

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CIVIL JURISDICTION

HBC 114 OF 2023

BETWEEN : **NILESH REDDY** of 12 Woodridge Drive, Flagstaff, Hamilton, New Zealand.

PLAINTIFF

AND : **RONEEL KUMAR** of Lomawai, Sigatoka Businessman.

DEFENDANT

Appearances: Mr. Nair S. for the Plaintiff

Date of Hearing: 04 July 2024

Date of Ruling: 13 September 2024

R U L I N G

1. On 22 May 2023, Nilesh Reddy filed a Writ of Summons and Statement of Claim against Ronil Kumar.
2. Reddy seeks the following relief:
 - a) General and special damages for defamation.
 - b) Punitive damages.
 - c) Aggravated damages.
 - d) Exemplary damages.
 - e) An injunction restraining the defendant or his servants or agents or otherwise from further publishing the same or any similar defamatory matter considering the Plaintiff.
 - f) The Defendant to publish a signed apology to the Plaintiff.
 - g) Interest under the Law Reform (Miscellaneous Provisions) (Death Interest) Act Cap 27 of the Laws of Fiji on the sums awarded to the Plaintiff.
 - h) Post judgment interest.
 - i) Costs of this action.
3. Reddy and Kumar were good friends for several years. They grew up in the same area in Sigatoka.
4. Both are businessmen. Reddy now lives in New Zealand, although he continues to maintain and run some business in Sigatoka. He travels to Fiji regularly.

5. Reddy and Kumar are now estranged as friends. Their estrangement developed as a result of, what Reddy alleges, some false defamatory accusations which Kumar had spread about Reddy in their community in Sigatoka.
6. Reddy alleges that Kumar had told people that he (Reddy) and Kumar's wife had been having an affair for some time. Reddy further pleads (see paragraph 12 of the claim) that Kumar also tells people that Reddy "*was in multiple affairs outside his marriage*".
7. I set out below the particulars of the defamatory statement which Kumar is alleged to have made are set out in paragraph 15 of the claim:

"....that Niles Reddy is having affair with the Defendant's wife and has eloped with her and is living with her. Niles is having affairs outside his marriage with girls and or other females".

8. At paragraph 16, the claim pleads as follows;
 - a) The Defendant painted the picture of the Plaintiff as person of not good character involved in unethical and immoral acts towards females specifically.
 - b) That the Plaintiff has eloped and is in Fiji claiming to be in New Zealand and has eloped with the wife of the Defendant.
 - c) That the Plaintiff has acted in adultery and is a person of notorious nature.
 - d) That the Plaintiff has suffered loss of reputation in his professional capacity as a Businessman.
9. The Writ of Summons and Statement of Claim was served on Kumar on 23 May 2023, according to the affidavit of service of one Ramanjalu Naicker sworn on 25 May 2023.
10. As there was no *acknowledgment of service* or *statement of defence* filed, Prikans Law then filed an *ex-parte* notice of motion on 17 July 2023 to formally prove the claim.
11. The matter proceeded to formal proof on 04 July 2024.
12. **PW1** Reddy said Kumar has even told Reddy's wife about the allegations. His wife has been very upset and is asking him for a divorce. **PW1** also said that the allegations are affecting his business. People in Lomawai in Sigatoka now avoid his supermarket. He is also finding it extremely difficult to rent out his shop space. **PW1** said some lady – tenants have vacated his rental properties because they are all scared of him.
13. **PW2** Rowan Reddy is also a businessman in Lomawai. He is a cousin of **PW1**. He (**PW2**), **PW1** and Kumar are all from the same village in Sigatoka. **PW2** merely said in a general way that the allegations are all false and have affected **PW1**'s business negatively.

14. **PW3** Nitya Nand is a Carpenters/ Labour. He is also from the same village in Lomawai. He said Kumar himself told him on one occasion that PW1 was having an affair with Kumar's wife. He said:

“they talked about it in Sangam Meetings and in School Meetings”.

15. An allegation of an extra-marital affair is potentially defamatory if it is untrue, and made with the intent to harm the reputation of the person who is said to be engaging in it.

16. In **Devi v Kumar** [2023] FJCA 248; ABU052.2020 (30 November 2023), the Fiji Court of Appeal reasserted that in a defamation case, the statement of claim must state verbatim the precise defamatory words uttered by the defendant and when the words were uttered.

22. With respect this analysis and conclusion is not a correct statement of the law in Fiji. In **Chand v Fiji Times Ltd** (2011) FJSC 2. The Supreme Court stated at paragraph 18 and 19 of the Judgment in reference to Defamation pleadings as follows:-

“18. The objective of pleadings is to narrow the issues between the parties and limit the scope of the trial. However, it is trite law that pleadings in a defamation action are in a special category and must be prepared with great care and scrutiny.”

19. Another cardinal rule of pleadings in defamation cases is that the Statement of Claim generally must set out verbatim the precise words alleged to have been used by the perpetrator...”
23. I would add the statement of claim must obviously also precisely set out when the alleged words were spoken and to whom.

17. The Court went on to state that the rationale was to enable the defendant to ascertain the specifics of the claim and to prepare for his or her defence.

24. The rationale behind the above requirements is to enable the Defendant to ascertain the specifics of the claim so as to be able to formulate a defence.

And later concluded:

32. I therefore conclude that the Judge was wrong in deciding that the allegation of defamation had been properly set out in paragraph 4 of the Statement of Claim and that the failure to use exact words in the Statement of Claim was not fatal. I consider that this failure together with the lack of detail regarding where when and to whom the alleged defamatory statements were made has resulted in a significant miscarriage of justice against the Appellant.
33. Even if these omissions were not fatal, I consider that the Respondent did not prove the allegation of defamation against the Appellant.

34. Despite claiming in his statement of claim without details that the alleged defamatory words were made to the Appellants' in laws, head pastor Suli, other pastors and her family members, none of these persons were called as witnesses.
18. In this case now before me, the words alleged (see paragraph 7 above) are pleaded in a formal, impersonal and objective tone rather than in a subjective personal tone.
19. Also, the claim does not plead who the defamatory statements were made to, or when and where specifically.
20. Although **PW2** and **PW3** said that Kumar did tell them the same words, the statement of claim does not plead so. The claim ought to have specifically pleaded these.
21. Guided by the above sentiments of the Fiji Court of Appeal in **Devi v Kumar** (supra), I am of the view that omissions are fatal or, alternatively, that the claim has not been proven.



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Anare Tuilevuka
JUDGE
13 September 2024