim does not follow proper pleading practice. Averments do no make for facts.

It may be a conclusion which the plaintiffs seek the Court to draw when reading the words complained of, but to aver that the words, (or article,) were defamatory in "that it meant that both have indirectly participated and conspired in the carrying out of the illegal activities for selfish ends" is drawing a long bow. There is nothing in the statement complained of, of a conspiracy, or illegal activities for selfish ends by the plaintiffs.

If that be so, if that be the implication the plaintiffs wishes this court to draw when reading the statement, why should the plaintiffs succeed? If that is the implication the plaintiffs want this court to draw, then the characteristics of these plaintiffs could be seen to be not good. The plaintiffs should deny the implications which they seek the Court to draw, as malicious and baseless. Yet they fail to do so.

The averment does bring to the fore, however, the danger of using this type of cause, or defamation action, foreign in its roots and sophisticated in its complexity, without a clear understanding of the law surrounding it.

To seek $200,000 in these circumstances of the killings, for their own benefit, does require a strict compliance with the practice and procedure of this Court, to avoid any inference that the use of court process in this way is purely self-serving.

No sufficient facts are pleaded, unfortunately here. Courts must be careful to balance the freedom to report, in a democratic society, matters of public importance, with the right of the individual not to have his character impugned by lies or innuendo. In this case, no lies are alleged, no innuendo pleaded.

The Statement of Caim, then on its face is deficient. The failings are such that an order for particulars cannot supply such deficiencies. The appropriate order is to strike out the pleadings and consequently the writ of summons.

Order:
1. Writ of Summons and statement of claim struck out
2. The 3rd defendants costs shall be paid by the plaintiffs
3. I make no order in relation to the 1st defendant's costs.