

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

CIVIL ACTION NO. HBC 210 OF 2020

BETWEEN : **JOTISHMA BHAVNA** of Malolo, Nadi- Legal Practitioner. **PLAINTIFF**

AND : **PERMAL REDDY** of Malolo, Nadi, Retired. **DEFENDANT**

BEFORE : Justice Mr. Mohamed Mackie.

APPEARANCES : Mr. R. Charan, for the Plaintiff.
Mr. A. J. Singh, for the Defendant.

DATES OF TRIAL : 1st & 2nd June 2023.

WRITTEN SUBMISSIONS: Filed on 4th August 2023 by the Plaintiff.
Filed on 27th June 2023 by the Defendant.

DATE OF JUDGMENT : 11th September, 2023

JUDGMENT

A. INTRODUCTION:

1. The Plaintiff instituted this action by way of her Writ of Summons and the Statement of claim dated and filed on 10th September 2020, claiming the following reliefs against the Defendant:
 - a. *General and special damages for Libel.*
 - b. *Aggravated damages,*
 - c. *Punitive damages,*
 - d. *Exemplary damages,*
 - e. *An interim interlocutory and permanent injunction requiring the immediate removal and /or deletion of the post (as hereinabove defined) including all comments posted by any third parties to the post, and preventing Defendant from publishing any further defamatory material regarding the Plaintiff,*
 - f. *The Defendant do publish a signed apology to the Plaintiff and have the same promptly in both the Plaintiff's Facebook pages,*
 - g. *Interest and costs.*
2. The Defendant, who on his own, filed the Statement of Defence on 7th October 2020, subsequently, on 24th February 2021, with the leave of the Court, filed his amended Statement of Defence through his Solicitors, for which the Plaintiff on 19th March 2021 filed her reply to defense.

B. PLEADINGS:

Statement of Claim (SOC)

3. The plaintiff in her Statement of Claim, *inter alia*, states **THAT**:

1. She is a Legal Practitioner by profession. She is also a member of the “*Then India Sanmarga Ikya Sangam (TISIS)*” Nadi District, Secretary of Mololo Maathar Sangam, Member of the Fiji Law Society and Fiji Women Lawyers Association. She is a women of fine repute, widely known and highly respected in her community.

2. On 27th August 2020 the Defendant published a defamatory post on Facebook attacking her and the post continue to be publicly available and has been viewed at least several hundred times in the close-knit community.

3. The particulars of the defamatory statement read as follows;

“Mololo TIM Mathar Sangam actually has formed under Mololo Father Sangam. We have set a lot of examples years ago when you were not born which Mololo citizens know not drifting tenants like u”.(emphasis mine)

4. The said words in their natural and ordinary meaning meant and were understood to mean the following:-

- (i) The Plaintiff is inexperienced and not capable of handling the affairs of the Mololo Mathar Sangam,
- (ii) Undermining the efforts of Mololo Mathar Sangam of which the Plaintiff is a Secretary,
- (iii) The Plaintiff does not have a fixed place of residence,
- (iv) The Plaintiff is a Homeless,
- (v) The Plaintiff does not have a steady life and is itinerant.

5. The post has injured her reputation and lowered her in the estimation of right thinking members of society generally.

6. That the Defendant refused to tender an apology though requested in writing. Thus, she will rely on doctrine of actual and implied malice on the basis of his;

- a. Failure to tender an apology,
- b. Public posting of the defamation notice (sent by the Plaintiff), which he knew or ought to have known would incite further defamatory comments from the general public,
- c. Publication of post which constituted personal attacks on her and made mockery of her.
- d. Ulterior motive in publishing the post, in that it meant to be a personal attack/ vendetta against her.

Amended Statement of Defence (ASOD)

4. The Defendant in paragraph 3 of his ASOD, having denied the averments in paragraph 3 of the SOC, admitted that he operates a Facebook page known as "Reddy's Catering", and on 26th August 2020 he posted on the page thanking various donors and informed the readers that he catered Chicken Palau for approximately 200 students and it was the Plaintiff who commented on the post to the effect ***"Finally clubs are awoken. Thanks to our Mololo TIM Maathar Sangam for setting example. Great initiative taken by this team though. God bless"*** where it was implied ;
 - a. That the clubs were inactive until now;
 - b. That it was the organization wherein the Plaintiff is a member , that set an example implying that it was they who took the initiative;
 - c. That it was a great initiative of her organization.
5. That he took umbrage at the Plaintiff's comment and honestly stated his opinion in the public interest **THAT:**
 - a. The organization wherein the Plaintiff is a member was formed by Mololo Father Sangam of which he was a founding member;
 - b. That the parent organization set many good examples for a long period;
 - c. That at the time of this work the Plaintiff was not born and around to observe the good works;
 - d. That the Plaintiff is not a permanent resident in the area and she is merely a tenant in the area.
6. In paragraph 5, he admitted that in response to the defamatory Notice issued by the Plaintiff's Solicitors, he again published a post about the good works done by him for the Government and the Legal practitioner's unit to know about it.
7. In paragraph 6 , having denied the contents of paragraph 4 of the SOC, states that he did not utter anything defamatory, but rather his honest opinion in the public interest on the honest belief that the publication was in the public interest and there was no intention to defame the Plaintiff. (underlining provided)

C. AGREED FACTS:

8. The following facts were agreed between the parties;
 - 1.0 *The Plaintiff is admitted as Legal Practitioner in Fiji under the provisions of the Legal Practitioners Act 2009*
 - 1.1 *The Defendant resides in Malolo, Nadi.*
 - 1.2 *The Plaintiff commented on a Facebook post particular of which are as follows:*

“Finally clubs are awaken. Thanks to our Malolo TIM Maathar Sangam for setting example. Great initiative taken by this team thought. God bless”.

1.3 *The Defendant replied to the Plaintiff's comment, particulars of which are as follows:*

*“Malolo TIM Maathar Sangam actually has formed under Malolo Father Sangam. We have set a lot of examples years ago when you were not born which Mololo citizens know, **not drifting tenants like you**”*

1.4 *The Defendant posted the Plaintiff's Solicitors letter (Defamation Notice) dated 27th August 2020 on his Facebook page.*

D. AGREED ISSUES:

9. The followings were the agreed issues between the parties;

- a. *Whether the Plaintiff is also a member of Then India Sanmarga Ikyu Sangam Nadi District, Secretary of Malolo Maathar Sangam, Member of Fiji Law Society and Fiji Women Lawyers Association?*
- b. *Whether the Defendant operates a Facebook page known as “Reddy's catering”?*
- c. *Whether on 26th August 2020, the Defendant made a post on his Reddy's catering page thanking various donors and informed readers that he catered chicken palau for approximately 200 students?*
- d. *Whether the Plaintiff commented on the Defendant's Facebook page known as “Reddy's Catering” stating the “finally clubs are awaken. Thanks to our Malolo TIM Maathar Sangam for setting example. Great initiative taken by this team through. God bless”.*
- e. *Whether the Defendant replied to the Plaintiff's comment on his Facebook page “Reddy's catering” or was it the post of Aniish Kriishna Raju in a chain of comments?*
- f. *Whether the Plaintiff further replied to the Defendant's comment?*
- g. *Whether the subject Facebook post was defamatory of the Plaintiff or constitutes a defamatory statement?*
- h. *Does the Facebook post have any of the meanings pleaded by the Plaintiff?*
- i. *Whether the Plaintiff's Solicitors letter dated 27th August 2020 being Notice of Libel and requesting an apology and retraction of the post, was served publicly on the Defendant?*
- j. *Whether the defamatory post by the Defendant was seen by the public.*
- k. *Whether the Defendant expressed his honest opinion which was reasonable to hold as the opinion was based on the fact available at the time?*
- l. *Whether the Defendant's statement is true?*
- m. *Whether the statement, if true, can be regarded as defamatory?*

- n. *Whether the Defendants statement is in exercise of free speech?*
- o. *Whether the Defendants statement are fair comment in regard to matters posted on the Facebook concerning an ethnic organization?*

E. THE TRIAL:

- 10. At the two days trial, the Plaintiff (**PW-1**), Mr. Muni Kamlesh Naidu- the District president of TISI Sangam- Nadi District (**PW-2**), Mr. Ashok Chand, Registered Bailiff (**PW-3**) and Mr. Anish Krishna - Operations Officer (**PW-4**) gave evidence on behalf of the Plaintiff, while only the Defendant gave evidence on his behalf.
- 11. Exhibits from "P. Ex -1" to "P.Ex-13" were marked on behalf of the Plaintiff, and no exhibit was marked on behalf of the Defendant.

F. THE LAW:

- 12. 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) *That there should be malice;*
- (3) *That they must be defamatory;*
- (4) *That they must refer to the Plaintiff.*

- 13. 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".

- 14. In Fiji High Court decision in the case of *Dr. Ganesh Chand v Fiji Times & Margaret Wise, HBC Civil Action No. 306 of 2000L (No. 45 of 2007)* (unreported)(decided on 13.4.2007) Justice Ms. Gwen Phillips , inter alia, stated:

[10] "A statement is defamatory of a person if, broadly speaking, it is calculated to lower him in the estimation of right-thinking members of the community or cause him to be shunned or avoided or to expose him to hatred, contempt or ridicule ... a statement is prima facie defamatory if the words, in their natural and primary sense, that is, in their plain and popular meaning, are defamatory."

- 15. In *Borron v Fiji Broadcasting Commission [1982] FJCA 7; ABU0040.1981* (decided on 2 April 1982) (Unreported), the Fiji Court of Appeal held, that the question as to whether words which are complained of are capable of conveying a defamatory meaning, is a question of law; this question is one for the trial Judge to determine.

- 16. 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".

17. **In Stubbs Limited v. Russell [1913] UK Law Rp AC 13; [1913] A. C. 386 Lord Shaw said at p. 398**

"Is the meaning sought to be attributed to the language alleged to be libellous one which is a reasonable, natural, or necessary interpretation of its terms? It is productive, in my humble judgment, of much error and mischief to make the test simply whether some people would put such and such a meaning upon the words, however strained or unlikely that construction may be. The interpretation to be put on language varies infinitely. It varies with the infinitely. It varies with the knowledge, the mental equipment, even the prejudices, of the reader or hearer; it varies – and very often greatly varies – with his temperament or his disposition, in which the elements, on the one hand, of generosity or justice, or, on the other, of mistrust, jealousy, or suspicion, may play their part. To permit, in the latter case, a strained and sinister interpretation, which is thus essentially unjust, to form a ground for reparation, would be, in truth, to grant reparation for a wrong which had never been committed".

18. It is a widely accepted legal norm that in order to succeed in a case for defamation, it is necessary for the Plaintiff to prove that the words or the particular act concerned were "published of him or her or of group of people" as the case may be. There is no onus lies with the Defendant to prove otherwise. It is however, finally the duty of the Court to decide and rule whether or not the disputed form of act or the words of the Defendant are capable of having a libelous meaning.
19. A similar opinion was succinctly given in **Vere v Chairman of Disciplined Services Commission [2001] FJHC 314; [2001] 1 FLR 328 (5 October 2001)**. The Court quoted **Sadgrove v Hole [1901] UKLawRpKQB 42; (1901) 2 KB 1 A.L.** as Smith M.R stated:

"The Plaintiff in order to succeed in the action must prove a publication of and concerning him of the libelous matter, and if he does not satisfy the onus of proof which is on him in this respect, there is no cause of action."

20. In **Rabuka v Fiji Daily Post Company Ltd [2005] FJHC 174; HBC0511j.2000s (8July 2005)** Justice Pathik said:

"To establish a cause of action in defamation, it must be shown that the defamatory words of and concerning the plaintiffs have been published. There are three aspects to this requirement, namely, (a) the nature of defamatory statement; this I have already stated here above, (b) the way in which it refers to the plaintiff; this has already been done, and (c) the means by which it was published; here it was through the newspaper as already stated".

21. Justice Pathik also quoted Lord Reid in the judgment in **Lewis v Daily Telegraph Ltd [1964] A.C. 234** where Lord Reid stated:

"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."

G. ANALYSIS :

22. Bearing in mind the aforementioned principles of Law outlined in the aforesaid authorities, I will get on to the task of analyzing the evidence led at the trial to see whether the Defendant posted the alleged Defamatory Statement for the members of the group and community with the intention of attacking the Plaintiff and encouraging the third parties for re-publication and comments on it as pleaded in paragraphs 3 and 4 of the SOC.

23. It is in evidence that one **Anil Krishna Raju (PW-4)**, had published a comment on the Defendant's Facebook page as to what he experienced by participating at a food distribution event that had been conducted for the School Children for which the Defendant was the said to be in forefront in organizing. This post had carried few photos of the event as well.

24. **Anish Krishna Raju's** post ,as per "Pex-1", reads as follows;

"I have never been too glad just recently when the schools started and I was given an opportunity to find my reason to be here in this world. Facing a lot of challenges but still thriving to reach my goals has helped me find the true beauty of humanity. If you are unhappy and cannot find your inner peace, then try and be there for someone in need and see how they react after your help, the world will stand still for a while for you"

25. It was in response to the above post by **Aniish Krishna Raju**, the Plaintiff posted her comments as follows ;

Jothishma Bhavna.

"Finally clubs are awaken. Thanks to our Mololo TIM Maathar Sangam for setting example. Great initiative taken by this team though. God bless"

26. The Defendant , admittedly, being offended by the above post of the plaintiff, published the impugned post , which reads as follows;

Permal Reddy.

*"Mololo TIM Maathar Sangam actually has formed under Malolo father Sangam. We have set a lot of examples years ago when you were not born which Mololo citizens know, **not drifting tenant's like you**" (emphasis mine)*

27. The Plaintiff, who apparently, got annoyed by the above post published by the Defendant, added a further post to the following effect.

Jotishma Bhavna.

"Permal Reddy whether Mololo TIM Maathar Sangam was formed under Mololo father Sangam is not relevant. Please also note personal attacks will not be tolerated by me or members of the Maathar Sangam. Please refrain from personal attacks. This is not the forum for such comments. You as a retired person ought to know better".

28. It was the post by the Defendant in paragraph 26 above, particularly, the last sentence of it to the effect **"not a drifting tenant's like u"** that seems to have ignited the tussle hereof, which led the parties to the Court. The Plaintiff, prior to the filing of the action, had served libel Notice (**Pex-2**) on 27th August 2020 through her Solicitors, requesting an apology and retraction of the post, but the Defendant by his Solicitor's letter dated 31st August 2020 (**Pex-8**) refused to do so. This letter was replied by the Plaintiff's Solicitors by the letter dated 2nd September 2020 marked as (**Pex-9**).
29. Subsequently, the Defendant published a further post, by attaching an image of the said libel Notice, as per (**Pex-3**), requiring comments in this regard from his friends, well-wishers and colleagues, which in turn had attracted more than 20 comments praising and encouraging the Defendant's efforts to serve the community, but also including some adverse comments against the Plaintiff, such as "**bush lawyer**", "**this lawyer is a dumb ass**", which, undoubtedly, added 'fuel to the fire'.
30. The first issue for determination is; Whether the Plaintiff is also a member of Then India Sanmarga Ikya Sangam- Nadi District, Secretary of Malolo Maathar Sangam, Member of Fiji Law Society and Fiji Women Lawyers Association? I find that the Plaintiff's averments in this regard in paragraph 1 of her SOC have been admitted by the Defendant in paragraph 1 of his ASOD, except for her claim that "*she is women of fine repute and is widely known and highly respected in her community*".
31. However, the Plaintiff has given unchallenged evidence about her educational and professional qualification and status and about her membership in professional bodies such as Fiji Law Society and Women Lawyer's Association, by tendering documentary evidence. Further, her membership in the TISIS, Malolo Maather Sangam and her position therein as the Assistant Secretary/ Secretary, Board Membership of TISI Sangam Nadi District and her position as the Manager of for Nadi Sangam School are not disputed. As far as her claim about her reputation and good standing in the community, no adverse evidence was led or even a suggestion to that effect was made by the defence at the trial. Thus, the issue No.1 stands answered in her favor.
32. The issues Nos. 2 to 6 are in relation to the operation of a Facebook page by the Defendant under the name "Reddy's Catering" and its usage. Admittedly, **PW-4** Anish Krishana Raju, had published a post as per the first page of the annexure marked as "**Pex-1**" as stated in paragraph 24 above. It was in response to Anish Krishna Raju's said post, the Plaintiff posted a comment shown in paragraph 25 above upon which the Defendant took umbrage of it and instantly reacted to it with the alleged defamatory contents as Shown in paragraph 26 above. These sequence of events are not disputed by the parties.

33. It is observed that the plaintiff in fact by her further post had requested the Defendant to refrain from personal attacks and informed him that it will not be tolerated by her or members of Maathar Sangam and this is not the forum for such comments. It is also observed that the Defendant on his part had made a further post, as per pages 1 and 2 of the "Pex-3", including an image of the Defamation Notice, which attracted more comments from third parties, as per pages 3-8 thereof. Unfortunately, some of the comments received by the Defendant from third parties were obviously further defamatory towards the Plaintiff.
34. The Plaintiff in her evidence in chief and under the cross examination has reiterated that her first comment was only to the post published by Anish Krishna Raju (vide in page 1 of Pex-1) and not a direct comment to any of the Defendant's comments for the Defendant to take umbrage and to post the disputed comment including the wording "***not drifting tenants like u***", which the plaintiff alleges as defamatory.
35. The pivotal question hereof, as raised in the issue number 7, is; ***whether the subject Facebook post was defamatory of the Plaintiff or constitutes a defamatory statement?***
36. It has been held that a claimant in a libel action of an internet posts or publication cannot rely on a presumption of law that there has been substantial publication, in contrast to libel cases involving traditional publishing methods, where the claimant is not expected to prove publication to individual readers. The claimant must prove that the statements in question had been accessed and read by members of the public.
37. In ***Al Amoudhi v Brisard and Another, [2007] 1WLR 113 at pg 120 Gray J stated:***
- "..The claimant bears the burden of proving that the words complained of were read or seen by a third party. From that proposition it would appear to follow that, in the case of an internet libel, it would be for the claimant to prove that the material in question was accessed and downloaded".*
38. In that context, before I decide the issue of publication, I would determine whether the statements pleaded are defamatory of the plaintiff.
39. The "test" as stated by ***Lord Selbourne in Capital & Counties Bank v George Henry & Sons, [1881] 7 App Cases 741*** 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*".
40. As far as the first comment, by Anish Krishna Raju (PW-4) in page 1 of his post tendered as PEx-1, is concerned, I don't see any reason to pin any blame on any one for it. Really it is a compliment and an encouragement for such activities and to the persons behind it.
41. It is to be noted that it was the Plaintiff, who immediately chose to response to Anish Krishna's above comment by stating that "***Finally clubs are awaken . Thanks to our Mololo TIM Maathar Sangam for setting example. Great initiative taken by this team though. God bless***", on which the Defendant, admittedly, took umbrage and made his

disputed comment including the words **“not drifting tenants like u”** which the Plaintiff claims as defamatory.

42. On careful perusal of the comments made by the Plaintiff to that of “PW-4” Anish Krishna Raju, I don’t find any derogatory contents therein for the Defendant to take umbrage or get offended as it clearly appears to be a general comment not aimed at the Defendant or any individual or Club or organization. The Plaintiff in her comments has not specifically referred to the club presided by the Defendant or any other club. The term she uses is in plural as “clubs”. She in fact has thanked and praised the Mololo TIM Maathar Sangam, seemingly being unaware of the actual fact that the relevant food distribution was organized by the Club presided by the Defendant.
43. What needs to be examined here is the propriety of the contents of the post immediately published by the Defendant in response to the Plaintiff’s comment in page 2 of PEx-1. I find that the comment made by the Plaintiff in her post to the effect that **“Finally Clubs are awoken”** in no way has referred to the Club presided by the defendant. If the Defendant thought that he had the right to respond to it and explain the correct picture behind the Food distribution event, he could very well have done so without resorting to personal attacks as the plaintiff alleges. In my view, his choice of words to the effect **“not drifting tenants like u”** in order to respond to the Plaintiff’s comment was, undoubtedly, disproportionate and cannot be justified under the circumstances prevailed.
44. I find that the Defendant’s words to the effect **“not drifting tenants like u”** at the end of his disputed comments in page 2 of the PEx-1 was too harsh , intolerable and defamatory. The Plaintiff, through her oral and documentary evidence and the evidence of the other witnesses, has successfully demonstrated that the Defendant’s above comment has lowered her image and social Standing as a practicing young Solicitor & Barrister, who is also holding number of positions in the community she lives in, particularly as the Assistant Secretary/ Secretary of the Club, Board member of the Sangam and as a member of the Management board of the School.
45. The Defendant, being a matured and experienced person, in his response to the Plaintiff’s post, could have been a bit lenient and explained the position without resorting to such extent of personal attack. The Defendant has wittingly and maliciously exceeded his limits in responding to the Plaintiff’s comments by including the impugned sentence **“not drifting tenants like u”**, which in my view was uncalled and unwarranted.
46. The Defendant went a step ahead and made a further publication as per PEx-3, by including a copy of the Defamation Notice, and invited further comments from the third party readers. In response to this some third party readers reacted in the way he expected, but few of them made some adverse comments against the Plaintiff, such as **“bush Lawyer”** and **Dumb ass** “ which in its natural and ordinary meaning meant and understood that the Plaintiff is inexperienced and not capable of handling the affairs of the Mololo Maathar Sangam and undermining the efforts of said Sangam of which she is the Secretary. This was pleaded in paragraphs 7 (i) and (ii) of the Statement of claim.

47. Having carefully perused the contents of the annexures and those of the oral evidence of the Plaintiff and that of her witnesses adduced at the trial, I am satisfied that the said defamatory words to the effect "**not drifting tenants like u**" found in the Defendant's said post had reached considerable number of people in the community, which undoubtedly was in its natural and ordinary meaning meant and were understood that the Plaintiff is homeless, does not have a fixed place of residence, does not have a steady life and is itinerant as pleaded in sub paragraphs (iii), (iv) and (v) of paragraph 7 of the Statement of Claim.
48. It is also observed that by the subsequent act of making a further comments, including the picture of the Defamation Notice, the Defendant has caused the 3rd parties to make further adverse comments and this clearly demonstrates the malice and ill-will entertained by the Defendant with regard to the plaintiff. The Plaintiff, through her evidence, has also substantiated the fact that the Defendant had a previous enmity towards her and her Father and this has prompted the Defendant to make a post like this.
49. The Plaintiff, by her post in "PEX-1", requested the Defendant to refrain from personal attacks and required to remove the posts. She also by sending the Defamation Notice "PEX-2" requested an apology from the Defendant. But the Defendant was unbending and continued to publish further posts inimical to the Plaintiff.
50. The Defendant by his failure to tender an apology as requested and by public posting of the Defamation Notice calling further comments from the readers, some of which again were further defamatory to the Plaintiff, has exhibited his actual and implied malice towards the Plaintiff.
51. The Defendant during his evidence was seen to be in an attempt to shift his culpability in posting the impugned contents to another person called Pralad Krishna, but still through his Phone. However, he did not take the same stance in relation to his subsequent postings, which was quiet lengthy and appealing for comments in his favor. He did not call Pralad Krishna to substantiate his position.
52. The Defendant inserted the aforesaid offending part "**not drifting tenants like u**" in to his post against the Plaintiff, when she was not deserving such a comment by the Defendant.
53. The Defendant's post, containing the impugned defamatory contents, had reached a sizable number of the readers in the community within a short span of time. The number of comments received shows it. There was no even an iota of evidence to establish that the Defendant's post portraying the Plaintiff as "**a drifting tenant**" was true. The Defendant's freedom of speech could not have extended to publish such a comment in relation to the Plaintiff.
54. The plaintiff under cross examination has clearly stated that they are tenants of Shalesh Reddy, but the Court action was against her Father and not against her, and the post by the Defendant describing her as a drifting tenant, is not true. The impugned content of the Defendant's post was sufficient enough to paint a picture in the mind of the ordinary

people that the Plaintiff does not have a fixed place of residence, steady life and she is homeless, which were not proved to be a true.

55. The reference to the Plaintiff in the post as “a drifting tenant” cannot be an honest and truthful opinion of the Defendant published in the public interest.
56. In the Amended Statement of Defence, the Defendant had pleaded that the Notice of defamation was served in public. The “PW-1”, the registered Bailiff, Ashok Chand, has given clear evidence that the Notice was served at the Defendant’s residence. However, this does not warrant any consideration as the Defendant is not making any counter claim.

H. DAMAGES:

57. The Plaintiff prays for damages under various headings. The wordings found in the annexure marked as “PEX-1” to read as “*not drifting tenants like u*”, being published by the Defendant, has defamed the Plaintiff. This is a worst form of defamation and the gravity of the said post and words were aggravated as the Defendant chose to publish another post “PEX-3” on which the Defendant entertained further comments from third parties, which in fact added insult to injury.
58. The Plaintiff has reiterated in her evidence that she is not a drifting tenant and that statement is false. No contrary was adduced by the Defendant. She, in page 14 of the transcript, under examination in chief, explains as to what was the reaction of the people in the area towards her and her family after this publication. She explained her predicament after the posting of these defamatory words.
59. The answers given by the Plaintiff under cross examination indicates her honesty in responding to the first post by Anish Krishna, who seemingly had praised the Defendant’s food distribution activities. The Plaintiff on her part added more praise to the meritorious act described in the post by Anish Krishna.
60. During the cross examination of the Plaintiff, learned Counsel for the Defendant was heard to be posing questions with regard to the division in the TISIS, the number of Court cases it involved in, about the ethnicities of the people who are the members of TISIS and who used to receive benefits by the services rendered by the Defendant, which were not relevant at all in deciding the only question here whether the impugned post by the Defendant was defamatory or not.
61. The Plaintiff was and is a Lawyer by profession, the Assistant Secretary/ Secretary of the Malolo Maatahr Sangam, Board member of the TISI Nadi District and School Manager of the Nadi Sangam School. These facts were not disputed.
62. The Plaintiff was not a “drifting tenant” as described by the Defendant in the impugned post. Plaintiff had a good standing in the society holding several positions as substantiated by evidence adduced. The Plaintiff has to live and lead her professional and social activities within the same community that she was a part of at the time material. No amount of

compensation can regain the lost reputation of such a person, but the court needs to grant a damage considering, circumstances and precedents.

63. This Court also considers the facts that despite the adversities created by the impugned posts, the Plaintiff has been entrusted with new positions as well. Her record as a Barrister & Solicitor is said to be unblemished. No contrary was even suggested. It is a testimony to her unblemished character.
64. In *Patel v Gosai [2014] FJCA 37; ABU0037.2012 (24 March 2014)* Fiji Court of Appeal granted \$50,000 as damage for a politician.
65. In *Chanda v Kumar [1980] FJCA 6; Civil Appeal No 06 of 1980 (27 June 1980)* the Court of Appeal, held that reputation of the Plaintiff, is a relevant fact. The Plaintiff through her evidence proved that she had a reputation in the community. Considering the agony that the Plaintiff had to go through and the fact that this happened in the same community where she held several honorary positions, it will not be possible to remedy the total damages suffered by the Plaintiff. However, Court decide to warded general damages considering all the factors discussed above.
66. In *Devi v Prasad FJHC 611; HBC373.2007 (25 August 2015)*, the Court considered the decision in *Prasad v Khelawan [2011] FJHC 123; HBC 325; 2003 (1 March 2011)* wherein the claim was \$30,000.00. In the said case judgment was entered against two (2) Defendants to pay the Plaintiff a sum of \$30,000.00 with interest of 6% per annum for the wrong of defamation to the Plaintiff. The Plaintiff in the said matter was an Assistant Head Teacher of a High School. In awarding she said sum of \$30,000.00 the Court has considered the Plaintiff's impeccable reputation as a School Teacher, having taught in one school for over 22 years and the Defendants making the defamatory utterance in the presence of the officials of the Ministry of Education.
67. The facts in this case at hand are similar to those in *Devi v Prasad (Supra)* wherein the Plaintiff was a Justice of peace and the award was \$20,000.00. In *Prasad V Khelawan (Supra)* the Plaintiff was a High School Teacher and the award was \$30,000.00. However, an award of \$30,000.00 as damages to a High School Teacher in that case, who was employed under the Ministry of Education as a public servant, in my view cannot be taken as a guideline to award general damages to a Plaintiff in this case.
68. The Plaintiff hereof appears not to be litigating for the sole purpose of recovering money. She requested a proper apology from the Defendant, but it was not coming forth. Thus, she decided to litigate. The amount of damages is not the prime concern for her. She did not even specifically prescribed the amount she claims as damages.
69. Considering all the facts and circumstances surrounding this case, I decide to grant a nominal sum of \$ 15,000.00 only (Fifteen Thousand Fijian Dollars) as general damages, together with a permanent injunction Order restraining the Defendant from publishing and/ or causing to publish any further defamatory materials regarding the Plaintiff. An order for the Defendant to publish an open apology in the Facebook pages would also do justice to the Plaintiff. No other damages awarded.

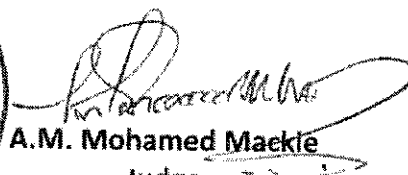
I. **COSTS & INTEREST:**

70. The Plaintiff was represented by the solicitor's office, wherein she is an Associate practitioner. However, considering the circumstances and the miscellaneous expenses that may have incurred, I decide to order \$1,000.00 to be paid unto the Plaintiff within 28 days as summarily assessed Costs.
72. The Plaintiff shall be entitled for interest on the adjudged sum of damages at the rate of 3% per annum from 10th September 2020 till the date of this judgment, and thereafter under Law Reform (Miscellaneous Provisions) (Death and Interest) Act Cap 27 of the Laws of Fiji on the aggregate sum of this Judgment till the payment in full.

J. **FINAL ORDERS:**

- A. The Plaintiff's Action against the Defendant succeeds.
- B. The defendant shall pay the Plaintiff a sum of \$15,000.00 (Fifteen Thousand Fijian Dollars) being the general damages.
- C. A permanent injunction is issued restraining the Defendant, his servants and/ or agents from publishing any further defamatory materials against the Plaintiff.
- D. The Defendant shall within 14 days hereof publish a signed public apology to the plaintiff as prayed for in paragraph (f) of the prayers to the Statement of claim.
- E. The impugned posts shall be deleted forthwith from the Face book pages, if they are still available.
- F. There shall be a summarily assessed costs in a sum of \$1,000.00 payable by the Defendant to the Plaintiff within 14 days.
- G. There shall be an interest on the damages ordered at 3% calculated from the date of filing the action till the date of this Judgment and thereafter as prayed for in paragraph (g) of the prayers to the Statement of claim.




A.M. Mohamed Maekle
Judge

At High Court Lautoka this 11th day of September, 2023.

SOLICITORS:

For the Plaintiff:

Messrs. Ravneet Charan Lawyers – Barristers & Solicitors.

For the Defendant:

Messrs. Anil J. Singh Lawyers- Barristers & Solicitors.