IN THE SUPREME COURT OF SEYCHELLES

SAMUEL GAPPY **PLAINTIFF**

VERSUS

GAETAN BARALLON **DEFENDANT**

Civil Side No 204 of 2004

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Mr. W. Lucas for the Plaintiff
Mr. B. Georges for the Defendant

JUDGMENT

B. Renaud

On 9th July, 2004 the Plaintiff entered a Plaint alleging that the Defendant slandered him and he claimed damages.

The Defendant denied the allegation and sought the dismissal of the Plaintiff's claim.

It is not in dispute the Plaintiff was a customer of one Ronny Barallon *(the son of the Defendant)* who is and was at all material time carrying on the business of importation of vehicle.

The Plaintiff pleaded that sometime during the year 1999 he and Mr. Ronny Barallon entered into an agreement for importation of a pick-up and subsequently the said pick-up was seized on its arrival by Custom Authority which resulted into a court case.

The Plaintiff further pleaded that in connection with that transaction, on 26th August, 2000 whilst he was attending a football match between St. Michel and Red Star at Stade Linite the Defendant falsely and maliciously, in front of a crowd, published at him the following words – *"voler pick-up".* He added that those words complained of, in their natural and ordinary meanings are understood to refer to the Plaintiff and its natural and ordinary meaning are explicitly understood to mean that the Plaintiff is a thief who robbed Defendant's son of his pick-up.

The Plaintiff alleged that the said words were false and constitute a grave slander on him, and as a result of these false and malicious allegations against him, he has been severely injured in his credit, character and reputation and has been brought into ridicule, hatred and contempt.

The Plaintiff also alleged that he has suffered prejudice and has sustained loss and damage for which he is praying this Court to enter judgment in his favour and award damages in an amount to be determined by this Court.

The Defendant denied all the material allegations. He specifically denied having spoken the words complained of or any words similar to them at a football match on the day.

At the conclusion of the case, Learned Counsel for the Defendant submitted a point of law, that no proof of the words into English was made by the Plaintiff and there are thus no words before the court to ground the case.

I will proceed to consider the point of law raised as revealed by the pleadings and evidence adduced.

In the case of ***Bouchereau v Rassool (1975) SLR 238,*** the Court of Appeal *inter alia* held that:

i) *The law of slander and libel in Seychelles is that obtainable in England, the English rule must be followed, and where the words complained of are in a foreign language the plaintiff must prove by a witness capable of being cross-examined their meaning in English. There was before the Court no evidence of the correctness of the translation into English of the alleged slanderous words.*

ii) *The allegations in the plaint that Plaintiff had used the words complained of in creole and their meaning in English were met in the defence by a general denial. Though open to criticism, such denial could not be construed as an admission of the correctness of the translation*.

Paragraphs 3 and 5 of the Plaint are worded as follows:

3. *"In connection to the said transaction, on the 26th August 2000, the plaintiff was attended (sic) a football match between St. Michel and Red Star at Stade Linite where the Defendant falsely and maliciously published at the plaintiff the following words in front of a crowd "voler pick-up"*

5. *"The said words within their natural and ordinary meaning are explicitly understood to mean that the plaintiff is a thief who robbed the defendant's son of his pick-up".*

The Defendant in his Statement of Defence denied paragraph 3 and stated that – "*the Defendant specifically denies having spoken the words complained of or any words similar to them at a football match on the day specified or at all".*

The Defendant simply made a general denial to the averments in paragraph

It is to be noted that the official language of the Courts in Seychelles is English. The Civil Law of Defamation applicable in Seychelles is the English law of slander and libel obtaining in England as at the 1st January, 1976 (Article 1383(2) of the Civil Code). Accordingly, as to the point under consideration, we must follow the relevant rule obtained under English law at the time and this is found in Gatley on Libel and Slander, 5th Edition at paragraph 987 which reads as follows:

> "*PROOF BY INTERPRETER.Where the words complained of are in a foreign language the plaintiff must prove the actual words published. He must also prove by an interpreter sworn as a witness that the translation given in the statement of claim is correct, unless this fact has been admitted. If a witness giving evidence through an interpreter proves only the foreign words, the plaintiff*
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> *has not discharged the burden of proving by evidence the meaning of the words in English. The meaning of the words in English must be proved by a witness who can be cross-examined."*

It may be true that the Defendant only pleaded a general denial which by virtue of Section 75 of the Seychelles Code of Civil Procedure amounts to an admission, this was held in the case of ***Seetanah v Anuth 1964 MR. 68*** that, although open to criticism, could not be construed as an admission.

I therefore hold that the pleading of the Defendant cannot be construed as admission of the facts alleged in paragraphs 3 and 5 of the Plaint, including the correctness of the translation under reference. (***Bouchereau v Rassool (1975) SLR .238 -*** followed).

In the light of my finding I accordingly uphold the submission of Learned Counsel for the Defendant that there are no words before this Court to ground the case. In the case of ***osse v Fabien (1979) SLR15)*** the Court held that in omitting to plead the translation of the creole words uttered, is fatal to the case.

Having upheld the submission of Learned Counsel for the Defendant, there is now no cause of action before this Court against the Defendant.

The Plaint is accordingly dismissed but I will make no order as to cost.

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B. RENAUD

JUDGE

Dated this 8th day of June 2007

The Plaintiff and one witness testified in support of his claim and the Defendant alone testified in his defence.

The determination of this case hinges on this Court accepting one of two diametrically opposed versions of the events of the day in question. One the one hand, the Plaintiff and his witness who testified, that the Defendant accused the Plaintiff of being a thief. On the other hand, the Defendant states that he cannot remember the incident and denied ever calling the Plaintiff a thief, at a football match or elsewhere.

In determining which of the two versions is more credible, I observed the demeanour of all the parties when they were testifying, the cogency and consistency of their evidence in chief and as well as under cross-examination. The evidence of the Plaintiff was corroborated by that of his witness as to the material particulars. One could be tempted to believe that there could have been collaboration in preparing them. The incident happened on the remarkable occasion when two top football teams were competing. The Plaintiff's witness is a Police Officer who by his training ought to be observant and be able to recollect such an incident. There is no reason that would lead me to doubt his testimony. The Defendant's testimony was obviously self-serving as one would expect in such circumstances. He stated that he was always accompanied by either his son-in-law or his brother at such football matches but he failed bring any witness. Of these two versions, I find on a balance of probabilities, that the version of the Plaintiff is more credible than that of the Defendant.

I find and conclude that on the material date and time at Stade Linite the Defendant did utter the words as alleged by the Plaintiff. I also find that such words were uttered loudly and were heard by other people including the witness. The words uttered amounted to a false allegation, were slanderous and malicious. By doing so, the Defendant injured the credit, character and reputation Plaintiff and brought him into ridicule, hatred and contempt.

In determining the damages that I ought to award in the particular circumstances of this case, I have taken into consideration that it was a slanderous act imputing a criminal offence, however, I do not believe that the damage caused was severe, to merit an award of substantial damages.

For reasons stated above, I enter judgment in favour of the Plaintiff as against the Defendant in the amount of SR3,000.00 with interest and costs on the Magistrate Court scale.