

**IN THE HIGH COURT OF FIJI  
AT SUVA  
CIVIL JURISDICTION**

Civil Action No. HBC 262 of 2021

**BETWEEN:** **SHELVIN AMIT SINGH** trading as **SHELVIN SINGH LAWYERS** of 38 MacGregor Road, Suva, Fiji.

**Plaintiff**

**AND:** **SUN (FIJI) NEWS LIMITED** a limited liability company having its place of business at Waimanu Road, Suva trading as **FIJI SUN**.

**1<sup>st</sup> Defendant**

**AND:** **PETER LOMAS** of Suva, Fiji, Publisher, Editor.

**2<sup>nd</sup> Defendant**

**AND:** **ASHNA KUMAR** of Suva, Fiji, Reporter.

**3<sup>rd</sup> Defendant**

**Representation**

**Plaintiff:** Ms. Saumaki & Ms. Kumar (Shelvin Singh Lawyers).

**Defendants:** Mr. Kumar & Mr. Kaleem (Patel Sharma Lawyers).

**Date of Hearing:** 3<sup>rd</sup> July 2024.

**Judgment**

**A. Introduction**

[1] The Plaintiff commenced action for defamation against the Defendants for publication of certain articles in reference to him. At the trial 3 witnesses gave evidence. The plaintiff gave evidence. His other witness was Mr. Ravindra Lal. The Defendants called Ms. Rosi Tamani Doviverata, the acting CEO and Publisher of Fiji Sun.

**B. Agreed Facts**

[2] At the pre-trial conference the parties agreed upon the following:

*“1. The Plaintiff is a Barrister & Solicitor practicing under the name of Shelvin Singh Lawyers of 38 MacGregor Road, Suva.*

*2. The first Defendant is a newspaper publisher in Fiji trading as “the Fiji Sun”.*

*3. The second Defendant is the Publisher/Editor of the first Defendant.*

*4. The third Defendant is an employee of the first Defendant.*

5. That the Defendants wrote and/or caused to be published the following articles (collectively referred to as "the said publications" of the Plaintiff:

- a. Article titled "**Must Read**" "**Hearing Date fixed for Suva Lawyer**" published on 3<sup>rd</sup> December 2021 in the Fiji Sun Newspaper.
- b. Article titled "**Lawyer faces charges for professional misconduct**" published on 4<sup>th</sup> December 2021 in the Fiji Sun Newspaper.
- c. Online Article titled "**Lawyer faces charge for professional misconduct**" published on 4<sup>th</sup> December 2021 in the Fiji Sun Newspaper (online).

6. The 3<sup>rd</sup> Defendant is the author of an article published on 03 December 2021 and 04 December 2021 titled "**Must Read**" "**Hearing date fixed for Suva Lawyer**" and "**Lawyer faces charge for professional misconduct**" respectively.

7. That the Plaintiff was charged by the Independent Legal Services Commission (ILSC) IN ILSC Case No. 02 of 2021 under section 81 of the Legal Practitioners Act 2009, for the charge of "**unsatisfactory professional conduct**".

### C. The Law

[3] The law recognizes the right of every person, during life, to possession of a good name. Defamation is a tort which protects reputation and that is the core concern at the heart of defamation law: the deterring and remedying of unwarranted harm to reputation. The purpose of the law of defamation is to hold a balance between freedom of speech and the right to reputation: **Panday v. Gordon [2005] UKPC 36; 1 A.C 427 at [12] – [15]**. The gist of the tort of libel or slander is the publication of matter conveying a defamatory imputation. In determining whether words are defamatory there are two stages, to decide what the words mean, and to decide whether those words are defamatory in that meaning: **Lord MacAlpine of West Green v Bercow [2013] EWHC 1342 (QB)**.

[4] A statement may be defamatory in relation to the claimant's personal character, office or vocation. What is defamatory in one era may not continue to be so in another. Our Supreme Court has recently dealt with matters relating to defamation in **Sharma v Biumaitotoya [2024] FJSC 17; CBV0001.2023 (28 June 2024)** and in **Nawaikula v Khaiyum [2024] FJSC 23; CBV0016.2022 (28 June 2024)**. In **Thornton v Telegraph Media Group Ltd [2010] EWHC 1414 (QB); [2011] 1 W.L.R 1985**, Tugendhat J considered the test for whether words are defamatory, and undertook a thorough review and analysis of the test. In **Nawaikula (supra)**, Goddard J on the law of defamation stated as follows:

*"61. The common law principles relating to the law of defamation have been developed over time and continue to evolve alongside legislative requirements.*

*62. Of overarching importance in Fiji is Section 17 of the Constitution of the Republic of Fiji which enshrines the fundamental right to freedom of speech, expression, thought, opinion and publication, and includes the freedom to seek, receive and impart information, knowledge and ideas.*

63. *The other relevant legislative provisions in Fiji law are sections 15 and 16 of the Defamation Act.*”

[5] In considering whether a statement has a defamatory meaning, the court gives to the material in question its “natural and ordinary meaning”. Words are to be taken in the sense that is most natural and obvious, and in which those to whom they are spoken will be sure to understand them. The test of reasonableness guides and directs the court: **Lewis v Daily Telegraph Ltd [1964] A.C 234; Skuse v Granada Television Ltd [1996] E.M.R 278; Gillick v Brook Advisory Centres (No.1) [2001] EWCA Civ 1263; Jeynes v News Magazines Ltd [2008] EWCA Civ 130**. The principles to be applied when determining the natural and ordinary meaning of words were recently re-stated in **Koutsogiannis v The Random House Group Ltd [2019] EWHC 38 (QB); [2020] 4 W.L.R 25 at [11], [12]**:

*“i) The governing principle is reasonableness.*

*ii) The intention of the publisher is irrelevant.*

*iii) The hypothetical reasonable reader is not naïve but he is not unduly suspicious. He can read between the lines. He can read in an implication more readily than a lawyer and may indulge in a certain amount of loose thinking but he must be treated as being a man who is not avid for scandal and someone who does not, and should not, select one bad meaning where other non-defamatory meanings are available. A reader who always adopts a bad meaning where a less serious or non-defamatory meaning is available is not reasonable: s/he is avid for scandal. But always to adopt the less derogatory meaning would also be unreasonable: it would be naïve.*

*iv) Over-elaborate analysis should be avoided and the court should certainly not take a too literal approach to the task.*

*v) Consequently, a judge providing written reasons for conclusions on meaning should not fall into the trap of conducting too detailed an analysis of the various passages relied on by the respective parties.*

*vi) Any meaning that emerges as the produce of some strained, or forced, or utterly unreasonable interpretation should be rejected.*

*vii) It follows that it is not enough to say that by some person or another the words might be understood in a defamatory sense.*

*viii) The publication must be read as a whole, and any ‘bane and antidote’ taken together. Sometimes, the context will clothe the words in a more serious defamatory meaning (for example the classic “rogues’ gallery” case). In other cases, the context will weaken (even extinguish altogether) the defamatory meaning that the words would bear if they were read in isolation (e.g. bane and antidote cases).*

*ix) In order to determine the natural and ordinary meaning of the statement of which the claimant complains, it is necessary to take into account the context in which it appeared and the mode of publication.*

*x) No evidence, beyond publication complained of, is admissible in determining the natural and ordinary meaning.*

*xi) The hypothetical reader is taken to be representative of those who would read the publication in question. The court can take judicial notice of facts which are common knowledge, but should beware of reliance on impressionistic assessments of the characteristics of a publication's readership.*

*xii) Judges should have regard to the impression the article has made upon them themselves in considering what impact it would have made on the hypothetical reasonable reader.*

*xiii) In determining the single meaning, the court is free to choose the correct meaning; it is not bound by the meanings advanced by the parties (save that it cannot find a meaning that is more injurious than the claimant's pleaded meaning)."*

**D. Determination of the Issues**

[6] I would go over each issue. As identified by the parties at the PTC.

"8. Whether the Defendants falsely and maliciously wrote and published of the Plaintiff and of it in the way of his business and in relation to his conduct therein the following words in the Fiji Sun newspaper on 3<sup>rd</sup> December 2021 titled "**Must Read**" "**Hearing date fixed for Suva Lawyer**":

**a. Singh is charged with one count of unsatisfactory professional misconduct.**

**b. Singh being a legal practitioner and principal of Shelvin Singh Lawyers failed to protect the interest of his client by failing to prepare and have the parties namely Omar Niazi and Mohammed Towhir execute a deed of settlement, after a partial settlement was reached between parties on June 13, 2009."**

[7] For ease of reference, I have reproduced the Fiji Sun article of 3<sup>rd</sup> December 2021 (page 44) which is as follows:

**must read**

**Hearing date fixed for Suva lawyer**

The Independent Legal Service Commission has fixed hearing date in the case of a Suva based lawyer Shelvin Amit Singh.

Singh is charged with one count of unsatisfactory professional misconduct. His case was called before ILSC Commissioner Justice Daniel Goundar.

Singh being a legal practitioner and principal practitioner of Shelvin Singh Lawyers failed to protect the interest of his client by failing to prepare and have the parties namely Omar Niazi and Mohammed Towhir execute a deed of settlement after a partial settlement was reached between the said parties on June 13, 2019.

The matter has been fixed for hearing on May 2, 2022.

A final pre-trial conference has been fixed to be called on March 1.

**ASHNA KUMAR**

- [8] The Plaintiff's claim (Para 9 of Minutes of PTC) is that the words published in the above article meant and was understood to mean the following:
- a. That the plaintiff has been involved in dishonest conduct.
  - b. That the Plaintiff was likely to lose his license to practice and/or disbarred.
  - c. That it was in the public interest and must read for the public to know that the Plaintiff has been charged for unsatisfactory professional misconduct notwithstanding that at least 25 other cases of far serious charges called before the ILSC between 29 and 30 November 2021.
- [9] Further according to the Plaintiff, the words published in the above article meant and was understood to mean the following (Para 10 Minutes of PTC):
- a. That the Plaintiff was guilty of bad conduct.
  - b. That the Plaintiff was a bad lawyer.
  - c. That the Plaintiff had acted wrongly.
  - d. That the Plaintiff was not allowed to practice law.
  - e. That the Plaintiff was a dishonest lawyer.
- [10] The parties said article seek that the court determine:
- "11. Whether the 1<sup>st</sup> and 2<sup>nd</sup> Defendant published and/or caused a false newspaper article of the Plaintiff in the Fiji Sun newspaper on 3<sup>rd</sup> December 2021 titled "Must Read" "Hearing date fixed for Suva Lawyer".*
- [11] It is not in disputed between the parties that the Plaintiff was charged by the Independent Legal Services Commission (ILSC). It was case no. 2 of 2021. The charge was under Section 81 of the Legal Practitioners Act for "unsatisfactory professional conduct". The matter was called before Justice Goundar on 29<sup>th</sup> November 2021.
- [12] I have noted above various case laws which are my guide. In considering whether a statement has a defamatory meaning, I give to the material in question its "natural and ordinary meaning". Words are to be taken in the sense that is most natural and obvious, and in which those to whom they are spoken will be sure to understand them. The test of reasonableness guides and directs the court. I further take guidance from **Koutsogiannis** (Supra) which sets out the principles to be applied when determining the natural and ordinary meaning of words.
- [13] The Defendants for their part admitted that the Plaintiff was charged with unsatisfactory professional conduct instead of unsatisfactory professional misconduct. For this they published an apology and a correction on 15th December 2021 and 30th December 2021. Sections 81 and 82 of the Legal Practitioners Act 2009 defines unsatisfactory professional and unsatisfactory professional misconduct, respectively. Section 83 (2) of the Act further states that "professional misconduct" includes malpractice, and unsatisfactory professional conduct" includes unprofessional practice or conduct.
- [14] I find that the article does not convey a message that the Plaintiff is guilty of a charge by Independent Legal Services Commission (ILSC). An ordinary reasonable person reading the article would not get a message that the Plaintiff is guilty of an offence under the Legal Practitioners Act. I take a reasonable person to be one of ordinary intelligence, general knowledge and experience of worldly affairs.

- [15] I am not concerned with the literal meaning of the words or the meaning which might be extracted on close analysis by a lawyer or academic linguist. What matters is the meaning which an ordinary person on the streets of Fiji would as a matter of impression carry away in his or her head after reading after reading the article.
- [16] I reject those meanings which emerge as the product of some strained or forced interpretation. It is not enough to say that words might be understood in a defamatory sense by some particular person or other.
- [17] I read the article complained of in context. It must be construed as a whole with appropriate regard to the mode of publication and surrounding circumstances in which the article appears. The article in the Fiji Sun appeared following the matter being called before the ILSC. The Plaintiff had appeared before the ILSC for his matter.
- [18] It should be noted that in ascertaining the natural and ordinary meaning of the words in the article, the actual intention of the publisher is irrelevant. What is relevant is what the publisher's words conveyed, not what he or she intended to convey: **Hulton & Co Ltd v. Jones [1910] AC 20 (HL)** at 23 per Lord Loreburn; **Slim v. Daily Telegraph Ltd [1968] 2 QB 157 (CA)** at 172. It should also be noted that evidence is not admissible of what actual readers or listeners understood by the words. Witnesses cannot be called to give evidence of their understanding. For that reason, the evidence of Mr. Ravindra Lal does not assist the Plaintiff. "The only question is, might reasonable people understand (the words) in a defamatory sense?": **Hough v. London Express Newspaper Ltd [1940] 2 KB 507 (CA)** at 515 per Goddard LJ. The answer to this is no. A reasonable person will not understand the words in the article in defamatory sense.
- [19] The next article in the Fiji Sun of December 4-5, 2021 on Page 16 is under "*Today's Briefing*" and headed "*Lawyer faces charge for professional Misconduct*". The words in the article are similar to that I have determined above. The article is similar except the headings. My determination of this article does not change from my determination of a similar article of a day earlier. This deals with the issues under PTC paragraphs 13 to 16.
- [20] The other article is an online article published in the Press Reader on 4<sup>th</sup> December 2021. It is the article published in the Fiji Sun of December 4-5, 2021. It is and headed "*Lawyer faces charge for professional Misconduct*". Below the heading are the words "Crime - White-collar Crime". The Press Reader platform is not a Fiji Sun platform. They are not responsible for this platform. I also find that the article which is on this platform is similar to that published in the Fiji Sun of 1<sup>st</sup> December and 3-4<sup>th</sup> December 2021. For the reasons given above I do not find the article to be defamatory. This deals with issues under paragraphs 17 to 21 of the PTC.
- [21] The publications were not done in bad faith and neither were they false or defamatory. I do not find that that the publications damages the Plaintiffs reputation and goodwill. The Plaintiffs character, credit and reputation and his legal practice were not brought into public scandal, odium and contempt. The Plaintiffs business did not suffer due to the publications. The Defendants had no malicious intent to injure the Plaintiff's character, credit or reputation. The articles did not lower the Plaintiffs estimation in the eyes of the members of the society.

- [22] There is no charge of unsatisfactory professional misconduct under the Legal Practitioners Act 2009. The Defendants published a correction and an apology on 15<sup>th</sup> and 30<sup>th</sup> December 2021.
- [23] On 21<sup>st</sup> March 2023, the Plaintiff was discharged from the allegation of unsatisfactory professional conduct by Justice Kulatunga (Commissioner – ILSC)
- [24] For the reasons given the Plaintiffs claim is dismissed. I summarily asses that the Plaintiff pay the Defendants a sum of \$2000.00 as costs within 21 days.

**E. Court Orders**

(i) Plaintiff's Claim is dismissed.

(ii) Plaintiff to pay Defendants a sum of \$2000.00 as costs within 21 days. Costs have been summarily assessed.



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Chaitanya S.C.A Lakshman  
Puisne Judge

31st January 2025

