

Privy Council Appeal No. 1 of 1956

Pierre Sarr N’Jie - - - - - *Appellant*

v.

Charles S. T. Edmondson - - - - - *Respondent*

FROM

THE WEST AFRICAN COURT OF APPEAL

**JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL, DELIVERED THE 18TH NOVEMBER, 1957**

Present at the Hearing :

LORD REID
LORD SOMERVELL OF HARROW
MR. L. M. D. DE SILVA

[*Delivered by* LORD SOMERVELL OF HARROW]

This is an appeal by the plaintiff from a decision of the West African Court of Appeal setting aside a judgment in favour of the plaintiff of the Supreme Court of the Gambia. The plaintiff’s claim was for damages for libel. The defendant alleged that the occasion was privileged. The plaintiff disputed privilege and alternatively alleged malice. Both courts below held the occasion was privileged. The learned trial judge found malice and awarded £1,000 damages. The Court of Appeal set aside the finding of malice and entered judgment for the defendant. The plaintiff appeals.

The plaintiff and the defendant are both barristers-at-law. The libel alleged is contained in a letter sent by the defendant to the Attorney-General enclosing a statement purporting to have been made by one Sanjali Bojang. At that date the defendant was acting as solicitor for Bojang who wished to set aside a deed of conveyance of certain property executed by Bojang and conveying the property to the plaintiff. It is alleged in the statement that Bojang executed the conveyance on a representation by the plaintiff that it was an agreement for a loan of money. By section 330 of the Criminal Code a signature obtained by a fraudulent misrepresentation is a forgery.

The letter read as follows:—

“ C. S. T. Edmondson, Barrister-at-Law Solicitor Proctor etc., Phone F. 701	Lincoln Chambers, 13, Trelawney Street, Freetown, Sierra Leone, British West Africa, 28th April, 1953.
---	--

Sir,

On behalf of my client Mr. Sanjal Bojang of 7, Denton Street, Bathurst, Gambia I hereby lay before you his complaint against Mr. Pierre Sarr N’Jie, a barrister-at-law, practising in the Gambia.

I enclose herewith a copy of a statement brought to me by a messenger sent by Mr. Bojang from Bathurst. The facts of his complaint are therein contained. In effect they amount to an allegation of forgery.

My instructions were to take proceedings to cancel the alleged deed of conveyance on the ground that it was not signed by my client and was in fact a forgery on the part of Mr. N'Jie. As however civil suits involving allegations of crime on any particular matter should as a rule be stayed until the complainant has pursued his criminal remedy I am of opinion that the proper thing for me to do is to lay the matter before you for such action to be taken as you may think proper. A copy of Mr. N'Jie's letter of explanation to me is enclosed herewith.

I shall be grateful if you will cause full investigation to be made into the matter and such action taken, if any, as to you may seem proper. Mr. Bojang has with him a certified copy of the alleged deed of conveyance as well as other papers all of which I have instructed him to submit to you when called upon.

I remain to be,

Yours faithfully,

(Sgd.) C. S. T. EDMONDSON.

The Honourable
The Attorney General,
Bathurst,
Gambia."

As will be seen there was also enclosed a letter from the plaintiff. On receipt of the complaint the defendant had asked the plaintiff for his account of the matter. The plaintiff in his letter denied that there was any misrepresentation; he wrote that he had later sold the property and that Bojang was a tenant of the new owner paying £15 a month. It was not disputed that the statement was defamatory and the only defence was privilege. Civil proceedings were taken in 1953 by Bojang for the cancellation of the deed on the ground that it was not executed by him or was executed on a misrepresentation by the plaintiff. These proceedings failed.

The learned Judge found the occasion privileged.

"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."

The Court of Appeal agreed with the learned trial Judge on this point. The only points taken in the appellant's case are directed to the issue of malice.

Evidence was given by the plaintiff of an interview with the defendant on the 21st May, 1954. The writ of summons had then been issued and the civil proceedings started. The plaintiff's evidence appears in the note as follows:—

"After the issue of the writ in this action the defendant came to Bathurst. On 21st May 1953 I received a message in consequence of which defendant and I met in the library. The defendant asked why I had summoned him. I said 'well this is the second time you have done this thing and you know as a lawyer that the correct thing for you to have done if you believe your client was to take out civil proceedings to have the conveyance between myself and Sanjali Bojang cancelled'. He was sitting in a chair and I on the

table. He moved his chair closer to me and said 'how can I do that when I don't believe the man'? Look. The statement is not signed but I am going to get it signed today."

The defendant did not give evidence. The plaintiff relied on the defendant's statement that he did not believe Bojang as evidence of malice. He also relied on (a) the fact that the defendant had not seen his client or that Bojang's statement was unsigned; (b) an inaccuracy in the defendant's letter. That letter says that Bojang was saying he had not signed the conveyance, whereas in the attached statement he is admitting that he signed a paper but on a representation that it was a loan agreement; (c) the failure to forward a copy of the tenancy agreement between Bojang and the then owner. It is admitted that the defendant had a copy of this agreement; (d) his failure to mark the envelope addressed to the Attorney General as confidential; (e) an incident in 1950 when it was said the defendant had also libelled the plaintiff in a letter to the Attorney General and later apologised.

In finding malice the learned Judge put in the forefront of his reasons the statement by the defendant that he did not believe Bojang's story. The learned Judge cited various statements as to the necessity of honest belief. One example will suffice. "If the defendant honestly believed the statement to be true omission to make any enquiry is not in itself evidence of malice." The learned Judge states his conclusion in these words, "The fact that the defendant did not honestly believe the information upon which he acted is of itself strong evidence of malice."

Normally a defendant relying on privilege must honestly believe what he writes. In *Clark v. Molyneux*, 3 Q.B.D. 237, Bramwell, L.J., pointed out that there may be occasions when it may be proper to communicate a statement without believing it to be true. A barrister or solicitor if it becomes his duty to communicate facts as to which he is instructed may well be within this exception. Although the defendant's letter summarises, in one point inaccurately, the statement by the client it does not indicate personal belief. It encloses a statement from the person accused. Their Lordships for these reasons do not find evidence of malice in the statement made by the defendant to the plaintiff.

The points set out above under (a) and (b) are said to indicate a recklessness which was evidence of malice. The Court of Appeal said the defendant might have acted with more caution: it is true he had only the statement, but his client was a long way away. To have himself made further investigation would have meant delay and expense. The matter was put forward not as something established but as a matter for investigation. There is nothing in these points nor in the failure to mark the envelope and the slip in the letter which would justify a finding of malice. The Board agree with the Court of Appeal that the incident of 1950 in no way assists the plaintiff's case.

The learned Judge was of course right to take into account the fact that the defendant did not give evidence and in particular did not support by evidence the account of the interview put by his Counsel in cross examination. In surveying all the evidence it is important to remember that the defendant enclosed the plaintiff's own account of the transaction and his answer to the charges. There is also no evidence which suggests any personal ill will or any conceivable reason why the defendant should wish to harm the plaintiff. There is no question of taking a view different from that of the learned Judge on questions of credibility. Their Lordships are of opinion that the Court of Appeal were right in holding that malice had not been established. The reasons which have led their Lordships to this conclusion are substantially those given by the Court of Appeal. They will humbly advise Her Majesty that this appeal be dismissed. The appellants must pay the costs of the appeal.

In the Privy Council

PIERRE SARR N'JIE

v.

CHARLES S. T. EDMONDSON

DELIVERED BY LORD SOMERVELL OF
HARROW

Printed by HER MAJESTY'S STATIONERY OFFICE PRESS
DRURY LANE, W.C.2
1957