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## Vayeshnoi v Fiji Television Ltd [2000] FJLawRp 26; [2000] 2 FLR 21 (11 April 2000)

[\[2000\] 2 FLR 21](#)

IN THE HIGH COURT OF FIJI

LEKH RAM VAYESHNOI

v

FIJI TELEVISION LIMITED, TUKAHA MUA,  
IMRAZ IQBAL, INOKE BAINIMARAMA  
& AHMED ALI

High Court Civil Jurisdiction  
Scott, J  
11 April, 2000  
HBC 0068/00S

*Striking out - no reasonable cause of action - defamation - breaches of the Code of Media Ethics and Practice - whether the plaintiff has been gravely injured in his credit and reputation in his profession as Assistant Minister of Information and brought into public scandal, odium and contempt - High Court Act s. 31(1); High Court Rules O.18 r.1(a), 19; O.32 r.9; [Defamation Act](#) ss. 2 and 3; 1997 Constitution article 30(1)(a),(b)*

The plaintiff alleged two incidents were defamatory of his credit and reputation. In the first incident, the third defendant and crew allegedly trespassed into his private offices without express permission and proceeded to interview without permission, causing him humiliation and embarrassment. The first defendant broadcast a story that it was denied entry into a media conference where other media of choice were allowed in. The plaintiff alleged that the words of the broadcast in their ordinary meaning meant the plaintiff called one news conference and intentionally excluded the first defendant, that the plaintiff intentionally excluded the reporter who was tasked with reporting, that the plaintiff intentionally wanted to avoid the coverage by the first defendant and that the plaintiff told lies about the time and date of the media conference. The Court found the first three complaints unobjectionable but could not find that there was a lie capable of constituting defamation. The second incident arose out of the Prime Minister's visit to Rakiraki. The plaintiff alleged that the words of the resulting broadcast in their ordinary meaning meant the plaintiff was to be replaced, that he would be replaced sooner than later, that the Ministry of Information needed a shake up as it was not performing to the accepted level of performance, that the plaintiff would be replaced as he was incapable of performing his duties as Minister of Information, that his purported replacement is better than the plaintiff and government needed him urgently. The Court found the first four complaints unobjectionable as ministerial reshuffles are routine, and found the latter two remotely disparaging.

**Held** - (1) Alleged breaches of the Code of Media Ethics and Practice do not plead defamation;

(2) The latitude afforded the principle of fair comment for comments on matters of public interest and well known public figures is exceptionally wide;

(3) The right to fair comment is a fundamental right of free speech and of vital importance to the rule of law on which we depend for our personal freedom;

(4) Words complained of amounted to no more than fair comment or criticism of the public acts of a public man;

(5) The action against the first four defendants is doomed to failure and cannot proceed further.

Paragraphs 2 to 13 of the Statement of Claim against the first four defendants are struck out.

#### Cases referred to in Decision

cons *Hubbock v Wilkinson* [1899] 1 QB 86

cons *Attorney-General of Duchy of Lancaster v L & NW Rly Co.* [1892] 3 Ch 274

cons *Wenlock v Moloney* [1965] 1 WLR 1238

cons *Drummond-Jackson v BMA* [1970] 1 WLR 688

cons *Lilly v Roney* (1892) 61 LJQB 727

cons *Law v Llewellyn* [1906] 1 KB 487

appl *Lyons v Daily Telegraph* [1943] 1 KB 746

appl *Manitoba Press v Martin* (1892) 8 Manitoba R 50

*Suresh Chandra for the plaintiff*

*William W Clarke for the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> defendants*

No appearance by the 5<sup>th</sup> defendant

11 April, 2000.

### DECISION

**Scott, J**

The first four Defendants apply to have the Statement of Claim struck out on the ground that it discloses no reasonable cause of action. At the hearing Mr. Clarke confined his application to paragraphs 5 to 13 of the Statement of Claim since paragraphs 14 & 15 only concern the 5th Defendant who was not joined in the application.

The Plaintiff commenced his action on 23 February 00. It is an action in defamation. The relevant paragraphs of the Statement of Claim arise out of a visit by a television camera crew to the Plaintiff's offices at Government Buildings on 17 December 1999, a report or reports of that visit broadcast by the 1st Defendant on 17 and 18 December and another report broadcast by the 1<sup>st</sup> Defendant on 7 January 00 following a visit to Rakiraki by the Prime Minister. It is said that by reason of the matters complained of which are also alleged by the Plaintiff to involve breaches by the Defendants of the Code of Media Ethics and Practice the Plaintiff has been "gravely injured in his credit and reputation in his profession as Assistant Minister of Information in the Prime Minister's Office and has been brought into public scandal, odium and contempt."

The Court's power to strike out given by RHC O18 r(1)(a) will only be exercised in "plain and obvious cases" (*Hubbock v. Wilkinson* [1899] 1 QB 86) and where the impugned pleading is "obviously unsustainable" (*Attorney-General of Duchy of Lancaster v. L & NW Rly Co.* [1892] 3 Ch 274). So long as a Statement of Claim discloses at least some cause of action or raises some question fit to be decided by the Court the mere fact that the case is weak or is not likely to succeed is no ground for striking it out (*Wenlock v. Maloney* [1965] 1 WLR 1238). In a defamation action, In particular, if the words complained of are capable of having a defamatory meaning then in England the Statement of Claim will not be struck out as disclosing no cause of action (*Drummond-Jackson v. BMA* [1970] 1 WLR 688).

Although the substantive law of defamation in England and Wales is broadly similar to that in Fiji there are nevertheless significant differences, some of which should be borne in mind.

In Fiji the legislation is the [Defamation Act](#) (Cap. 34). The Act does not refer to television broadcasts as such but Sections 2 & 3 are in my view wide enough to cover them.

In England and Wales the trial of defamation actions is by Judge and jury. As in criminal trials the Judge decides the law while the jury makes findings of fact. The jury also assesses the damages. In Fiji on the other hand civil causes in the High Court are tried by a Judge alone (High Court Act Cap. 13 - Section 31(1)). The Judge in Fiji is not only the Judge of the law but also the Judge of the facts.

In England an application brought under RSC O 18 r 19 is made to a Master with a right of appeal to a single Judge. In Fiji this type of interlocutory application is always made to a Judge since as yet no Master of the High Court has been appointed (see [High Court \(Amendment Act\) 1998](#)) and the jurisdiction of the Chief Registrar does not extend to these applications (see O 32 r 9).

In my opinion these three differences cumulatively have a significant effect on questions which a Judge may ask when considering an application such as this.

First, however, the Plaintiff's complaints must be considered in some detail.

Paragraphs 5, 6, 7 and 9 arise out of the visit to the Plaintiff's offices at Government Buildings on 17 December 1999. Paragraphs 7, 8 & 9 provide a convenient starting point since these paragraphs contain the Plaintiff's own account of what actually happened. They read as follows:

"7. THAT on or about 17th December 1999 the first Defendant by its News reporters including second Defendant entered the Private Offices of the Plaintiff without any express permission to do so.

That on 17 December, 1999, Imraz Iqbal and the crew approached the Ministry of Information Office. The Plaintiff did not invite the crew and in fact were told to leave the ministry premises. There were express notices on the doors and on the walls to exclude any public member including the first Defendant or its agents. Without due regard to those notices, the first Defendant or its agents entered the private offices of the Plaintiff.

The Plaintiff expressly terminated entry to offices and filming of the offices by agents of the first Defendant but they ignored the express wish.

8. THAT on or about 17 December, 1999 the first Defendant by its agent, third Defendant and the Crew Members abused and harassed the Plaintiff.

That on 17 December, 1999, the third Defendant without any notice to the Plaintiff entered the private offices of the Plaintiff and started filming without consent from the Plaintiff.

The third Defendant without any permission or warning asked inappropriate questions to the Plaintiff.

The Plaintiff indicated expressly to the third Defendant to terminate the purported interview but the third Defendant persistently harassed the Plaintiff in front of his own office staff.

The Plaintiff felt very much humiliated and embarrassed from the actions of the third Defendant.

9. THAT the first Defendant or its agents or employees sought from Plaintiff interviews information and pictures by intimidation; harassment and persistent pursuit."

Assuming as one must that the Plaintiff's account is correct it can then be compared with the account which was broadcast by the first Defendant and to which the Plaintiff takes exception as being false, malicious and defamatory. Paragraph 5 sets out the words used in the broadcast. They are:

"Reporter IMRAZ IQBAL who was tasked with the story was turned away. Other media organisations were allowed to go into the Ministry.

It seems that a press conference was called, other Journalist were allowed to stay. Fiji One News were the only ones not allowed in.

The reason for not allowing Fiji One News into the Media Conference remains bizarre and no answers could be obtained from those concerned.

Fiji One understands that the Minister only wanted a reporter he chose and not one that was tasked by the News Director."

According to paragraph 6 the words in their ordinary and natural meaning meant:

"(a) That the Plaintiff called one news Conference and intentionally excluded the first Defendant.

(b) That the Plaintiff intentionally excluded the reporter who was tasked with the job of reporting.

(c) That the Plaintiff told "lies" about the time and date of Media Conference.

(d) That the Plaintiff intentionally wanted to avoid the coverage by the first Defendant."

Conceding for the moment that the broadcast words do indeed point to the conclusions said to be derived from them then in my view (a), (b) and (d) are entirely unobjectionable. There is no obligation upon an Assistant Minister of Information either to call or not to call a press conference. There is no reason why he should have anyone present at his press conferences unless he wishes them to be there. There is no reason why he should not brief one of the organs of the media rather than another. I can see nothing wrong in his doing any of these things and therefore nothing wrong in saying that they were done. The only allegation which disparages the Plaintiff is that contained in paragraph (c): the allegation that he had lied. But try as I might to understand how Mr. Chandra explained that the suggestion that the Plaintiff had lied followed naturally from the word used, I could not. Mr. Chandra's argument appeared to be that no press conference had actually being called. Assuming that to be the case then it was the Defendants who had lied, not the Plaintiff.

As has been seen paragraphs 8 and 9 allege that the television crew trespassed into the Plaintiff's office, abused, harassed and intimidated him causing him to be humiliated and embarrassed. In argument Mr. Chandra made it clear that the Plaintiff's claim was being brought in defamation only and not in any other tort. In my view the matters complained of in paragraphs 8 and 9 are incapable of constituting defamation.

The next matter complained of is the broadcast of 7 January 00 which followed the Prime Minister's visit to Rakiraki. The words complained of are set out in paragraph 10 and their alleged defamatory meaning is set out in paragraph 11 as follows:

"(a) That the Plaintiff is the Minister of Information and will be replaced by Mr. Datt.

(b) That the Plaintiff will be replaced because he is incapable to perform his duties as Minister of Information.

(c) That the Plaintiff would be replaced sooner than later.

(d) That the Plaintiff would be replaced because of clashes between the Minister of Information and media.

(e) That the Ministry of Information needs a shake up as it is not performing to the accepted level of performance.

(f) That the Plaintiff's purported replacement is better than the Plaintiff and the Government needs him more urgently as Minister of Information than the Plaintiff."

Government reshuffles are routine. They take place for many reasons. Sometimes Assistant Ministers become Ministers. In my view sub-paragraphs (a), (c), (d) and (e) do not reflect badly on the Plaintiff in any way and are therefore entirely unobjectionable. Only (b) and (f) (assuming them to flow naturally from the actual words complained of, which is not at all clear) are remotely disparaging.

Paragraph 12 which alleges the breach of the Code of Media Ethics and Practice does not in my view plead defamation.

Disregarding paragraphs 14 and 15 which, as already explained are not before the Court for consideration it seems to me that all the case against the first four defendants amounts to is a claim that they suggested that the Plaintiff was incapable of adequately performing his duties as Assistant Minister for Information and was therefore likely to be replaced.

In England the general practice is not to anticipate the defence or defences which may be pleaded when considering a strike out application in defamation proceedings (see *Drummond Jackson v. BMA* - supra) but where the pleading under consideration itself immediately suggests a complete defence, notice of that defence will be taken (see *Lilly v Roney* (1892) 61 LJQB 727 and *Law v. Llewellyn* [1906] 1 KB 487). Bearing in mind the procedural differences between the jurisdictions which have already been referred to I can find no objection to considering obvious defences to the present pleadings. To do otherwise would in my view be artificial.

The Plaintiff is the Assistant Minister of Information and the first Defendant is Fiji's National Television Station. As anyone who lives in Fiji knows, the Plaintiff is a very well known public figure who frequently appears on radio and television. He is a regular correspondent to the national daily newspapers. His relationship with the media (as seen by the present case) has not always been entirely harmonious. Where the fault lies is not for me to say.

The principle of freedom of expression is enshrined in our Constitution. Section 30(1)(a)(b) guarantees the right to freedom of speech and expression including the freedom to in part information and ideas and the freedom of the press and other media. The right to fair comment:

"is one of the fundamental rights of free speech and writing which are so dear ... and it is of vital importance to the rule of law on which we depend for our personal freedom." (*Lyons v. Daily Telegraph* [1943] 1 KB 746, 753.)

Where the matter commented on is, as it obviously is in this case, a matter of public interest and the person in respect of whom the comments are made is the holder of a public office then the latitude afforded to the commentator by the Courts is exceptionally wide. In the words of Bain J in *Manitoba Press v. Martin* (1892) 8 Manitoba R 50:

"One who undertakes to fill a public office offers himself to public attack and criticism and it is now admitted and recognised that the public interest requires that a man's public conduct shall be open to the most searching criticism."

In my opinion the words complained of by the Plaintiff, even viewed in the worst possible light, amount to no more than fair comment or criticism of the public acts of a public man. As such they are perfectly lawful and can attract no sanction from the Court.

In my view the Plaintiff's action against the first four Defendants is doomed to failure and I do not think that it would be right to allow it to proceed further.

Paragraphs 2 to 13 of the Statement of Claim are ordered struck out.

*Application Succeeds.*

Marie Chan