

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

**CIVIL ACTION NO.: HBC 337 of 2014**

**BETWEEN : ALIZ PACIFIC  
FIRST PLAINTIFF**

**: DR. NUR BANO ALI  
SECOND PLAINTIFF**

**AND : AUDITOR GENERAL OF FIJI  
FIRST DEFENDANT**

**: ATTORNEY GENERAL OF FIJI  
SECOND DEFENDANT**

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**APPEARANCES/REPRESENTATION**

**FIRST & SECOND**

**PLAINTIFFS : Mr. D Sharma [R Patel Lawyers]**

**FIRST DEFENDANT : Mr. P Knight [Cromptons]**

**SECOND DEFENDANT : Mr. Y Naidu [Attorney-General's Chamber]**

**RULING BY : Master Ms. Vandhana Lal**

**DELIVERED ON : 04 September 2023**

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**JUDGMENT**

**[Assessment of damages]**

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**A Background to the Proceeding**

- I.** The Plaintiff's claim is for defamation involving an audit report, the publication of which alleges to have hurt the good name and reputation of a consultative firm and its managing partner.

2. The First Plaintiff and its managing partner the Second Plaintiff seeks relief by way of writ of summons dated 28<sup>th</sup> November 2014 against the First Defendant on the basis that the contents of the First Defendant's Audit Report for 2010 injured the character and reputation of the Plaintiffs, brought them into hatred, ridicule and contempt and they have suffered damages as a result.
3. On appeal to the Supreme Court, on 28<sup>th</sup> October 2022 the Supreme Court, granted relief to the Plaintiffs in terms of prayers (4) of the relief sought in the claim i.e.– declaration that the First Defendant defamed the Plaintiffs and for the First Defendant to tender a public apology; relief for general and special damages was also granted and matter was remitted to High Court for assessment of damages.
4. A public apology was made via advertisement in the Fiji Times on 24 May 2023 in the classified section, which apology has been accepted by the Plaintiffs.
5. The issues left for determination by this Court are:
  - i. What is the assessment of damages for the Plaintiffs?
  - ii. What interest should apply to the damages?
  - iii. What costs is to be awarded?

**The defamatory words**

6. The words that the Plaintiffs claim are defamatory of them as contained in volume 2 of the 2010 Audit Report (Paragraph 1.13 of the Agreed Facts) relating to the Ministry of Industry and Trade are as follows:

*(a) Ministry of Industry and Trade*

*Engagements of Consultants – Aliz Pacific*

*Tenders were not called for the restructure of the Rewa Co-operative Dairy Company Limited (RCDC) casting doubt on the transparency of the process in awarding the consultancy contract to Aliz Pacific. In 2010, Government paid \$562,500.00 to Aliz Pacific in consultancy fees, with additional fees paid in 2011.*

*The procurement authorities delegated by the Permanent Secretaries and the Government Tender Board when procuring goods, services or works are as follows:*

*Responsible Authority Procurement Limits*

*Permanent Secretary \$30,000.00 and less*

*Government Tender Board \$30,001.00 and more*

*A tender must be called for the procurement of goods, services or works valued at \$30,001.00 and more.”*

7. Further allegation was that in volume 4 of the Audit Report the First Defendant observed:

*“Government Procurement procedures pertaining to the acquisition of service above \$30,000.00 were breached and the transparency of the process in which Aliz Pacific was awarded the Consultancy Contract for the re-structure of RCDC was questionable. A tender must be called for the procurement of goods, services or works valued at \$30,001.00 and more.*

*The Audit also noted that the then RCDC Board was informed by a representative of AP Consultants in a Board Meeting held on 17<sup>th</sup> May 2010 that Government through the Ministry of Industry and Trade had appointed her Consultancy Firm to implement the re-structure of the company.”*

**Evidence on Damages**

8. Plaintiff's first witness was the Second Plaintiff Nur Bano Ali and her evidence is summarized as follows.

She is a chartered Accountant, practicing Accountancy for 30 years and is also the Vice President of the Fiji Chamber of commerce and President of the Women in Business. (At the time of the Hearing) she was the chairperson of the South Pacific Stock Exchange.

She is the principle of her own chartered accountancy and business advisory firm having international affiliations and thus representing globally. She began the firm in 1984. There are now two offices, one in Suva and one in Nadi.

The Suva office has two partners with a team of 25 people whilst the Nadi office has the third partner with a team of 15 people.

The clients are both local and international clients, large and medium business environment with range of services from accountancy, business advisory, tax advisory, tax agents, auditing to consulting work on structure and restructure.

On the international arena, the firm has been part of the international network for accounting firms. Currently the Franchise is with Morrison KSI.

During the time of engagement to do the consultancy work for Rewa Dairy Cooperative, the First Plaintiff was known as BDO Aliz's and between February 2009 and September 2009, the firm was in the process of changing name.

In 2009, the firm was an affiliate of BDO. Reason given for break up by BDO was that they wanted to withdraw from Fiji and when they will come back, they will give the First Plaintiff an opportunity to realign.

BDO returned to Fiji but is now with Nalin Patel.

In cross examination the witness confirmed that by 2014 First Plaintiff had no further association with BDO.

In 2009 Rewa Dairy was intending to restructure its organization. The First Plaintiff was chosen to carry out industry study hence entered into an agreement with the Government of Fiji through the Ministry of Industry and Trade to carry out the work.

The First Plaintiff was paid full consultancy cost for the work it did. Work was completed by end 2010 or 2011.

The Auditor General tabled an audit report in 2014.

According to the witness, they became aware through media that the Auditor General made specific mention of the First Plaintiff in its audit report.

They found out through the media that as per the report, the firm was paid and that they had to be investigated. In large bold prints the media news stated they were paid half a million dollars.

Hence, they went and looked up on the website as to what was written in the audit report. According to the witness the words used were referring to a "she" which according to her meant the Second Defendant.

Due to the media reports she had international calls asking her what was going on. As a result of them requiring to answer what they were doing, they lost reputation with international valuation.

According to the witness, the Auditor General's report states that *"the tenders for Rewa Dairy was not called for, for the re-structure of Rewa Cooperate Dairy Company Limited thus casting doubt on the transparency of the process in awarding the consultancy contract to Aliz's Pacific and in 2010 the Government paid \$562,500 to Aliz's Pacific in consultancy fees with additional fees paid in 2011."*

The audit report also stated:

*"The then Rewa Dairy Company board was informed by representative of Aliz's Pacific in a board meeting held on 27<sup>th</sup> May 2010, that Governments through the Ministry of Trade has appointed her consultancy firm to implement the restructure of the company. The audit*

*then sort clarification again from the Ministry and was advised by the Principal Accounts Officer the tenders were not called for the awarding of the consultancy contract in relation to the restructure of Rewa Cooperate Dairy Company. ....*

*The transparency of the process in which Aliz's Pacific was awarded the consultancy contract of \$500,000 in 2010 for the restructure is questionable.*

*Recommendation made was that "a detailed investigation should be conducted on how the Ministry awarded the consultancy contract of \$500,0000 for the restructure of Rewa Cooperate Dairy Company to Aliz's Pacific without going through an open public tender process."*

According to the witness, the Auditor General's Office never contacted her to seek clarification on this matter.

The witness states that upon finding out about the audit report from the media, she got calls. One of her friends called her and told her to look at the newspapers since it says she (the Second Defendant) stole money.

Thereafter she took her lawyer's advice and put out a paid media statement to correct the whole process.

She also received calls from her business association; international connections and local clients. The witness claims some refused to engage them and some left.

They questioned the integrity of the firm as to a breach in the tender process and unfairly being paid but the clients thought she was in hooks with government and she is on the side making deals with government.

She also states that the staff morale was low and she claims to have lost senior professional staff. Two of her managers left thereafter.

She further states that till the hearing date (2016) she is being questioned about the Rewa Dairy Company.

According to her, after the publication about the report in the news articles they had bury their heads and kept quiet and would not to go out.

Fiji being a small community, she (Plaintiff witness 1) would be questioned about it wherever she went.

She was the President in Chamber of Commerce so she had to explain to the board members at the exchange as to what was going on and she had to inform that the matter is in court. She also had to provide explanation to other institutions where she is a leader. The report questioned her integrity as President.

The firm lost business and offhand she recalls 02 clients who left the firm calling her and stating they cannot work with her. The report looked like she was doing under hand deals with the Government.

She had to provide explanation to international association and she had to collect evidence that reports were published on websites and subsequently taken down and submit the evidence to the international office she reports to i.e. the affiliation she has.

According to her the stress was beyond and she cannot describe this in words enough how bad it was for her since she always held lead role as business commentator in Fiji.

In the First Plaintiff's name Aliz's Pacific, Ali refers to her as she is the principal starting the firm; "Z" is for Zareen Khan. The other partners in the firm are Mr. Sharma and Zahreen Khan.

In her cross-examination she confirmed she has not tendered any accounts/financial statement to show that the income had decreased subsequent to the publication of the report.

According to her one of the client's the firm had lost said that "*she was too close to the Government, too close to the Attorney General; you are related to him this is going to cause us a lot of troubles so I don't think you can act for us in a matter.*"

One of the clients lost was a local client and the other an international client.

The Fiji Time on its 11<sup>th</sup> November 2014 edition printed news on the finding of the Auditor General. The newspapers from this news agency has been in widely circulation.

The news was printed on the front page and reminder of the audit find was printed inside.

News was also published on the Fiji Village's web page online with headline as "*Consultancy contract to Aliz's Pacific should be investigated. Auditor-General*".

The Fiji Times carried on with reporting about this for a week or two repeating the same thing.

The report was part of headline for Fiji Broadcast Corporation news as well on their website.

She had paid around \$1,800 for a paid advertisement in the Fiji Sun to put out her statement.

Her lawyers also wrote to the Auditor General in November 2014 asking for retraction and withdrawal of the offending part of the 2010 audit report. She also asked for a public apology and compensation.



In respond Cromptons [solicitors for the First Defendant] wrote saying they are considering the matter and will forward a substantive reply.

The Auditor General also acknowledged receipt of the letter by Plaintiff's solicitors and was awaiting legal advice.

On 25<sup>th</sup> November 2014 the Plaintiff's lawyers followed up with Cromptons who replied asking to clarify what words in the report was defamatory.

The Plaintiff's solution replied on 27<sup>th</sup> November 2014 outlining what words were offending.

The compensation/damage she as the Second Plaintiff seeks is in million dollars as she was in consulting work and corporate assignments and the report was personally damaging to her. And on average their charge would be from \$10,000 going up to half a million or beyond.

She can not divulge the information regarding other big consultancy work she has done.

She does not do the everyday accounting work but only advisory and structure.

9. The Plaintiffs' second witness was Sunil Deo Sharma who has been with the First Plaintiff for 32 years joining in 1988 and became a Partner in 2002 when the First Plaintiff was known as BDO Aliz's.

He is specialized in audit and assurance partner. He has 10-12 people in audit department who are auditors and accountants all professionally qualified.

The firm does all sorts of audit ranging from small audit investigation to statutory/compliance audit; project audit; sub-contract audit; auditing with the Auditor General's office; forensic audit and other special audits as required.

The clients range from all industries – fishing; transport; supermarkets; construction manufactory; non-profit organizations; government business enterprises and multi-national companies.

He found out from the media about the firm's name published and was mentioned in the Auditor General's report.

He had also read the Auditor General's report on the Auditor- General's website.

Mostly the print media, Fiji Broadcasting Corporation, FM96 and the blogs sites were picking out on the report in a negative way i.e. the report suggested there was impropriety on their side i.e. suggest to the readers that the firm got the job without proper procedure.

As a result of the publication by the Auditor General of its report and use of the report by media outlets accusing the firm, caused disruption as staff morale was low and due to their international affiliation, the firm had enquiries from some big companies.

The negative publicity damaged their ability to get good potential work.

The firm lost a lot of senior management staff and as a result their service delivery to the existing clients was impacted and the firm had to ensure it salvaged the clients.

Due to the report that the award to the firm was done in proper manner, the stigma is still there and they need to clear that as a firm.

They could not retain the international affiliation through which they got a lot of international work. Also, sub-contract work for Auditor General's Office stopped completely. They have submitted tenders but not given any sub-contracts.

They had lost a major partner which was consultancy work. This loss was about \$5.000 to million.

Currently (at time of the trial in 2016) the firm got couple of jobs from Auditor General's office.

Between 2014 and 2016, the staff turnover has increased and hence they are required to train staff every time which requires investing more time and money.

In his cross-examination, the witness agreed that the relationship with BDO had finished before the report by Auditor General was published.

However, the report impacted the firm in re-engaging the affiliation with BDO backk.

BDO came back to Fiji but has not affiliated with them.

The First Plaintiff affiliated with another international company KSI International which merged with Morrison.

In his cross-examination the witness also agreed that staff turnover is a common problem for accounting firms in Fiji and the ones the firm lost was eventually replaced.

The potential loss of income suffered and cost to the firm if a monetary value was to be given would be half million and two million dollars.

**General Rules for award of damages**

10. The general rule for award of damages in an action for defamation is that damages are to be assessed on a compensatory basis and not as a punishment for wrong doing.
11. In the current proceeding the Plaintiffs in their statement of claim are asking for general and special damages.
12. *In cases of defamation the assessment of damage mostly includes substantial subjective element as damage to reputation are not convertible by the use of any yardstick into a sum*

*of money* – Rampton: Rogers: Atkinson and Eardley; Butterworths Common Law Series: Duncan and Neil on defamation and other media and communications claims (5<sup>th</sup> Ed); 2020; RELX (UK) Limited @ page 284.

13. In *Cassell & Co Limited v. Broome* [1972] AC 1027 at 1070, Lord Hailsham said of the subjective element in the assessment of damages in defamation:

*“Such actions (defamation) involve a money award which may put the Plaintiff in a purely financial sense in a much stronger position than he was before the wrong.”*

His Lordship went on to cite Windeyer J in *Uren v. John Fairfax & Sons Pty Limited* (1966) 117 CLR 118 at 150 who had said:

*“..... a man defamed does not get compensation for his damaged reputation. He gets damages because he was injured in his reputation that is simply because he was publicly defamed. For this reason, compensation by damages operates in two ways: as a vindication of the Plaintiff to the public and as consolation to him for a wrong done. Compensation is here a solatium rather than a monetary recompense for harm measurable in money.”*

14. In *John v. MGN Limited* [1997] QB 586 at 607 outlined the essential elements of general compensatory damages in a defamation case and these are for damages to his reputation; vindicate his good name; and take account of the distress, hurt and humiliation the publication has caused.
15. Same principles apply to individual and corporate claimants, except that a limited liability company cannot suffer distress or injury to feelings and is not entitled to claim aggravated damages – *Eaton Mansions (Westminster) Limited v. Stinger Cia de Inversion SA* [2013] EWCA Civ 1308.

16. Relevant circumstances of case should be considered and the sum being awarded is proportionate to the damage suffered and that it is reasonably required to compensate the claimant and re-establish their reputation – *Rantzen v. Mirror Group Newspapers (1986) Limited* [1994] QB 670 at 696.

**Quantum for award of damages in Fiji**

17. In a very recent case of *Padarath v. Tabua and Another* a Suva High Court Civil Action HBC 250 of 2016, the Plaintiff was a medical doctor who claimed damages for cyber libel published on both the Second Defendant's website and Facebook page in September 2016. He was awarded \$50,000 as general damages and \$4,000 as costs.
18. In *Patel v. Gosai* a Fiji Court of Appeal case ABU 37 of 2012 (delivered on 24 March 2014), the Court of Appeal reviewed the award of damages awarded to a local body politician who was defamed in a council meeting. In the High Court the Plaintiff was awarded \$70,000 in damages which was reduced to \$50,000.
19. In *Prasad v. Khelawan* a Lautoka High Court Civil Action HBC 325 of 2003, the High Court awarded \$30,000 to a High school teacher who was subjected to number of petty allegation that reflected on her integrity and qualities in her professional role. There was no apology by the Defendant.
20. In *Prasad v. Singh* a Lautoka High Court Civil Action HBC 115 of 2020 (delivered on 03 March 2021), the Court awarded \$30,000 to the Plaintiff for publication made on a Facebook page.
21. In *Khaiyum –v- Tikoca* a Suva High Court Civil Action HBC 83 of 2019 (delivered on 25 February 2021), the Court found that the Defendant intentionally or recklessly slandered the Plaintiff in an interview with a Sydney Community Radio Station. This interview was uploaded on a Facebook Page titled "Fiji Exposed Forum". The court awarded the Plaintiff \$80,000 as compensatory and punitive damages.

22. In *Chand v Bolatiki & Others* a Suva High Court Civil Action HBC 32 of 2014 (delivered on 5<sup>th</sup> June 2019) the Plaintiff sued the Defendants for defamation relating to four newspaper articles published. Plaintiff was awarded \$60,000 as general damages.

### Determination

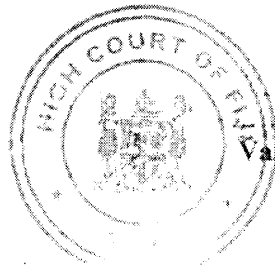
23. In the current case a report was prepared by the Auditor General which was tabled to the parliament in 2014. The report was also published on its webpage.
24. Using this report, media outlets in Fiji thereafter published news articles on printed media and their social media pages thus ~~bringing~~ <sup>bringing</sup> it to the notice of a larger audience.
25. The Second Defendant has removed the report from its webpage and only apologized in 2023 after ordered by the Supreme Court.
26. At the initial stage the Plaintiffs had to engage solicitors and take steps in issuing paid advertisement to clarify their position.
27. The Plaintiffs' witnesses in their evidence stated how the Plaintiffs were affected by the report of the First Defendant and its publication on the First Defendant's webpage.
28. The Court needs to assess the gravity of the damages to the reputation and if it touches the Plaintiffs' personal integrity and professional reputation than it would be more serious. And whether the Second Plaintiff's role in the society has been affected and how.

If the Second Plaintiff continued to have a successful career and public acclaim, this will also affect the award of damages.

Is there sufficient evidence to justify a substantial award more than already awarded by the Courts locally for publication of defamatory articles/news etc?

29. The Second Plaintiff had to answer to the boards/organization she was serving on. There is no dispute that she a person of high social standing in the society. It is apparent that the publication would have been likely damaging for her in her professional capacity.
30. Injury to professional reputation carries with it some extent of financial loss even though it may be impossible to quantify it.
31. The Second Plaintiff still pursues the successful career as a chartered accountant and managing partner of the First Plaintiff.
32. The First Plaintiff has secured another international affiliate.
33. However, there is no evidence to show how much loss the First Plaintiff suffered in comparison to previous years.
34. Furthermore, there was no evidence of clients withdrawing from the First Plaintiff due to the report.
35. As far as the affiliation with BDO is concerned there was no evidence that BDO did not come to them due to the report. In any event they were withdrawing from Fiji and was not due to the report.
36. The award of damages is compensatory of distress to the Second Plaintiff; reparation for harm to reputation and vindication of the Plaintiffs' standing.
37. Court has to ensure there is "an appropriate and rational relationship between the harm sustained by the Plaintiff and the amount of damages awarded".
38. The mitigating factors are: the removal of the report from the website and public apology by the First Defendant which has been accepted by the Plaintiff.

39. However, the delay in apologizing does warrant an increase in compensatory damages.
40. No award is made for special damages as there is nothing in the pleading or specific evidence was adduced concerning the suffering of financial loss.
41. No award for exemplary damages is made as non was pleaded in the statement of claim.
42. The award of general damages is sufficient for First Plaintiff for damage/harm done to the business.
43. Taking into account the above and considering the awards made by the Courts in other defamation cases I find an award of \$50,000 to the First Plaintiff and \$70,000 to the Second Plaintiff as general damages proper. And I order so.
44. The Second Defendant is to also pay the Plaintiffs' cost which is summarily assessed at \$4,000 in total.



*[Handwritten signature]*

Vandhana Lal [Ms]  
Master  
At Suva.

04 September 2023

TO:

1. Suva High Court Civil File No. HBC 337 of 2014;
2. R Patel Lawyers, Solicitors for the First & Second Plaintiffs;
3. Cromptons, Solicitors for the First Defendant;
4. Attorney-General's Chambers appearing for the Second Defendant.