

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CIVIL JURISDICTION

Civil Action No. HBC 258 of 2007

BETWEEN : **PARMENDRA RAJESH SHARMA** f/n Goverdhan of Nadera, Suva, Law Clerk/Farmer and **ANOOP PRAKASH** f/n Jagdish Prasad of Baratu, Rakiraki, Advisory Councillor.

Plaintiffs

AND : **ASHOK K SINGH** f/n Bikram Singh, **MOTI LAL** f/n Ram Dhoni and **PRADISH CHAND** f/n Jagdish all of Barotu, Rakiraki, Farmers.

Defendants

Appearances : M/S Iqbal Khan & Associates for the Plaintiff
G.P. Lala & Associates for the Defendant

J U D G E M E N T

1. The plaintiffs and the defendants all live in a small rural close knit-community called Barotu near Rakiraki.
2. They are seeking damages to the tune of \$100,000 for some alleged slanderous rumours that the defendants had spread in their community sometime around July and August 2007.
3. The Statement of Claim was filed on 20 August 2007. The defendants filed their Statement of Defence on 07 December 2007.
4. At some point, the Defendants had engaged the services of GP Lala as their lawyers. However, GP Lala would withdraw as their counsel in 2009. The defendants did not appoint a new solicitor to act for them, nor did they ever bother to appear in Court.
5. The plaintiffs then proceeded to formally prove their case.
6. The first plaintiff, Parmendra Rajesh Sharma (“PW1”) said the defendants are cultivators from the same community.

7. PW1 had helped the defendants and some other farmers in the area in collating their paperwork and documentation in support of an application for some grant from the Agricultural Landlord & Tenant Authority which farmers in the area were to receive for their new leases. What this scheme was about was never explained in detail. The processing of the application took some time and was delayed. The defendants waited anxiously during this time.
8. I gather from the evidence of PW1 that it was during this time that the defendants started spreading rumours that the plaintiffs had misappropriated the sum of \$110,000 that was given by ALTA in grant for the benefit of the defendants and other farmers in the area.
9. The exact words that the defendants were purported to have said are not repeated. All that PW1 said was that the defendants were spreading rumours in the small tight-knit community.
10. The four other witnesses that the defendants called all said that they had heard the defendants **“speak words against the plaintiffs”** however, none of them ever repeated in Court the exact words that they heard. They all said though that the defendants had spread allegations that the plaintiffs had misappropriated the funds given by ALTA for their benefit which was in the vicinity of \$110,000.
11. PW1 said the words were not true. The grant from ALTA were finally processed and all the defendants as well as other farmers in the area have since received a portion.
12. PW1 said his reputation was tarnished. Some workers in his sheep farm would refuse to come and work for him as a result and also most people in the neighbourhood would avoid visiting coming to his shop.

13. As I have said, all the evidence of the alleged slanderous words is in reported speech. The statement of claim, notably, also does not plead the actual words uttered by the defendants. In paragraphs 4 and 5, the statement of claim pleads as follows:
 4. ...in or about between July to August 2007, the defendants collectively made certain defamatory allegations against the Plaintiff jointly.
 5. The Defendants spoke of the Plaintiffs alleging that the Plaintiffs had misappropriated public funds amounting to \$110,000.00 (One Hundred Ten Thousand Dollars Only), monies belonging to the Agricultural Landlord and Tenant Authority.
14. The Fiji High Court case of **Sharma v Westpac Banking Corporation** [1995] FJHC 137; Hbc0155d.95s (25 August 1995) discusses some useful case authorities on the point.
15. In that case, Mr. Justice Fatiaki was dealing with an application to strike out a claim for damages for slander.
16. He started by observing that the statement of claim before him did not plead the exact words uttered, nor did the claim are the words elucidated by giving particulars.
17. He then went on to observe that Order 18 Rule 6(2) of the High Court Rules 1988 requires that precise words in any conversation unless the precise words, themselves, were material¹.
18. Fatiaki j then went on to cite various cases which underscore the point that in libel and slander, the very words complained of are the facts on which the action is grounded and that it is not the fact of the defendant having used defamatory expressions, but the fact of his having used those defamatory expressions alleged, which is the fact on which the case depends (Lord

¹ The said Order 18 Rule 6(2) states as follows:

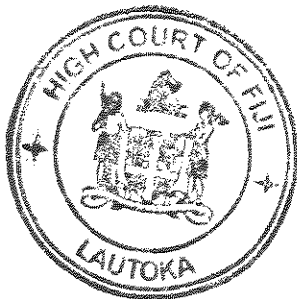
"... the purport of any conversation referred to in (a) pleading must, if material, be briefly stated, and the precise words of the ... conversation shall not be stated, except in so far as those words are themselves material."

Coleridge C.J. observed in Harris v. Warre (1879) 4 C.P.D. 125 at 128; Collins v. Jones (1955) 1 Q.B. 564; Lord Blackburn said in Capital and Counties Bank Ltd. v. Henty (1882) 7 A.C. 741 at p.771; Kerr v. Haydon (1981) 1 N.Z.L.R. 449.

19. Gatley On Libel & Slander, (11th Ed, 2008) at paragraph 34.13, cited by Mr. Justice Britto in Zikar v Chand [2016] FJHC 1087; HBC10.2014 (22 November 2016) states:

Action for Slander. Where there is no admission by the defendant that he spoke the words complained of or words to like effect, the plaintiff must call evidence of what the defendant said and of who heard him. The witnesses will usually be those who were present, but evidence is admissible of what the witness was told the defendant said by someone who was present. Evidence of the claimant as to what was said, and as to the presence of other people, may be insufficient, as the fact that there were other people around does not of itself entitle anyone to draw the conclusion that those people must have heard what was said. A tape recording of the slander would be admissible. The actual words alleged to have been published must be proved; it is not sufficient for witnesses to state what they conceive to be the substance or effect of the words, or their impression of what was said

20. I would say in conclusion that neither the pleading nor the evidence would support an award for slander and accordingly, I dismiss the claim.



Anare Tuilevuka
JUDGE

16 March 2018.