



38. *The mitigating factors are: the removal of the report from the website and public apology by the First Defendant which has been accepted by the Plaintiff.*
39. *However, the delay in apologizing does warrant an increase in compensatory damages.*
40. *No award is made for special damages as there is nothing in the pleading or specific evidence was adduced concerning the suffering of financial loss.*
41. *No award for exemplary damages is made as non was pleaded in the statement of claim.*
42. *The award of general damages is sufficient for First Plaintiff for damage/harm done to the business.*
43. *Taking into account the above and considering the awards made by the Courts in other defamation cases I find an award of \$50,000 to the First Plaintiff and \$70,000 to the Second Plaintiff as general damages proper. And I order so.*
44. *The Second Defendant is to also pay the Plaintiffs' cost which is summarily assessed at \$4,000 in total."*

**C. The Grounds of Appeal and Orders sought**

[3] The Appellants grounds of appeal are:

- “1. **THAT** the learned Master erred in law and in fact in holding at paragraph 39 of her judgment that ‘*However, the delay in apologizing does warrant an increase in compensation damages*’ when the Appellant had not been found liable until the Supreme Court delivered its judgment overturning the Court of Appeal’s judgment which had affirmed the High Court’s judgment.
2. **THAT** the learned Master erred in law and in fact in not taking into consideration in her assessment of damages the mitigating effect of the apology that has been published in the Fiji Times on 24 May 2023 by the Appellant and which was accepted by the 1<sup>st</sup> Respondent (Original 1<sup>st</sup> Plaintiff) and 2<sup>nd</sup> Respondent (Original 2<sup>nd</sup> Plaintiff) as noted in paragraph 4 of her judgment.
3. **THAT** the learned Master erred in law and in fact in proceeding to making assessment of general damages ‘severally’ by giving separate general damages in favour of the 1<sup>st</sup> Respondent (Original 1<sup>st</sup> Plaintiff) and 2<sup>nd</sup> Respondent (Original 2<sup>nd</sup> Plaintiff) when in the relief sought in the Plaintiff’s claim dated 28 November 2014 the plaintiffs had sought “General and Special Damages’ jointly and consequently rendering the general damages awarded excessive and disproportionate.
4. **THAT** the learned Master erred in law and in fact in failing to give sufficient weight and consideration to her own findings that there was no

evidence adduced by the Plaintiffs that established any loss of business or harm or damage caused to the Plaintiffs, which ipso facto extends to any finding and assessment against general damages and consequently rendering the general damages awarded excessive and disproportionate.”

- [4] The Appellant seeks that the Master’s orders be reversed and wholly set aside and judgment be entered for an order that no general damages is payable to the 1<sup>st</sup> (Original Plaintiff) and to 2<sup>nd</sup> Respondent (Original 2<sup>nd</sup> Plaintiff) or in the alternative the quantum be reduced.

**D. Determination**

- [5] The 1<sup>st</sup> and the 2<sup>nd</sup> grounds of appeal are related. I would deal with them together. The submission for the Appellants is that they were successful in their defence to the claim in the High Court. It was upheld by the Court of Appeal. The tendering of the apology followed the Supreme Court judgment. The Respondent’s lawyer’s submission is that the Appellants were forced to apologize after being found liable by the Supreme Court. They did not apologize being genuinely remorseful and by accepting culpability.

- [6] The Appellants report for the year 2010 was tabled in Parliament on 17<sup>th</sup> October 2014. It was circulated through its official website. The Supreme Court found the Appellants liable on 28<sup>th</sup> October 2022. A public apology was made through an advertisement in the Fiji Times on 24<sup>th</sup> May 2023. The apology was accepted by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents. The time period from the time of the Supreme Court finding the Appellants liable to the time of the publication of the apology is about 7 months (around 208 days).

- [7] There is no dispute as to the principles on which damages are awarded in defamation proceedings. They were referred to by Bingham MR giving the judgment of the court in **John v MGN Ltd [1996] 2 All ER 35 at 47–48, [1997] QB 586 at 607–608:**

*“The successful plaintiff in a defamation action is entitled to recover, as general compensatory damages, such sum as will compensate him for the wrong he has suffered. That sum must compensate him for the damage to his reputation; vindicate his good name; and take account of the distress, hurt and humiliation which the defamatory publication has caused. In assessing the appropriate damages for injury to reputation the most important factor is the gravity of the libel; the more closely it touches the plaintiff’s personal integrity, professional reputation, honour, courage, loyalty and the core attributes of his personality, the more serious it is likely to be. The extent of publication is also relevant: a libel published to millions has a greater potential to cause damage than a libel published to a handful of people. A successful plaintiff may properly look to an award of damages to vindicate his reputation: but the significance of this is much greater in a case where the defendant asserts the truth of the libel and refuses any retraction or apology than in a case where the defendant acknowledges the falsity of what was published and publicly expresses regret that the libellous publication took place. It is well established that compensatory damages may and should*

*compensate for additional injury caused to the plaintiff's feelings by the defendant's conduct of the action, as when he persists in an unfounded assertion that the publication was true, or refuses to apologise, or cross-examines the plaintiff in a wounding or insulting way. Although the plaintiff has been referred to as "he", all this of course applies to women just as much as men."*

- [8] I note from **Nail v News Group Newspapers Ltd and others; Nail v Jones and another**, [2005] 1 All ER 1040 (Per May LJ) that "[41] *One principle on which damages are awarded in defamation proceedings is that they are assessed as at the point of assessment. Of necessity, they are not in fact assessed at the date of publication, nor are they notionally assessed then. A further consequent principle is that conduct of the defendant after the publication may aggravate or mitigate the damage and therefore the award. Each case depends on its own facts and this will apply to the determination of compensation under s 3(5). That said, if an early unqualified offer to make amends is made and accepted and an agreed apology is published, as in the present cases, there is bound to be substantial mitigation.*"
- [9] Having perused the Learned Master's Judgment. I find that Master Lal took relevant principles into consideration in determining the assessment of damages as it relates to the first two grounds of appeal. She did not err.
- [10] For the 3<sup>rd</sup> ground of appeal, the Appellant submitted that the Respondents had jointly sought "General and Special Damages" and the Master ought to have made the general damages award in favour of the Respondents jointly rather than separately for each Respondent. They rely on the claim of the Respondents where the relief sought was jointly by the Respondents (Plaintiffs) and ought to have been combined for the Plaintiffs. For the 1<sup>st</sup> and 2<sup>nd</sup> Respondent the submission for this ground of appeal is that there were two Plaintiffs (Respondents) in the matter and each gave separate evidence about the type of damages that they suffered. Their position is that the Master was justified in making separate awards to the two Respondents. It was a discretion of the Court.
- [11] I do not find that the relief for damages was jointly claimed by the Respondents (Plaintiff). There are two Plaintiffs. One is the firm and the other an individual. Each provided evidence for the assessment for damages The Learned Master was correct in assessing the damages separately for each of the Plaintiff. She did not err.
- [12] For the 4<sup>th</sup> ground the Appellants submit that the Learned Master erred in law and fact in failing to give sufficient weight and consideration to her own findings that there was no evidence adduced by the Plaintiffs (Respondent) that any loss of business or harm or damage was caused to them, which extended to any finding and assessment against general damages and rendered its award excessive and disproportionate. In response the submission for the 1<sup>st</sup> and 2<sup>nd</sup> Respondent (Plaintiff) was that there was clear malice in defaming the Respondents and the Respondents suffered damage locally and internationally to their reputation and professional standing. They further submitted that

the Master was careful in making the award and she excluded heads of damages which she found had no proof.

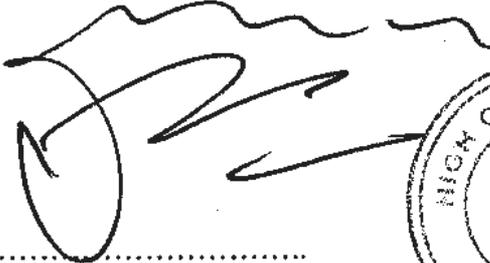
[13] I find that the Learned Master gave proper and full consideration to all relevant factors and reached a balanced conclusion. Those heads of damages which lacked proof were excluded.

[14] For these reasons I would dismiss this appeal. The Appellant is to pay \$2000.00 as costs to each of the 1<sup>st</sup> and the 2<sup>nd</sup> Respondent. The costs are summarily assessed. They are to be paid within 21 days.

**E. Court Orders**

(a) The Appeal is dismissed.

(b) Appellant to pay each \$2000.00 to each of the 1<sup>st</sup> and 2<sup>nd</sup> Respondent within 21 days. Costs have been summarily assessed.

  
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Chaitanya S.C.A. Lakshman  
Puisne Judge



31<sup>st</sup> March 2025