

BETWEEN: **JOE LIGO**
Claimant

AND: **REPUBLIC OF VANUATU**
Defendant

Coram: *Hon. Chief Justice Vincent Lunabek*

Date of Hearing: *23rd and 26th March
11th April and 18th May 2018*

Counsel: *Felix Laumae T. Kabini for the Claimant
Tom Loughman for the Respondent*

Date of Judgment: *17 July 2024*

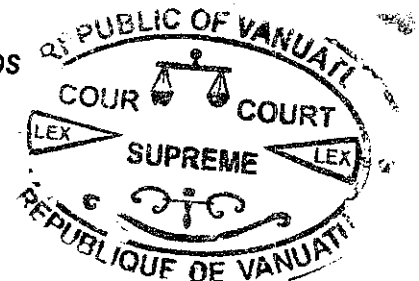
JUDGMENT

1. By letter dated 11th April 2013, the Prime Minister of Vanuatu, the Honourable Moana Carcasses Kalosil suspended the Claimant from his position as the Director General of the Ministry of Lands. Three prominent media articles followed on 13th and 15th April 2013 publicising the action of the Prime Minister. The Claimant says his fine reputation built up over decades as a leading senior public servant in Vanuatu was severely damaged by these articles causing him great loss. This claim seeks VT40 million by way of damages for defamation. The Republic is named as Defendant as it is alleged that the media articles reproduced information given to the Daily Post Newspaper by a spokesman of the Government, the Hon. Ralph Regenvanu MP.

Background

2. The Claimant was the Director General of the Ministry of Lands appointed on a four (4) year term under a contract of employment entered into with the Prime Minister. His employment was governed by the terms of his contract and the Public Service Act [CAP. 246].
3. Without any prior warning to him, on the afternoon of 12th April 2013, the Claimant was served with the Prime Minister's letter of 11th April 2013. The letter commenced:

"SUSPENSION AS DIRECTOR GENERAL OF MINISTRY OF LANDS



This letter serves to inform you that you are forthwith suspended on full pay as the Director General of the Ministry of Lands, Geology, Mines, Energy and Rural Water Supply.

I am taking this action as your employer because it is alleged that you were involved in attempting to pervert the cause of the current investigations, being undertaken by the Public Service Commission, concerning the leases of State Lands issued to public servants. ..."

4. The letter went on to make allegations of two breaches of the Public Services Act, without giving any particulars of what it was alleged the Claimant had done wrong. The letter advised him that his suspension was until "the matter is resolved".
5. The following morning the lead article in the Daily Post Newspaper, in very prominent bold print, reported "PM suspends DG and seeks termination". That heading and two paragraphs from the following article are relied on by the Claimant as being defamatory. They read:

Prime Minister suspends DG and seeks termination

A report from the interim spokesman of the Government, MP Ralph Regenvanu who is also the Minister of Lands said an official complaint was also submitted by the Prime Minister on Thursday, to the Chairman of the Public Service Commission seeking the DG's termination ...

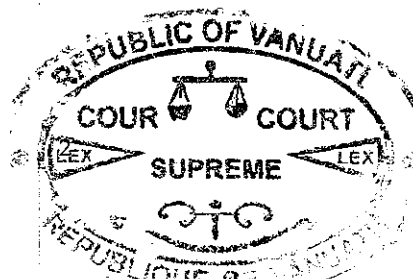
A quote from the letter from the Prime Minister to the Director General said "I am undertaking this action as your employer because it is alleged that you were involved in attempting to pervert the cause of the current investigation being taken by the Public Service Commission concerning the leases of state lands issued to public servants".

6. The claim then refers to a news broadcast by Radio New Zealand. The claim pleads that "The defendant through the former Prime Minister Moana Carcasses Kalosil again spoke to the Radio New Zealand" and repeated the defamation already published in the Daily Post. There is however no evidence led to support the assertion that the Prime Minister spoke to Radio New Zealand. The evidence is simply that Radio New Zealand reported:

"Top Vanuatu land ministry official suspended

The Director General of Vanuatu's Ministry of Lands, Joe Ligo has been suspended following an order from the Prime Minister Moana Carcasses Kalosil.

In a letter to Mr Ligo, Mr Carcasses said he was ordering his suspension because it was alleged that the Director General attempted to disrupt investigation into leases of State Lands issued to public servants."

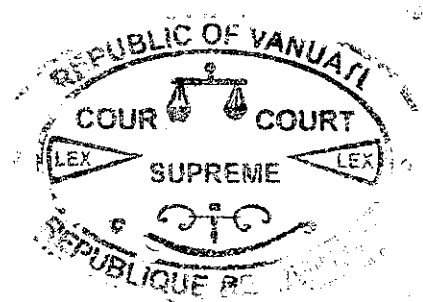


7. Then on 15th April 2013 the Pacific Islands Report republished the article which had appeared in the Daily Post on 13th April 2013 save that the heading of the article substituted for the words "*seeks termination*" the words "*pending termination*".
8. The Claimant pleads that Mr Regenvanu reported the fact of the Director General's suspension to the Daily Post "*maliciously and with the predominant intent and purpose, to damage the reputation*" of the Claimant (para. 6 of the claim) and the defamatory set out above in the media articles "*were calculated to tarnish the reputation of the Claimant and disparage the Claimant as a long time senior public servant*" (para. 10 of the claim).
9. The claim alleges that the Defendant intended the media statements to be understood in their common meaning, impugning the Claimant as being a person with characteristics of criminality and dishonesty, imputations that led to the Claimant's suffering serious injury and loss.
10. It is common ground between the parties that after the letter of 11th April 2013 was served, an investigation was conducted at the directions of the Government or the Public Service Commission by a specially appointed panel. The Claimant was not invited to, and did not, participate in the inquiry. The inquiry reported on or about 18th July 2013, finding no impropriety by the Claimant, and recommending that he be reinstated. On 6th August 2013, the Acting Prime Minister, the Honourable Edward Nipake Natapei, reinstated the Claimant to his former position. However later that day the Claimant was transferred to the position of Director General of the Ministry of Justice and Community Services. Later, after a change of government when the Honourable Joe Natuman became the Prime Minister, the Claimant was transferred back to the office of the Director General of the Ministry of Lands. He held that position until after another change of government when many Director Generals positions, including that of the Claimant, were changed. Why there were changes in the positions held by the Claimant after 16th August 2013 is not explored in the evidence.

Issues

11. In final submissions counsel for the Defendant posed four (4) questions for determination. These questions are also raised in the Claimant's submissions:
 - (1) Whether the impugned statements were published by the Defendant?
 - (2) Whether the statements were defamatory of the Claimant?
 - (3) Whether the statements were about the Claimant?
 - (4) In so far as the statements were published by the Defendant, are they covered by qualified privilege?

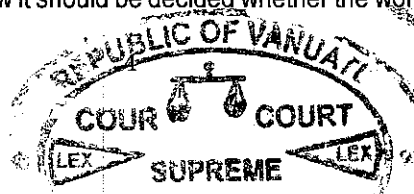
Issue 1: Were the statements published by the Defendant?



12. The Claimant's case rests on the statements in the media reports that information that the Claimant had been suspended came from the report of the interim spokesman of the Government, Mr Regenvanu. The Defendant in its defence denies that it carries responsibility for the articles saying that the articles were published not by the Government but by the media outlets themselves. This argument seeks to ignore the pleadings and the obvious strength of the Claimant's case that attributes responsibility to the Defendant for publishing the information to the Daily Post that has then been republished both in that newspaper and the other media outlets.
13. Mr Regenvanu in his sworn statement and in his oral evidence agrees that he provided information about the suspension of the Director General to the Daily Post. However, he denies that he gave a copy of the Prime Minister's letter of 11th April 2013 to the Daily Post.
14. Somehow the Daily Post seems to have had access to the letter itself as the resulting article quotes exactly the Prime Minister's reasons for acting.
15. In cross-examination of Mr Regenvanu, counsel for the Claimant put it to him that he seems to be the connection between the report about the suspension and the reasons for it contained in the letter, thus suggesting that he gave a copy of the letter to the Daily Post. Mr Regenvanu denied that he did so, and the other witness called in support of the Defendant's case, Mr Johnson Naviti Marakipule also denied that a copy of the letter had been released to Daily Post by the Government. This factual dispute raises the old problem of where and how a journalist obtains information. The Daily Post lead article is a long one. It refers to an article in the Daily Post one week earlier, concerning the then very public issue of concern about members of the public acquiring government houses and vacant residential State land under the instructions of the former Minister of Lands, and about leases approval by him. The article refers to other official correspondences about which there is no suggestion Mr Regenvanu had supplied them to the Daily Post. The possibility remains that the Daily Post journalist obtained the letter from another source. However, for the purposes of resolving the other issues in this case, I give the benefit of the doubt to the Claimant, and proceed on the basis that somehow the Defendant was responsible for providing the text of the letter of 11th April 2013, or at least the quoted part, to the Daily Post. It is clear that the Defendant, through its spokesman Mr Regenvanu, first published the material that was then republished as the government intended by the Daily Post, and in turn by other media outlets. The Defendant carries responsibility for the publications.

Issue 2: Are the statements defamatory of the Claimant?

16. The Defendant has referred the Court to judicial pronouncements to support a proposition that a mere allegation of suspicion of misconduct is not of itself defamatory, and on that basis has argued that at the worst the articles did no more than raise a possible suspicion that the Claimant had been guilty of improper conduct.
17. The Defendant relies on passages from *Lewis v Daily Telegraph Ltd.* [1964] AC 234, in particular in the Speech of Lord Reid at 260. However before referring to that passage I note earlier in his Speech Lord Reid considers how it should be decided whether the words in question are capable



of having a libellous meaning. His Lordship at 259 refers to the leading case of *Capital and Counties Bank Ltd. v Henty & Sons* (1882) 7 App. Cas. 741, 745 where Lord Selborne L. C. 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 libellous sense".

18. Further Lord Reid refers to *Nevill v Fine Art & General Insurance Co. Ltd.* [1897] AC 68 where Lord Halsbury said:

"... what is the sense in which any ordinary reasonable man would understand the words of the communication so as to expose the plaintiff to hatred, or contempt or ridicule ... it is not enough to say that by some person or another the words 'might' be understood in a defamatory sense".

19. The passage in Lord Reid's Speech on which the Defendant relies then follows. He said at page 260:

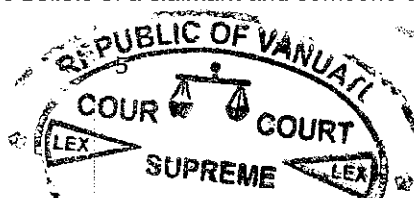
"What the ordinary man, not avid for scandal, would read into the words complained of must be a matter of impression. I can only say that I do not think he would infer guilt or fraud merely because an inquiry is on foot ...".

20. Lord Devlin in the *Lewis v Daily Telegraph Ltd.* at 285 also discusses whether an allegation of suspicion may be defamatory. He said:

"It is not, therefore, correct to say as a matter of law that a statement of suspicion imputes guilt. It can be said as a matter of practice that it very often does so, because although suspicion of guilt is something different from proof of guilt, it is the broad impression conveyed by the libel that has to be considered and not the meaning of each word under analysis. A man who wants to talk at large about smoke may have to pick his words very carefully if he wants to exclude the suggestion that there is also a fire; but it can be done. One always gets back to the fundamental question: what is the meaning that the words convey to the ordinary man: you cannot make a rule about that. They can convey a meaning of suspicion short of guilt; but loose talk about suspicion can very easily convey the impression that it is a suspicion that is well founded".

21. Guided by these authorities, I am required to consider whether an ordinary reasonable reader of the Daily Post and the other media outlets would understand the words to expose the Claimant to hatred, or contempt, or ridicule.

22. The evidence of the complainant and his wife give many examples of how they believed they have suffered ridicule and contempt, even hatred, from others in the community with whom they have associated in the past. However the test which the Court must apply is an objective one, not one determined merely on the beliefs of a claimant and someone close to him.



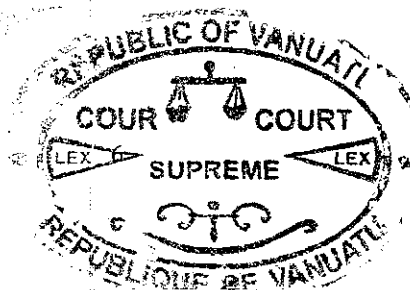
23. Here the words used do not refer simply to an unproved suspicion or to there being an inquiry to ascertain the facts. Two of the articles report an actual allegation that the Director General was attempting to pervert or disrupt an investigation into the leases of State land and, more than that, the articles of the Daily Post and the Pacific Islands Report state that the Prime Minister is seeking a termination of the complainant's employment thereby implying that the most senior officer of the State considers the information available sufficient to require termination.
24. In my opinion, the words used in the three media reports relied on by the Claimant would be understood by an ordinary reasonable reader as exposing the Claimant to ridicule and contempt as they would be understood to mean that the Claimant had been guilty of serious wrongdoing in interfering with a very important investigation then underway into the sale and lease of State lands.

Issue 3: Are the statements referring to the Claimants?

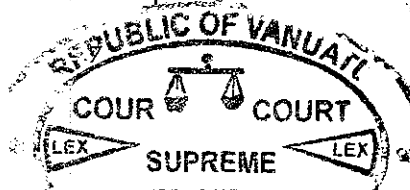
25. The Defendant admits that the articles referred to the Claimant, as is plainly the case.

Issue 4: Are the statements protected by qualified privilege?

26. It is common in everyday newspaper reporting to read articles that discuss possible misconduct or improper behaviour by people holding public office in the community. However those reports rarely lead to defamation proceedings. Sometimes, the reports deal with plainly established misconduct or impropriety such that the publication is protected by the defence of truth. That defence is not available here as events following the letter of 11th April 2013 have established that there was no substance in the allegations made against the complainant. Other times such statements are usually treated as being made in the public interest, and are therefore protected by qualified privilege.
27. Here, if the Defendant is to avoid a finding that it is liable to compensate the Claimant for the defamatory imputations made in the articles, the Defendant must make out the defence of qualified privilege. The onus is upon the Defendant to establish that there was a public interest issue that justified Mr Regenvanu on behalf of the Government making the report which he did to the Daily Post.
28. At the outset I note that a defence of qualified privilege will be defeated if the publication is made maliciously with the intent to harm the person against whom the imputations are made. Whilst the pleadings in this case allege that the statements were made with malicious intent, there is no evidence whatever that this was the case, and indeed the question of malicious or intentional behaviour was not pursued in the cross-examination of Mr Regenvanu. It is no longer a live issue in the proceedings.



29. Qualified privilege arises where the person who makes a communication has an interest or a duty, legal, social or moral, to make it to the person to whom it is made, and the person to whom it is made has a corresponding interest or duty to receive it. This reciprocity is essential.
30. That statement of principal is taken directly from the Speech of Lord Atkinson in *Adam v Word* [1917] AC 309 at 334 and is cited as the accepted law in *Defamation, Law, Procedure and Practice*, 3rd Ed., by Price and Duody, para. 12.01. The same requirements of the defence are stated in similar terms in *Gatley on Liable and Slander*, 10th Ed. [2004], para. 14.43 (see also *Watt v Longdon* [1930] 1 KB 130).
31. The role of a Director General in a Ministry of Government is a very senior and important role in the public service. The Director General carries heavy responsibilities. Many people within the relevant ministry will report to the Director General, and also receive directions and instructions from the Director General. The public has a right and often a need to know who holds the office of Director General for a Ministry. It is to that person who other ministries, government agencies, international bodies and members of the public may be required to communicate on matters of security, public order and good governance. For these reasons the community at large has an interest in knowing who holds the position of Director General for a ministry, and an interest in knowing if there is any change or disruption in that office. And the Government has a corresponding duty and interest to ensure that the community at large is aware of these matters. In my opinion a commonality of interest existed between the government and members of the community at large to know that the holder of the office of Director General of an important department had been suspended, and that another identified person had been appointed to fulfil the duties of that office during the period of suspension. In short it was a matter of public interest.
32. The public interest in this case concerned not just the holder for the time being of the office of a Director General, but also an event of major significance in the course of the ongoing well publicised fact of an investigation into sales and leases of State residential land.
33. The issue for the government was how to fulfil its duty to inform members of the community at large that the Claimant had been suspended. An announcement of some sort by the government was essential for this purpose. That the announcement should be made quickly and effectively to a wide audience in the community was in my opinion so important that it was entirely reasonable for an appointed spokesman for the government to make the announcement to the leading newspaper outlet in the Republic. This would ensure that the information was communicated quickly to the wide community that had an interest in receiving it.
34. In my opinion this is a clear case where the report of the government to the Daily Post and in turn picked up by the other media outlets was covered by qualified privilege. The public interest is very plain here.
35. It is understandable that the Claimant and his family felt seriously aggrieved by the government's announcement, but such feelings of aggrievement are from time to time the inevitable side wind of public office. Unfavourable press against the office holders does occur from time to time, and if the publication of the material is made in the public interest and meets the requirements of

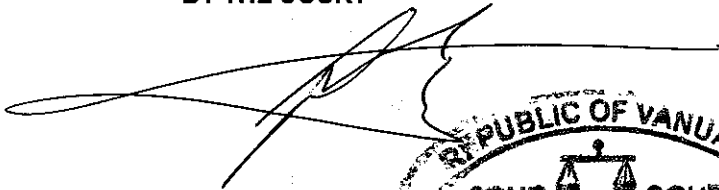


reciprocity the publication will be protected from defamation action notwithstanding that it has aggrieved the person whose character is impugned.

36. For the above reasons, I consider that the claim made in this action must fail and be dismissed. The dismissal of the claim must carry the inevitable consequence that costs follow the event, and the Claimant is ordered to pay the party and party costs of the Republic either agreed or assessed.
37. I note that preceding the delivery of this judgment, the parties have been in discussion about the settlement of the proceedings as authorised in a judgment of another judge of this court delivered on 15th November 2023. Unfortunately the parties were unable to reach a settlement, and at the request of the parties dated 24 May 2024 this judgment is now delivered to conclude the proceedings.

DATED at Port Vila, this 17th day of July, 2024.

BY THE COURT


Hon. Chief Justice Vincent Lunabe

