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G.H.2.G.T. 24, 1957

No. 1 of 1956.

In the Privy Council

ON APPEAL
FROM THE WEST AFRICAN COURT OF APPEAL (GAMBIA).

UNIVERSITY OF LONDON

25 FEB 1958

INSTITUTE OF ADVANCED
LEGAL STUDIES

BETWEEN

P. S. N'JIE Appellant

49832

AND

C. S. T. EDMONDSON Respondent.

Case for the Respondent

RECORD.

10 1. This is an Appeal from a Judgment of the West African Court of Appeal (Foster-Sutton, P., Smith, C.J. (Sierra Leone), and Coussey, J.A.) dated the 30th day of June 1954 whereby the Judgment of the Supreme Court of Gambia (Miles, J.) awarding £1,000 damages with costs to the Appellant for an alleged libel by the Respondent was set aside, judgment entered for the Respondent and the Appellant ordered to pay the Respondent's costs in both courts.

20 2. The action was commenced by a writ of summons dated the 18th day of May 1953 naming the Respondent as Defendant. An amended writ of summons dated the 5th day of June 1953 named the Respondent and one Sanjali Bojang and one Arthur Dudley Baker as Defendants. The original Statement of Claim dated the 4th day of June 1953 named these three persons as Defendants. The Respondent filed a defence dated the 19th day of June 1953 and a further amended writ of summons was issued on the 11th day of August 1953 naming only the Respondent as a Defendant. An amended Statement of Claim dated the 10th day of August 1953 naming the Respondent only as a Defendant was answered by an amended Defence dated the 26th day of August 1953. Finally a further amended Statement of Claim dated the 9th day of November 1953 was answered by a further amended Defence dated the 10th day of 30 November 1953:

p. 1.
p. 2.
pp. 4-5.
pp. 6-7.
p. 8.
pp. 9-10.
pp. 11-12.
pp. 13-14.
pp. 15-16.

3. The Appellant, who is a Barrister-at-law and a Solicitor of the Supreme Court of Gambia, by his further amended Statement of Claim alleged that on the 28th day of April 1953 the Respondent falsely and maliciously wrote and forwarded a letter to the Attorney-General of the Gambia to which was annexed a statement in writing made by the said Sanjali Bojang; that the Respondent in his said letter stated that the

p. 13, ll. 10-13.
p. 13, ll. 14-19.

complaint of the said Sanjali Bojang as stated in his said statement "in effect amounted to an allegation of forgery" and his instructions were to take proceedings to cancel the alleged deed of conveyance on the ground that it was not signed by his client and was in fact a forgery on the part of the Appellant; that in this said statement the said Sanjali Bojang said :—

p. 13, l. 20.

p. 13, l. 20 - p. 14, l. 24.

" I am the owner of No. 7 Denton Street, property in Bathurst (Gambia). I bought this property in 1946 from Thomas Collingwood Faye, deceased. The title-deeds were in my possession up to December 1950 when I gave them to P. S. N'Jie Barrister-at-law 10 as security for a loan of £100.

" In 1949 P. S. N'Jie loaned me £125 and took my title-deeds as security. That was during the rains. During the trade season I paid him back the £125 and he gave me back my title-deeds.

" In December 1950 I again approached P. S. N'Jie for a loan of £100. I offered my title-deeds as security against payment. P. S. N'Jie drew up a paper which he read and explained to me in the presence of Kari Fofanna. From what we understood this paper was to the effect that he, P. S. N'Jie, was buying my property for £1,000. I did not offer to sell my property and did not receive 20 £1,000 from P. S. N'Jie. Therefore I did not agree to sign that paper. Kari Fofanna also did not agree to sign it. P. S. N'Jie then tore the paper in our presence. He made another paper, which he read and explained to us. I believe it was a loan agreement like the one we had signed in 1949. I therefore signed and felt sure that my witness, Kari Fofanna, would also sign it. But Kari Fofanna did not agree to sign it. He said that, to him, it was like the sale paper which P. S. N'Jie had torn in our presence. P. S. told us we had nothing to fear; that whenever I paid him back the loan of £100 he would return my title-deeds to me. I believed him and 30 so I took the money.

" When I paid back the first loan of £125 to P. S. N'Jie he gave me a receipt together with my title-deeds. This year, before the end of the trade season (May/June) I paid back the loan of £100 to P. S. N'Jie and asked him to give me back my title-deeds. He gave me a receipt which I could not read. I cannot read or write English. Afterwards I was informed that the receipt said that I paid £100 to P. S. N'Jie for safekeeping. P. S. N'Jie had never kept any money for me before. I suspected nothing because he told me to come back another time for my title-deeds. 40

" In two to three days' time I went back. P. S. N'Jie then told me that I had signed to say that he had bought my property for £1,000. We altercated. I asked how could I sell my property to him for £1,000. He said he had no time to waste; he also told me that he had sold the property. I was upset. But I did not believe it. So I waited patiently to see how he could do that.

" In November last I received a message from one Kebba N'Jie who sent to tell me that P. S. N'Jie had sold my property to him,

and that he would like to come and view it. I replied to say that he could come. Next day in the afternoon Kebba N'Jie came with some of his friends. He told me that P. S. N'Jie had informed him that I was paying him rent of £15 a month for my property. I denied the allegation. I have never paid a farthing rent to P. S. N'Jie or to any one before, since I bought No. 7 Denton Street, in 1946. P. S. N'Jie never called for settlement of the loan of £100. He never told me that ' (He was '—torn part of page ?) selling my property."

- 10 The Appellant therein further alleged that by forwarding the said letter and statement to the Attorney-General the Respondent had falsely and maliciously published the alleged libellous statements ; that they had been published of the Appellant as a legal practitioner ; that the Appellant's reputation had been injured and he claimed £5,000 damages.

p. 14, ll. 25-27.
p. 14, ll. 28-29.
p. 14, l. 33.
p. 14, l. 34.

4. In his Defence the Respondent, who is also a Barrister-at-law and Solicitor of the Supreme Court of Gambia, admitted that he forwarded a copy of the said statement to the Attorney-General with a letter ; that in the said letter he did say that the complaint of the said Sanjali Bojang amounted to an allegation of forgery and that his instructions were to take proceedings to cancel the alleged Deed of Conveyance on the ground that it was not signed by the said Sanjali Bojang and was in fact a forgery on the part of the Appellant, but contended that his relationship with the said Sanjali Bojang was that of solicitor and client and that it was with a duty and interest that he wrote and published the said letter and statement to the Attorney-General who had a corresponding interest and duty to receive them ; that the letter contained fair and impartial statements and was written and sent bona fide along with a copy of the said Sanjali Bojang's statement in the honest defence of his client's interest and without any malice towards the Appellant and by reason of the occasion on which it was written and published the words complained of in the said letter and the said statement were privileged.

pp. 15-16.
p. 15, l. 18.
p. 16, ll. 15-21.
p. 15, ll. 16-17.
p. 15, l. 27.
p. 15, l. 29.
p. 15, ll. 30-35.

5. At the trial the Appellant, who appeared in person, gave evidence that subsequent to the said letter the Respondent had commenced an action on behalf of the said Sanjali Bojang to have the said Conveyance set aside and that the action had failed ; that in 1950 the Respondent had written to the Attorney-General on behalf of a client asking him to request the Appellant to let him know the position as to a certain estate as the client had not been able to obtain her share ; that in fact he had had nothing to do with the estate ; that after the writ in the present action the Appellant had told the Respondent that the correct thing to have done if he believed his client was to take out civil proceedings to have the said Conveyance cancelled and the Respondent replied " how can I do that when I don't believe the man " and had shown him that the said statement was unsigned.

p. 18, l. 17-p. 20, l. 19.
p. 18, ll. 26-28.
p. 18, l. 45-p. 19, l. 12.
p. 19, ll. 15-24.

6. In cross-examination the Appellant agreed that with the alleged libellous statement and letter had been enclosed a copy of a letter from him to the Respondent setting out his version of his negotiations with the said Sanjali Bojang.

p. 21, l. 6-p. 22, l. 21.
p. 21, l. 7.

p. 20, ll. 22-25.

p. 23, ll. 1-34.

p. 20, l. 28-p. 21, l. 4.

p. 24, ll. 5-28.

p. 24, l. 30-p. 25, l. 3.

7. The Attorney-General gave evidence that he had received the letter and had caused investigations to be made. The acting Superintendent of Police said that he had made certain enquiries. The Chief Clerk to the Attorney-General, the said Arthur Dudley Baker, gave evidence that he had opened the letter which was not marked confidential. One St. Clair Joof said that he had been shown the letter by the Chief Clerk, who denied this.

p. 25, l. 31-p. 26, l. 21.

8. The Respondent called no evidence but submitted that the occasion was privileged and that there was no evidence of malice.

pp. 27-31.

9. The learned trial Judge gave judgment on the 16th November 1953 in favour of the Appellant. In the course of his judgment he held that the occasion was privileged and said :—

p. 28, ll. 3-15.

“ The Defendant is in my opinion correct in stating, as he did in his letter, that it was necessary for a criminal remedy to be pursued before civil proceedings are commenced where the civil suit is based upon an alleged crime, i.e., a felony by the other party. See *Smith v. Selwyn* [1914] K.B. 98. The crime imputed to the Plaintiff was a felony, viz., forgery contrary to section 329 of the Criminal Code. The Attorney-General was in my opinion the correct authority to whom to refer the matter since he performs in this territory the duties of Director of Public Prosecutions. The Defendant had a duty as Solicitor for Sanjali Bojang to take whatever steps were necessary to prosecute Sanjali Bojang’s claim against the Plaintiff. I hold therefore that the letter and statement were published to the Attorney-General on an occasion of qualified privilege. And if the matter rested there the case for the Plaintiff would fall to the ground.”

p. 29, ll. 16-19.

10. The learned Judge, however, held that the Respondent did not honestly believe the information upon which he acted and that this was of itself strong evidence of malice, and further held that the following matters also showed a malicious intention :—

p. 29, ll. 20-32.

(1) “ The recklessness with which the charge was made.” The learned Judge held that the Respondent had acted on the unsigned statement of Sanjali Bojang whom he had not seen and in face of a letter of explanation from the Appellant.

p. 30, ll. 1-13.

(2) “ The excessive publication of the libel ” by failing to mark the letter private or confidential.

p. 30, ll. 14-20.

(3) “ The allegation . . . that the deed of conveyance was not signed by his client and was in fact a forgery on the part of Mr. N’Jie is not borne out by anything in the annexed statement.”

p. 30, ll. 21-25.

(4) “ The Defendant ” (Respondent) “ had on a previous occasion in 1950 libelled the Plaintiff in a letter to the then Attorney-General.”

p. 30, ll. 26-33.

(5) “ The failure of the Defendant ” (Respondent) “ when he forwarded the statement of Sanjali Bojang to the Attorney-General to enclose the copy of the tenancy agreement which had been sent to him by the Plaintiff ” (Appellant).

(6) The conduct of the Respondent in the proceedings in failing to give evidence and yet through his advocate imputing to the Appellant the "deliberate fabrication of evidence." p. 30, l. 34-p. 31, l. 5.

The learned Judge then awarded £1,000 damages and costs. p. 30, l. 20.

11. The Respondent by Notice of Appeal dated the 25th day of November 1953 appealed to the West African Court of Appeal on the following grounds :—

10 (1) That there was no evidence of malice sufficient to destroy the defence of privilege as the Defendant had a duty to make the communication to the Attorney-General. p. 32, l. 16-p. 33, l. 5.

(2) That the learned trial Judge misdirected himself in law.

PARTICULARS OF MISDIRECTION

The learned Trial Judge was wrong in law in holding that the defence of privilege was destroyed because the Defendant did not honestly believe the information upon which he acted, the Defendant having a duty to make the communication to the Attorney-General.

(3) That the letter of the 28th April 1952 and the written statement attached thereto were not published recklessly.

(4) That there was no excessive publication of the libel.

20 (5) That the meaning of the word 'Forgery' in the letter complained of has been misconceived by the learned trial judge.

(6) That the Defendant had not on any previous occasion libelled the Plaintiff in a letter to the then Attorney-General or at all.

(7) That the failure of the Defendant to forward the copy of the tenancy agreement is no evidence of malice.

(8) That the failure of the Defendant to appear personally in Court or call any evidence is not evidence of malice.

30 (9) That the judgment cannot be supported having regard to the evidence.

(10) That the sum awarded as damages is excessive.

and further by an additional ground of Appeal dated the 10th day of March 1954 :—

"That the learned trial judge misdirected himself by holding that the several matters or any one of them referred to by him showed a malicious intention on the part of the Defendant and that they had the cumulative effect of proving malice on the part of the Defendant." p. 34, ll. 9-12.

40 12. The West African Court of Appeal in allowing the appeal agreed with the trial judge that the occasion was privileged, but held that there was no evidence of malice. Accepting the learned trial judge's finding pp. 62-66. p. 62, ll. 25-32.

p. 63, l. 25. that the Respondent did not believe his client's story, the Court held that in writing to the Attorney-General as he had done he was performing the ordinary duty of a solicitor. The Court further held—

p. 64, ll. 23-39. (1) That the failure to mark the envelope confidential was not so outside the usual procedure as to justify an inference of malice.

p. 65, ll. 1-14. (2) That the mention of forgery in the letter whereas the real complaint was obtaining a signature by fraud was not evidence of malice in that the facts were set out in the accompanying statement.

p. 65, ll. 15-23. (3) That the alleged previous libel was not libellous. 10

p. 65, l. 24-p. 66, l. 10. (4) That the instruction of his advocate to contest the correctness of the Appellant's version of an interview was not such conduct as to infer that he wrote the letter with a malicious intention to injure the Plaintiff.

p. 66, l. 14. In allowing the appeal the Court ordered the Appellant to pay the Respondent's costs in both courts.

13. The Respondent respectfully submits that the question of whether or not the Respondent being a solicitor believed his client's story was irrelevant and that it was his duty to act on it as he did, unless he knew that it was false; that the learned trial judge erred in holding 20 "the fact that the Defendant did not honestly believe the information upon which he acted is of itself strong evidence of malice" and that the other matters on which the learned trial judge relied did not either individually or collectively establish malice.

14. The Respondent further respectfully submits that by virtue of Section 329 of the Criminal Code of Gambia which reads:—

"Any person who, by means of any false and fraudulent representations as to the nature contents or operation of a document, procures another to sign or execute the document, is guilty of an offence of the same kind, and is liable to the same punishment, as if 30 he had forged the instrument"

the Respondent's comment that the statement of Sanjali Bojang "in effect amounted to an allegation of forgery" was correct.

15. The Respondent submits that this Appeal should be dismissed for the following among other

REASONS

(1) BECAUSE the trial judge and the Court of Appeal were right in holding that the occasion of the publication was privileged.

(2) BECAUSE the Court of Appeal was right in holding 40 that the evidence was not such as to justify an inference of malice.

- (3) BECAUSE the Appellant had not discharged the onus that was on him to establish malice.
- (4) BECAUSE the trial judge misinterpreted the duty owed by a solicitor to his client.
- (5) BECAUSE the Court of Appeal correctly interpreted the position and duty of the Respondent in the circumstances of this case.
- (6) BECAUSE the judgment of the Court of Appeal was right.

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AND

C. S. T. EDMONDSON *Respondent.*

Case for the Respondent

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