

**THE HIGH COURT****[2011 No. 186 CA]****BETWEEN****RUTH MORAM****PLAINTIFF/APPLICANT****v.****MARTYN BELL, PETER BENTHEM & ANDREW BEESTON****DEFENDANTS/RESPONDENTS****Judgment of Mr. Justice Hedigan delivered the 5th day of March 2012**

1. The plaintiff resides at Mastergeeha, Kilcummin, Killarney, Co Kerry. The first named defendant resides at Furies, Co Kerry. The second named defendant resides at Parkavonear, Aghadoe, Killarney, Co Kerry. The third named defendant resides at Coolmagort, Beaufort, Co Kerry.

2. The events upon which this case is based date back to June 2004. On the 17th January 2011, the plaintiff issued an Ordinary Civil Bill and Indorsement of Claim in the South Western Circuit Court at Tralee. In February 2011, the defendants issued a notice of Motion to Strike out the Claim. The motion was heard on the 2nd June 2011, before Circuit Judge O'Sullivan who struck out the claim on three grounds:-

- a) The issues raised were not justiciable before a secular court
- b) No publication to an identified party was pleaded
- c) No special damage was pleaded.

On the 8th June 2011, the plaintiff purported to issue a Notice of Appeal in the High Court on Circuit in Tralee. On the 7th November 2011, the plaintiff's purported appeal was heard by Edwards J. sitting at Tralee. The defendants submitted that pursuant to s. 37 of the Courts of Justice Act 1936 the appeal should have been made to the High Court sitting in Dublin. Edwards J accepted he had no jurisdiction and dismissed the appeal. The plaintiff applied to the Master of the High Court for an order extending the time for bringing an appeal. On the 21st December, 2011 the Master gave this extension of time to appeal and fixed a return date of the 30th January, 2012 for hearing the appeal. On the 28th December, 2011 the defendants filed a Notice of Motion to overturn the purported Order of the Master as made without jurisdiction and sought to dismiss the application for leave to appeal as out of time. On the 30th January 2012, the President, by consent, ordered the two applications be heard on the 27th February, 2012.

**Submissions of the Plaintiff**

3.1 In this action the plaintiff seeks damages for slander and a declaration that she did not commit slander herself. The events upon which this case is founded date back to June

2004. At that time the plaintiff was a member of the Killarney Congregation of Jehovah's Witnesses. The plaintiff claims that in June 2004 the second and third named defendants, who are elders of the Killarney Congregation of Jehovah's Witnesses, called to her home and accused her of slander. The plaintiff claims that she was not informed of what the alleged slander was.

3.2 At a meeting of the of the Killarney Congregation Jehovah's Witnesses in June 2004, the first named defendant attended and gave evidence as to the alleged slander. The plaintiff was disfellowshipped from the Killarney Congregation Jehovah's Witnesses. The plaintiff appealed this decision in August 2004. Evidence was given that the plaintiff had informed a fellow Jehovah's Witness that a certain woman E.G. had spent weekends away with the plaintiffs husband. The plaintiff claims that she was accused of slander in that she had implied that her husband was an adulterer. In a separate meeting the plaintiffs husband denied this allegation.

3.3 Following the hearings the plaintiff was disfellowshipped from the Killarney Congregation Jehovah's Witnesses for slandering her husband. The plaintiff claims she wrote a letter of complaint to the branch office of Jehovah's Witnesses in Greystones Co Wicklow which included photographs of her husband on a weekend break in Galway with E.G. A letter was sent to the appeal committee and the committee then changed their decision and said they "forgave" the plaintiff. The plaintiff did not accept this as she claims she did not slander anyone. She alleges the second and third named defendants apologised to the plaintiff, but informed the plaintiff there was no need to inform the witnesses that there had been a mistake, and the accusation of slander was not withdrawn.

3.4 The plaintiff claims that in April 2009, the first defendant Martyn Bell stated to the plaintiff that she was a slanderer and that he telephoned her again and claimed that she was a slanderer. On the 20th April 2009, the plaintiff instructed her solicitor to issue proceedings. The branch office in Greystones informed her if she abandoned the proceedings the problem would be sorted out. The plaintiff claims that on the basis of this assurance she instructed her solicitor to close the case.

3.5 In December 2009, the first named defendant Martyn Bell wrote to the plaintiff. The following are extracts from this letter:-

- "a) I understand Brother Parker has explained to you what the appeal committee's decision was five years ago and that the Branch extended mercy to you.
- b) Why can you not accept that kindness and let get on with our peace?
- c) Would they approve of having their Christian law overridden by the law of this world. Legal action to prevent or change Christian principles... is a defeat for you.

d) I understand you have now withdrawn the legal action."

The plaintiff submits that the said words given their natural and ordinary meaning meant that the defendant had slandered her husband. The first named defendant incorrectly claimed that Mr Parker informed the plaintiff that she was convicted as a slanderer. The plaintiff further submits that the first named defendant was claiming that the plaintiff should accept that she is a slanderer and was trying to upset Christian principles.

3.6 She claims that in February 2010, the Elders of the Killarney Congregation of Jehovah's Witnesses refused to allow her to speak at a meeting. The plaintiff formally left the Jehovah's Witnesses. Since the plaintiff left, all her friends who are witnesses are forbidden to speak to her. The said words she claims were understood to mean that the plaintiff was not an honourable person, was dishonest and could not be trusted. The plaintiff claims she has suffered great injury to her reputation and health and has been brought into public hatred, contempt and ridicule. The plaintiff seeks a declaration that she did not commit slander and she seeks damages for slander.

#### **Submissions on behalf of the Defendants**

5.1 The defendants submit that the matters raised by the plaintiff in her pleadings, although in the form of a claim of slander are in substance an attempt to litigate before a secular Court issues relating to Church discipline that are specifically excluded from the jurisdiction of the Courts at Common Law. They further plead that the plaintiffs essential grievance and cause of action (if any) arose in 2004. It was subject to a three year time limit under the Statute of Limitations. The proceedings have been instituted on the 17th January, 2011 and are clearly out of time. Moreover, no special damage nor publication has been pleaded as required by the law of defamation.

#### **Decision of the Court**

6.1 The plaintiff appeals against the order of the Circuit Court of the 2nd June, 2011 dismissing her claim. On that date the Circuit Court Judge struck out the plaintiff's case on the basis that-

- a) It was an action that raised the issue of church discipline that was not justiciable before the secular courts,
- b) There was no publication to an identified third party and
- c) No pecuniary loss was pleaded as Special Damage.

The plaintiff appealed but did not do so in accordance with s. 37 of the Courts of Justice Act 1936 which mandates that in circumstances such as herein, the appeal must be made to the High Court sitting in Dublin. The plaintiffs appeal was dismissed on the 7th November 2011, by Edwards J on this jurisdictional ground. On the 21st December 2011, the plaintiff applied to the Master of the High Court who made an order extending the time for bringing an appeal. On the 28th December 2011, the defendants filed a Notice of Motion to overturn the purported Order of the Master as made without jurisdiction. On the 30th January 2012, the President of the High Court on consent ordered the two applications be heard on the 27th February 2012. On the 2nd February this Court heard these two matters together and in the interest of finality will treat this matter as the appeal from the decision of the Circuit Court. I am conscious that the plaintiff has always wished to appeal the decision of the Circuit Court. She is a lay litigant and her efforts to appeal have fallen foul of procedural regulation.

6.2 The events at the heart of the plaintiffs claim date back to 2004. The plaintiff claims that in June 2004, Peter Van Benthem (the second named defendant) and Andrew Beeston (the third named defendant) both Elders of the Killarney Congregation of Jehovah's Witnesses called to her home and accused her of slander. The plaintiff further claims that at a meeting of the of the Killarney Congregation of Jehovah's Witnesses in June 2004, Martyn Bell (the first named defendant) attended as a witness and gave evidence about the alleged slander. The plaintiff was disfellowshipped from the Killarney Congregation Jehovah's Witnesses. The plaintiff wrote a letter of complaint to the branch office of Jehovah's Witnesses. A rising out of this she was informed that the appeal committee had changed the decision.

6.3 The plaintiff alleges that on the 12th August 2009, Martyn Bell wrote to the plaintiff accusing her of slander. She alleges his letter was defamatory but no publication of this letter is alleged. Publication to the plaintiff herself alone is not publication for the purposes of an action in defamation. Thus no cause of action emerges from the facts pleaded.

6.4 Proceedings for slander must be brought within three years of the date on which the cause of action accrued. Section 11 (2) (c) of the Statute of Limitations 1957, provides:-

"An action claiming damages for slander shall not be brought after the expiration of three years from the date on which the cause of action accrued."

These proceedings issued on the 17th January, 2011. Thus no action is maintainable in respect of events pre dating the 17th January, 2008.

6.5 The plaintiff refers to the actions by Elders of her congregation at meetings in August 2009 and the 1st and 2nd of October 2010 but none of the parties referred to in her pleadings are named as defendants herein. Justiciability of the issues involved at these meetings does not therefore arise.

6.6 The plaintiffs claim is not against the congregation. It is solely against the three defendants. It is not alleged that any publication occurred of the slander alleged against these three either in 2004 or subsequently in 2009. The events of 2004 are clearly statute barred. In respect of the events of August 2009 and October 2010, there being no publication alleged, nor special damage claimed, the plaintiff's pleadings disclose no cause of action against the three defendants named and will therefore be dismissed.