

**IN THE HIGH COURT OF FIJI  
(WESTERN DIVISION) AT LAUTOKA  
CIVIL JURISDICTION**

**CIVIL ACTION NO. HBC 3 OF 2020**

**BETWEEN** : **DHIRENDRA NATH** of Savalau, Votualevu, Nadi  
**1<sup>ST</sup> PLAINTIFF**

**AND** : **PRIYA DARSHANI** (daughter of 1<sup>st</sup> Plaintiff) of Savalau, Votualevu, Nadi  
**2<sup>ND</sup> PLAINTIFF**

**AND** : **DEVESH PRASHNEEL NATH** (son of 1<sup>st</sup> Plaintiff) of Savalau, Votualevu, Nadi  
**3<sup>RD</sup> PLAINTIFF**

**AND** : **SHOMA SHANI NATH** (daughter in law of 1<sup>st</sup> Plaintiff) of Savalau, Votualevu, Nadi  
**4<sup>TH</sup> PLAINTIFF.**

**AND** : **ASHLESH KUMAR** trading as Advance Automotive of Namaka, Nadi  
**DEFENDANT**

**BEFORE** : Hon. Mr. Justice Mohamed Mackie

**APPEARANCES** : Ms. A. Sadrata with Mr. S. Heritage, for the Plaintiffs.  
Mr. Z. Mohamed with Ms. S. Begum & Ms. Prasad, for the Defendant.

**DATES OF TRIAL** : 2<sup>nd</sup> June & 14<sup>th</sup> October, 2022.

**W. SUBMISSIONS** : By the Plaintiff filed on 13<sup>th</sup> December, 2022.  
No Written Submissions filed by the Defendant.

**DATE OF DECISION** : 13<sup>th</sup> MARCH, 2023

**JUDGMENT**

**A. INTRODUCTION:**

1. This is an action, by way of writ of summons and the statement of claim, filed on 10<sup>th</sup> January, 2020 by the 1<sup>st</sup> to 4<sup>th</sup> Plaintiffs against the Defendant, alleging that the certain publications carried out by the Defendant on social media, namely on his Facebook page, are defamatory.

2. The reliefs claimed by the Plaintiffs , *inter – alia*, are ;
  - i. Damages for slander/ Defamation,
  - ii. Interest under the Law Reform ( Miscellaneous Provisions ) ( Death and Interest) Act
  - iii. Costs of this Action on Solicitor/ Client indemnity basis.
3. The Defendant by his Statement of Defence filed on 4<sup>th</sup> February, 2020 denied the material averments in paragraphs 3, 4, 9, 10, 11, 12, 13 and 14, of the Statement of claim, which were on the alleged defamatory Publications and moved for the dismissal of the Plaintiffs’ action. The Plaintiffs on 28<sup>th</sup> April, 2020 filed their reply to defence.

#### **Who are the Parties?**

4. The Plaintiffs and the Defendant are members of one extended family. In that the 2<sup>nd</sup> and 3<sup>rd</sup> Plaintiffs are the lawful and/ or biological Daughter and Son respectively of the 1<sup>st</sup> named plaintiff, **Dhirendra Nath**, and the 4<sup>th</sup> named Plaintiff is the wife of the 3<sup>rd</sup> named Plaintiff. The Defendant is a lawful and/or biological Son of the 1<sup>st</sup> named Plaintiff’s biological elder Brother, namely, Suruju. As such, the Defendant is the parental nephew of the 1<sup>st</sup> named Plaintiff and cousins to the other Plaintiffs.

The 1<sup>st</sup> named Plaintiff is a retired Bio-security Officer and currently said to be the Co-Director of the Plaintiffs’ Family business, namely, “Davesh and Bharos Farms”.

The 2<sup>nd</sup> Plaintiff works as a member Service Officer at Fiji National Provident Fund, while the 3<sup>rd</sup> Plaintiff is a Co- Director of the said Family Business, and the 4<sup>th</sup> Plaintiff is a School Teacher. The Defendant runs his own Mechanic workshop in Namaka- Nadi.

#### **The Dispute:**

5. As per the pleadings, the main dispute that led to the animosity between the Plaintiffs and the Defendant, which finally ended up in the alleged Defamatory Publications by the Defendant, is the allegation by the Defendant that he is a Biological Son of the 1<sup>st</sup> Plaintiff, Dhirendra Nath. He alleges that he was born as a result of the intimacy the 1<sup>st</sup> named Plaintiff had with his (the Defendant’s) Mother, while his lawful Father **Suruju**, was alive, under whom he claims to have grown up. The Plaintiffs, particularly, the 1<sup>st</sup> Plaintiff refuted the allegation.

#### **Statement of claim in brief:**

6. The material averments in the Statement of Claim state:
  - a. THAT the Defendant has been publishing defamatory and false statements regarding the Plaintiffs on Social Media platform (Facebook page) with intent and malice to cause injury to the Plaintiffs, due to which the Plaintiffs claim that their reputation has been seriously damaged and their day to day obligations have been affected.

- b. THAT the Defendant had on numerous occasions harassed his own Sister- in- Law, which the 1<sup>st</sup> Plaintiff and his Brother Virendra Nath, did not like. Hence, the 1<sup>st</sup> Plaintiff did not invite the Defendant for the Wedding of the 1<sup>st</sup> Plaintiff's Son. However, the Defendant went to participate at the wedding without an invitation and the 1<sup>st</sup> Plaintiff asked him to leave, as a result of which it ended up in a brawl causing the Defendant to make a complaint at the Namaka Police Station.
- c. THAT the Defendant on 16<sup>th</sup> May,2019 filed the Application bearing No- 19/NAN / 0235 at the Nadi Magistrate's Court, seeking a Paternity Test [DNA] to ascertain whether the 1<sup>st</sup> Plaintiff ( Dhirendra Nath) was his Biological Father.
- d. THAT the Learned Magistrate on 8<sup>th</sup> November, 2019 dismissed the said Application citing the ground that he had no jurisdiction. This judgment was neither Appealed against nor further action was taken by the Defendant in relation to his allegation on his paternity.

**The alleged defamatory word/s and Statements:**

- e. THAT, subsequently, the Defendant started posting various malicious and false statements about the Plaintiffs on social media( Facebook), which included pictures of the Plaintiffs, embarrassing them before the Community, families and friends.
- f. The alleged posting/ publication by the Defendant in his Facebook page are specifically pleaded in the Statement of Claim are as follows;

- i. The Defendant on 10<sup>th</sup> November,2019 at 5:15 pm posted on his Social media " Facebook" page discriminating the 1<sup>st</sup> Plaintiff ;-

***"My main culprit biological father Dhirendra Nath who had pleasure with his brother Suruju's wife who is my mom then I was born and his brother Suruju torched me all of my life when I was young I had joint pain (gout) he used to kick me and punched me because I cannot work for Suruju and he never took me to Hospital. I don't know why Suruju and his small brother they still get along may be Suruju open door for him to have fun with my Mom."*** (Vide para-11 of the SOC)

- ii. That the Defendant on another post of his Social Media Facebook page on 18<sup>th</sup> November,2019 at 10.06 am posted the picture of the 1<sup>st</sup> Plaintiff , his wife and two sons and stated as follows;

***"Today my cocke bhabi will dance in two piece with pinkey's step dad Verand he will be in his underwear doing brake-dance please public make picture in your brain before you go there"*** (Vide para 12 of SOC)

- iii. That the Defendant further on 18<sup>th</sup> November , 2019 at 4:55 pm tagged on Vijendra Kumar and 13 others and posted as follows:

***“This evil people also raped Munabhai daughter when he was alive daughter handed herself. Pinkey and his animal horse father so disgusting know Kunal who just got new wife today he has to very carefully because both step grandfather and his father pinkey turn into horse”.***

- g. In addition to the above quoted publications, various other statements and pictures published by the Defendant in his Facebook page concerning the Plaintiffs, being the part and parcel of the Plaintiff’s Bundle of Documents, were marked at the trial without any objection by the Defence Counsel.
- h. The exhibits marked on behalf of the Plaintiffs from “Pex-1” to “Pex-12”, also included a Video Compaq Disk (VCD) marked as “Pex-12”, which contained the Defendant’s live Video recording in Hindi Language through which he made various allegations and statements against the Plaintiffs, including the aforesaid statements, was played on screen in Court during the course of the Trial. This was not objected on behalf of the Defendant.
- i. Further, the Transcript of the entirety of the Defendant’s utterances/ statements in the said V. C.D, with the English Translation of it, running into 29 pages, was also produced at the trial. This provided clarity and easy comprehension, for both the Counsel of the plaintiff and me to whom the Hindi Language is foreign. The learned Counsel for the Defendant was amenable not to object to the same.

**B. TRIAL:**

- 7. At the two days Trial, the 1<sup>st</sup> and the 3<sup>rd</sup> named Plaintiffs gave evidence by marking exhibits from “Pex-1” to “Pex-12 and none of the exhibits or the contents of them was objected by the Defence Counsel. The Defendant also chose to give evidence on his part, without marking any documents.

**The Agreed facts.**

The facts that the parties are closely related, they live in Savalau – Votualevu- Nadi, that the Defendant made a Complaint at the Namaka Police Station against the 1<sup>st</sup> Plaintiff and his Brother Virendra Nath, after the brawl at the Wedding House, there was no communication among them after that, and that the Defendant filed an Application No-19/ NAN/0235 at the Magistrate’s Court of Nadi, were admitted to by and between the parties.

**The Agreed Issues:**

- 8. Parties raised total number of 12 Agreed issues, out of which I find only 4 issues to be discussed below are material in the determination of the matter at hand.

**C. RELEVANT LAWS:**

9. Before, I proceed to decide whether the word/s, the statement allegedly published and/ or uttered by the Defendant in relation to the matter at hand are capable of conveying a defamatory meaning. I think it is advisable to consider in brief the relevant laws that govern the subject matter of defamation.

a. In ***Indramani v W R Carpenters & Co. (Fiji) Ltd [1962] Fiji Law Rp 38 [1962] 8 FLR 46 (9th March, 1962)*** the Supreme Court held that there are four essentials to be established in an action for defamation.

*(1) That the words complained of must be published;*

*(2) it was done maliciously;*

*(3) That they must be defamatory;*

*(4) That they must refer to the Plaintiff.*

b. In a case for defamation, one of the available defence is that the words spoken or published are truth, when the Plaintiffs state that those words complained of are far from truth and utterly false. Burden is on the Defendant to prove that those publications or utterances are truth.

c. What is publication of Slander is defined in Halsburys Laws of England Forth Edition Vol 28 at page 40 paragraph 78 as follows:

*"A person publishes a slander who speaks words defamatory of the Plaintiff to or in the presence of a third person who hears them and understands them in a defamatory sense".*

d. "Any statement which tends to lower the plaintiff, to whom the article refers, in the estimation of right-thinking persons generally or bring them into hatred, ridicule or contempt is defamatory" – ***Broome v Castell & Co, [1972] UKHL 3; (1972) 2. WLR 645.***

e. The question as to whether the words complained of are capable of conveying a defamatory meaning is a question of law. This question is one for the trial Judge to determine. In ***Hopwood v. Muirson [1945] 1 K.B. 313 at p.316 Lord Goddard C.J. said:***

*"Whether or not words are capable of bearing a defamatory meaning is always for the court and is therefore to be regarded as a question of law".*

f. In ***Gatley on' Libel and Slander', 7th Edition***, at paragraph 93 the learned author states:

*"Words are normally construed in their natural and ordinary meaning, i.e. in the meaning in which reasonable men of ordinary intelligence, with the ordinary man's general knowledge and experience of worldly affairs, would be likely to understand them. The natural and ordinary meaning may also include any implication or inference which a reasonable reader guided not by any special but only by general*

knowledge and not fettered by any strict legal rules of construction would draw from the words.”

“The law of defamation does not even look to the meaning intended by the writer or speaker, but to the meaning attached by a reasonable reader or listener” – *The Law of Torts* by John F. Fleming, 9th Ed. 1998, p.590.

- g. It is further stated at **Lee v Wilson (1934) HCA 60, 51 C.L.R. 276 at 278 (Dixon J)**

“A person charged with libel cannot defend himself by showing that he intended in his own breast not to defame, or that he intended not to defame the plaintiff is in fact he did both”

- h. ‘In 1825 it was finally settled that absence of ill-will against the persons defamed and honest belief in the truth of the allegation did not excuse’. **Broomage v Proser, [1825] EngR 42; (1825) 4 B & C 247, 107 ER 1051.**

- i. ‘Whether statements which have a clearly disparaging meaning are to be found defamatory depends very much on the context in which they are made, and the audience to whom they are made.’ **Law of Torts by Balkin & Davis at 558.**

- j. In case of a newspaper article, the hypothetical reader or listener is less concerned with the precise words used and more with the overall impression gained.’ **(Balkin & Davis – supra at 562-563)**

- k. The defamatory words must refer to the plaintiff. If it is defamatory, liability in defamation is imposed irrespective of the actual intention of the defendant. **(Hulton & Co, v. Jones [1909] UKLawRpAC 57; [1910] AC 20 (H.L.).**

- l. All that is important or relevant is that;

‘Some ordinary reasonable people reading the publication would understand it to refer to the plaintiff.’ **(Balkin & Davis – supra).**

- m. What would the words convey to an ordinary man? How an ‘ordinary man’ looks at them? Lord Reid in the classic judgment in **Lewis v Daily Telegraph Ltd [1964] A.C. 234 at 258-260** said as follows:

“There is no doubt that in actions for libel the question is what the words would convey to the ordinary man: it is not one of construction in the legal sense. The ordinary man does not live in an ivory tower and he is not inhibited by a knowledge of the rules of construction. So he can and does read between the lines in the light of his general knowledge and experience of worldly affairs... What the ordinary man would infer without special knowledge has generally been called the natural and ordinary meaning of the words. But the expression is rather misleading in that it conceals the fact that there are two elements in it. Sometimes it is not necessary to go beyond the words themselves, as where the plaintiff has been called a thief or a murderer. But more often the sting is not so much in the words themselves as in what the ordinary man will infer from them, and that is also regarded as part of their natural and

*ordinary meaning... Generally the controversy is whether the words are capable of having a libelous meaning at all, and undoubtedly it is the judge's duty to rule on that."*

- n. "A statement should be taken to be defamatory if it would tend to lower the plaintiff in the estimation of right-thinking members of society generally, or be likely to affect a person adversely in the estimation of reasonable people generally". Lord Justice Neill in *Gillick v British Broadcasting Corporation and Anor.*, 20 October 1995 The T.L.R. 527 at 528

D. **ANALYSIS:**

10. For the final determination of the matter at hand, let me make an analysis of the total evidence adduced by the 1<sup>st</sup> and the 3<sup>rd</sup> Plaintiffs, and the Defendant, in light of the above and other relevant laws, including the case law authorities that govern the subject. This exercise, at the end of the day, would guide this Court to give appropriate answers to the pivotal issues raised, which finally would decide the final outcome.

Issue 1 for determination:

The first issue is ***Whether or not there was a publication of defamatory statement made by the Defendant?***

11. Given the facts and circumstances of this case at hand, the issue whether the alleged publications, referred to in the Statement of Claim, were defamatory or not is not at all a difficult one to answer. When the contents of those averments are carefully examined, in light of the relevant law discussed above and the case law authorities governing the subject, the inescapable conclusion that can be safely arrived at is that those statements/ comments are nothing but defamatory of the Plaintiffs.

The Defendant in his own evidence has categorically stated and admitted that the very purpose of making this publications was to let the people know that the 1<sup>st</sup> Plaintiff is his Biological Father. He did not pause for a moment to ponder that by the very act of his publication, he brings disrepute, not only to the Plaintiffs, but also to his own Mother and Father under whom he claims to have grown up.

12. The 1<sup>st</sup> and 3<sup>rd</sup> Plaintiffs gave clear and un-contradicted evidence, not only in relation to the publications highlighted in paragraphs 11, 12 and 13 of the Statement of Claim, but also with regard to other related publications both in writing and verbal, with the pictures of the Plaintiffs and other family members, and about the very words spoken via live Video recording done by none other than the Defendant himself, making various allegations against the Plaintiffs, which did not warrant any other oral or documentary evidence for corroboration, as it was played during the trial. This relived the Court and the counsel for both the parties from totally depending only on the oral and/or documentary evidence, which otherwise would have needed corroboration.
13. Careful perusal of the total evidence led by both the Plaintiffs, together with the contents of the relevant parts of the written publications, the images so published and

particularly , the contents of the live Video recording, wherein the Defendant is making his verbal attack aimed at the Plaintiffs, unambiguously demonstrate that the Defendant had exhausted almost all the filthy and/or uncultured terms in his vocabulary in the language known to him, to defame, discredit and harm the Plaintiffs.

Those written publications and verbal statements / utterances are undoubtedly bound to lower the image and the standing the Plaintiffs enjoyed among the members of their families, Community they live in all other forums they represent and their places of work. The 2<sup>nd</sup> and 4<sup>th</sup> Plaintiffs, being ladies and a staff member at FNFP and a School Teacher respectively, this attack by the Defendant would have had a serious effect on their day to day works.

14. There is no even an iota of doubt that the Articles referred to by the Plaintiffs' with their names and the contents of those articles do in fact will lead reasonable people, who know the Plaintiffs to arrive at the conclusion that those do refer to them
15. One of the guiding principles on which the Court has approached the task of deciding the meaning to be attributed to the words used is that :

*“ a statement should be taken to be defamatory if it would tend to lower the Plaintiff in the estimation of right-thinking members of society, or be likely to affect a person adversely in the estimation of reasonable people generally” ( Lord Justice Neill in Gillick v British Broadcasting Corporation and anor.. 20 October 1995 The T.L.R 527 at 528)*

16. In this case whether the publication and the very words complained of therein are capable of conveying a defamatory meaning is a question of law for the Court to determine. If it does then the Court will decide whether in fact it was conveying a defamatory meaning.

In ***Capital & Counties Bank v. George Henty & Sons [1881] 7 App. Cases 741 Lord Selbourne at p. 745*** said:

*“The test, according to the authorities, is whether under the circumstances in which the writing was published, reasonable men, to whom the publication was made, would be likely to understand it in a libelous sense.”*

17. A notable factor that could be observed at the trial was that, though the Defendant had denied the publications referred to in paragraphs 11, 12, and 13 of the Statement of claim, during his examination in chief and under cross examination the Defendant admitted and/or confirmed in no uncertain terms that he did made the Facebook publications complained of by the plaintiffs with the sole view of harming the Plaintiffs , which finally relieved the plaintiffs from discharging the burden of proof relying only on the Plaintiffs' evidence.



18. However, even if the Defendant had not admitted the liability of making such defamatory publications and remarks, the plaintiffs left no stone unturned through their oral and documentary evidence to prove their case in the manner expected of them.
19. I will at this stage refer to some questions put to the Defendant and the answers thereto given by the Defendant, admitting his wrongdoing, with no reservation.

**Under Examination in chief (by Ms. Begum)**

Ms. Begum: Q. Witness who is your dad?

Witness: A. biologically is my uncle my lord.

Ms. Begum: Q. Very well. Can you tell the Court has the first Plaintiff put on you?

Witness: A. That I am telling the public my lord on social media my lord that he is my real father. (Vide page 68 of the transcript)

Ms. Begum: Q. what did you do after that?

A. I came on Facebook my lord as I didn't get the justice from Nadi Magistrate's Court my lord so I came on social media . Only that's the way I can find who.

Ms. Begum: Q. Please answer in Hindi.

A. That was the only avenue through which I could have known who is my real father my lord. ( Vide page -69)

Ms. Begum: Q. So did you post anything against the plaintiffs on Facebook?

Witness: A. Yes my lord. (Vide page 74)

Ms. Begum: Q. What did you post?

Witness: A. whatever was done against me my lord, I had posted it on the Facebook.

Ms. Begum: Q. Did you post anything against the first plaintiff Direndra Nath?

Witness: A. Yes my lord.

Ms. Begum: Q. And what was the post?

Witness: A. ....And that I was told by my mother that Dhirendra Nath is my father.

Ms. Begum: Q. And only after that you posted on Facebook?

Witness: A. Yes. (Vide page 75)

**Witness under cross examination by Mr. Heritage.**

Mr. Heritage: Q. .... How many friends do you have in this Facebook?

Witness: A. About 8,000 my lord. Around 3000 active

Mr. Heritage: Q. when exactly did you start posting this Video against the Plaintiffs?

Witness: A. after I was informed by the Magistrate's Court that they don't have jurisdiction. (Vide page 78)

Mr. Heritage: Q. Do you recall posting this Video?  
Witness: A. Yes my lord.

Mr. Heritage: Q. And it was posted in your Facebook account, is it correct?  
Witness: A. Yes my lord. (Vide page 79).

Mr. Heritage: Q. in one of your post you have stated that the first plaintiff has affairs with his sister in law?  
Witness: A. Yes my lord. (Vide page 81)

20. Apart from the 1<sup>st</sup> and 3<sup>rd</sup> Plaintiffs' oral and documentary evidence, the Defendant has admitted as above that he made the alleged publications, which are also substantiated by the verbal defamatory utterances he made through Video recording, admittedly, done by him. Thus, the issue number 1 above can be conveniently answered affirmatively.

## 2<sup>nd</sup> Issue

### ***Whether or not the defamatory statements were regarding the Plaintiffs?***

21. Both the 1<sup>st</sup> and 3<sup>rd</sup> Plaintiffs have adduced clear evidence that the alleged publications, which were substantiated by the verbal utterances contained in the Video recording produced by the Defendant were aimed at none other than them and the other Plaintiffs, which is also an admission by the Defendant.
22. The Defendant in his evidence has also admitted that since he failed to have a DNA Test done through the Magistrate's Court proceedings, he resorted to Facebook, which he thought would be the only avenue to find his real Biological Father.
23. The conclusion that can be safely arrived at is that all the Facebook posts were in relation to the Plaintiffs, through which the Defendant had aired his anger and ill will that he had entertained with regard to the Plaintiffs, over his failure to obtain a DNA Test to prove his paternity that the 1<sup>st</sup> Plaintiff is his Biological Father. The allegations remain unsubstantiated by the Defendant. The Defendant in all posts had posted pictures of 2<sup>nd</sup> and 3<sup>rd</sup> Plaintiffs as well calling them as his half-sister and brother respectively, which also remained unsubstantiated. The 4<sup>th</sup> Plaintiff was also not left alone by the Defendant by making unwarranted and immoral suggestions. Thus, answer to issue No-2 should necessarily be an affirmative one.

## Issue -3

### **Whether the defamatory statement was false?**

24. As, I observed in a foregoing paragraph, one of the defenses that the Defendant could have resorted to was proving that his statements with regard to the Plaintiffs are not false, but true.

- j. His claim that the 1<sup>st</sup> Plaintiff is his biological Father could have been proved with some cogent evidence through his Mother, who is said to have told the Defendant that the 1<sup>st</sup> Plaintiff is his biological father. But, it was only hearsay evidence, which could have been substantiated by calling his Mother. For the reason best-known to the Defendant, he did not call his mother to give evidence on his behalf.
- k. Secondly, he could have appealed the decision of the Magistrate that refused the DNA test, or made an Application at the relevant forum for such a relief, which also he failed.
- l. The Defendant also failed to substantiate his allegation that the 1<sup>st</sup> named plaintiff is a fraudster and became the owner of the lands owned by his Grand Father. No evidence was placed to prove this allegation.
- m. So, once his claim on his paternity issue and his allegation about the way the 1<sup>st</sup> Plaintiff had owned the properties remained unsubstantiated, he could and should not have resorted to an avenue of this nature, which ultimately brought disgrace to the plaintiffs and lowered their standing in the family and society they live in.
- n. This move by the Defendant was uncalled and unwarranted and should be condemned by all means in order to ensure that the dignity, self- esteem and the social standing of the Plaintiffs to be protected and preserved.

25. I am satisfied that the plaintiffs have proved that by the defamatory publication and verbal utterances on his Facebook social media, the Defendant, has caused damages to the plaintiffs' reputation and to the standing they enjoyed in the family circle and the society they live in. Accordingly, the answer to issue 3 above should be, undoubtedly, an affirmative one.

#### Issue 4.

- 26. In view of the foregoing, the 4th issue, namely, ***Whether or not the defamatory statements had a negative impact and/ or damages to the Plaintiff's reputation*** also has to be answered affirmatively.
- 27. The whole purpose of defamation law is to enable a plaintiff to clear his or her name. The foundation of an action of defamation is malice. If words are used which are defamatory and untrue, the law implies 'malice'. That presumption is rebutted if the occasion when the words were used is privileged. The privilege destroys the presumption.
- 28. Therefore, with no reservations, I would say that the statements contained in the said publications are unsubstantiated. I have no alternative but to come to the above conclusion that the statements contained in the Facebook postings by the Defendant are defamatory to the Plaintiffs.

**E. DAMAGES :**

29. Having found that the publications are defamatory and affected the Plaintiffs in the manner stated above, the next question is what damages ought to be awarded in all the circumstance of the case.
30. The 1<sup>st</sup> Plaintiff is a retired Bio-Security Officer at the age of 63 and presently engaged in a family business with his Son the 3<sup>rd</sup> Plaintiff. The 1<sup>st</sup> named Plaintiff said to be functioning as the President of the Vatualevu Kindergarten School, which is said to be having around 1,500 students altogether. The 2<sup>nd</sup> Plaintiff is said to be a services officer at FNFP. The 3<sup>rd</sup> Plaintiff is said to be a businessman, while 4<sup>th</sup> Plaintiff is a School Teacher.
31. Damages in defamation are awarded generally to compensate the plaintiff for the injury done to his or her reputation (*see Rabuka v Fiji Daily Post Company Limited (2005) FJHC 174*). Exemplary and punitive damages are sometimes awarded.
32. Unlike in ordinary cases for defamation, in the matter at hand, counsel for both the parties and the Court were able to see and hear how the Defendant was engaged in the commission of the act of defaming the Plaintiffs. This was made possible through playing in Court, the live Video of the Defendant engaged in the act, out of which only few statements were pleaded in the statement of claim. This has facilitated the Court in the ascertainment of the gravity of the act complained of and for the assessment of damages.
33. Factors relevant in assessing damages were noted in the case of *Rabuka v Fiji Daily post Company ltd [2005] FJHC 174; HBC-0511* as follows:

*As stated in Neill (supra) at 18.09 the factors which are to be taken into account in assessing damages, apart from the 'seriousness of the libel is of course always a relevant consideration, the other factors to be considered are: (a) special damages; (b) injury to the plaintiff's feelings including aggravating factors; (c) extent of the publication; and (d) mitigating factors.'*

34. Defamation through Newspaper or by means of a television or radio may lead to a very substantial award because the defamatory material is likely to come to the notice of a very large number of people ...' (Neill, supra at 18, 14).

**F. CONCLUSION:**

35. The action of the Plaintiffs against the Defendant for defamation stands proved, entitling the Plaintiffs for damages. I consider that my award in general damages on compensatory basis reflect the serious nature of the defamation and would compensate the plaintiffs for the mental torment and distress they must have suffered owing to this publication. After considering all, I decide that an award of \$60,000.00 (sixty thousand dollars) is appropriate to compensate all four plaintiffs, together with summarily

assessed costs in a sum of \$2,000.00 (Two thousand dollars). I award interest at 4% payable from the date of judgment till the total sum is paid in full.

**G. FINAL ORDERS:-**

- a. Plaintiffs' action succeeds and Judgment entered in favour of the plaintiffs.
- b. The Defendant to pay \$60,000.00 (Sixty thousand Dollars) as general damages to the plaintiffs, within twenty eight (28) days from the date of this judgment.
- c. The plaintiffs are entitled to 4% simple interest per annum on \$60,000.00 from the date of this judgment.
- d. The Defendant shall pay the Plaintiffs a sum of \$2,000.00 (Two thousand Dollars) as summarily assessed costs.



**A.M. Mohamed Mackie**  
Judge

At High Court Lautoka this 13<sup>th</sup> day of March, 2023.

**SOLICITORS:**

**For the Plaintiff:**

**Messrs Iqbal Khan & Associates- Barristers & Solicitors.**

**For the Defendant:**

**Messrs Zoyab Shafi Mohammed Legal- Barristers & Solicitors**