

BETWEEN: FRANKO AFKHAMI

Claimant

AND: ALEXANDER HAMID DARIUSH FAR

Defendant

Date of Hearing: 21st July 2021
Date of Written Decision: 18th February 2022
Before: Justice Oliver.A.Saksak
In Attendance: Mr Tom Joe Botteng for the Claimant
Mrs Tabisa Harrison for the Defendant
(Ceased Acting)

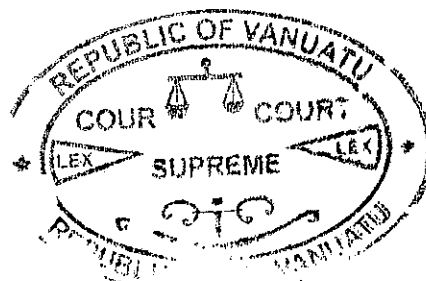
JUDGMENT

Introduction

1. The claimant claims damages for defamation in the sum of VT 8.000.000 and exemplary damages to be fixed, with interest at 12%, and costs.

Facts

2. The claimant alleges that the defendant falsely and maliciously wrote and published three emails that he alleges damaged his reputation.
3. The first email was one dated 30th July 2020 sent to one Greg Wilson and copied to Nasser Asasi, pleaded in paragraph 3 of the claim.
4. The second email was dated 3rd August 2020 alleged to have been sent to Nasser Asasi and copied to the claimant, pleaded in paragraph 6 of the claim.
5. The third email was dated 4th August 2020 alleged to have been sent to Tukana Yalita pleaded in paragraph 9 of the claim.



6. He alleges that the words used in the three emails in their natural and ordinary meanings meant the claimant is a “ mentally unbalanced person, has family related problems, is not trust worthy, is dishonest, and has committed a criminal offence, and is a dangerous and hateful person.”

7. The 30th July 2020 email reads:

[“ New Conman in Vila. Very funny public notice- Psychopath on the loose. Australian Federal Police and New Zealand Tax Department after him. Frank Fariborz Afkhami. His children are suffering from constant torture. His ex-wife trying to take her daughter away. His brother [f] his wife and ran away with the brother. Constant beating and malnutrition. Greg Wilson is a great name to hide under, you are reported to Police, and syphilis might not have killed you but has destroyed your brain whatever left of it”]

8. The 3rd August 2020 email reads:

[“ Franko, you sickman, the gloves are off”]

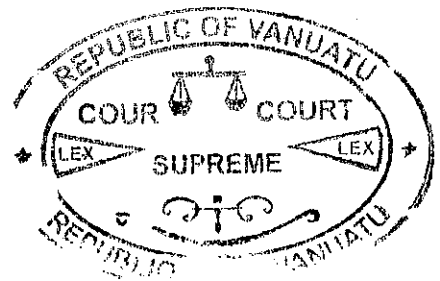
9. The 4th of August 2020 email reads:

[“Frank is a sick man not only mentally but physically he is sick. He is putting you in a lot of problems because of his hate with me. He is a desparate man, full of hate. His own family hate him. His wife excaped with his brother. You should not trust this man. You are going to end up in jail lying under Oath is a serious matter”]

10. The claimant alleges that he had been greatly injured in his credit, character, and reputation and that his office or occupation has been brought to hatred, ridicule and contempt.

Evidence

11. The evidence of the claimant in support of his claims are contained in his affirmed statement filed on 18th September 2020 in which he annexes the emails complained of and a medical report from Associate Professor Atifur Rahamn dated 29th January 2020.

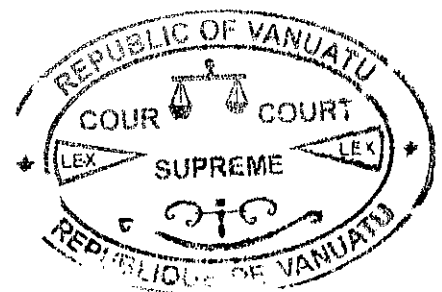


Defence

12. The defendant's agent Mr Nasser Asasi filed a response on 28th September 2020 indicating the claim was in dispute and that a counter-claim would be made. Mr Asasi filed a defence and counter-claim on the same date.
13. Mrs Harrison filed a proper defence on 2nd March 2021 but without any counter-claim.
14. The defendant generally denies the claim for defamation and counter-claims against the claimant for the sum of VT 80 million as damages plus 12% interest, and costs.
15. The defendant filed his sworn statement in support of his defence on 21st September 2020 and an additional sworn statement was filed on 27th July 2021.
16. As part of his counter-claim the defendant claims that the claimant's claims are frivolous and vexatious, and that they should be dismissed.
17. On the counter-claim the defendant has the onus of proof. The standard required is proof on the balance of probabilities. On the main claims, the claimant has the burden of proof.

Discussion

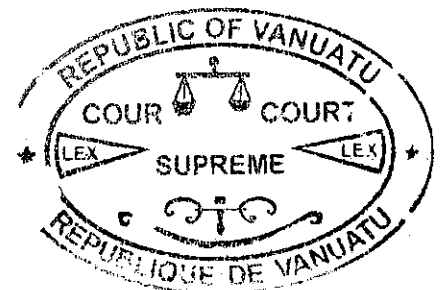
18. For clarification, this judgment is formulated on the papers without a trial. No parties served any notices to cross-examine each other's witnesses. The claimant filed and relied on written submission filed on 12th August 2021. The defendant being out of the jurisdiction and without a lawyer did not file any written submissions.
19. From the materials before the Court it is apparent that the claimant, the defendant and Mr Asasi, the defendant's agent were historically good friends. It appears apparent also that those relationships turned sour at some point, resulting in what now appears to be animosity that exists between them that provides a breeding ground for greed and revenge.



20. Whilst the claimant is claiming only VT 8 million in damages, the defendant is claiming VT 80 million damages as counter-claim. That is 80 times more than the claim of the claimant.
21. For the claimant to succeed in his claim for defamation he has to establish by admissible evidence three elements:
- a) That there was communication by the defendant to a third party,
 - b) That the communication conveyed an imputation concerning the claimant, and
 - c) That the imputation was defamatory.
22. It is also a requirement of proper pleading that the person to whom the impugned words were spoken or published be identified.

The 30th July 2020 Email

23. The claimant pleaded this in paragraph 3 of his statement of claim and states it was from Greg Wilson, copied to Nasser Asasi. He affirmed to this in paragraph 9 of his affirmed statement of 18th September 2020. He annexes chains of emails as “FA1”. These are irrelevant as they relate to incidents occurring in April and May 2020 and which are not pleaded in the claim.
24. The emails the claimant annexes as “FA2” are mostly irrelevant also. The only relevant emails are those dated 30th July 2020 and especially that transmitted at 10:52 am which is the subject of his pleading in paragraph 3 of the claim and paragraph 9 of his statement.
25. That is an email from the defendant to Grey Wilson. It is copied to Nasser Asasi. However it is an email in response to an earlier email of 9:36am on 30th July 2020. It records that Greg Wilson <gregolivierw2020@gmail.com> wrote:
- “ Public notice, 2 new conmans in Port Vila
Alexander Dariush Far NZ passport holder. Nasser Nasasi, Australian
passport holder.
Anyone has any issues, please contact us urgently.*



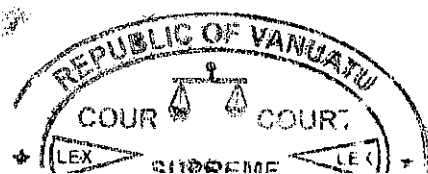
*He has 2 property on Devil Point RD,
Business: United Car Rentals and public bus business etc...
Regards,
Alex Far 0402022211 sent from Gmail Mobile.*

26. It is not indicated that it was an email from Greg Wilson to Alexander Far. However it appears the defendant received the email and at 10:52 on 30th July 2020 he responded in the words impugned as pleaded by the claimant in paragraph 3.
27. The email of 9:36am was about the defendant and Nasser Assasi. That of 10:52am was about the claimant from the defendant to Greg Wilson who the defendant and his agent claim is the claimant himself.
28. The claimant has not rebutted that claim by producing any evidence to the contrary to identify Greg Wilson as the Third party.
29. Furthermore these appear to be internal emails passing purely between the defendant, Greg Wilson and Nasser Asasi as close associates and friends whose relationship had gone sour.
30. Greg Wilson in turn on 31st July 2020, at 6:28am forwarded an email to Franko Afkhami, the claimant with the "*subject: fwd: New Conmans in Vila*", referring to the email of 9:36am on 30th July 2020.
31. Greg Wilson has not been properly identified by the claimant and is therefore in issue. Unless that is done, the Court cannot determine the elements of defamation as alleged.

The 3rd August email

32. This document is evidenced by the claimant as "FA4" showing it was from Alexander Dariush sent at 9:33 on Monday 3rd August 2020. The subject is:
*" Important Court documents to serve urgent. It is addressed to Nasser Asasi and " Frank afk", the claimant, it reads:
" Franko you sickman. The gloves are off."*

That is the part complained of by the claimant, however the email went further:



“ Due to Coronavirus travel restrictions you have to wait until I arrive to Port Vila. Just remind you on most transfer you have written gift. You are not entitled to any more money. All your loan has been paid off. When I return to Vanuatu you can serve your stupid documents. I suggest you check all your documents. Today I have send all your statements & medicate documents o ATO & New Zealand and Australian federal police. Good luck. ”

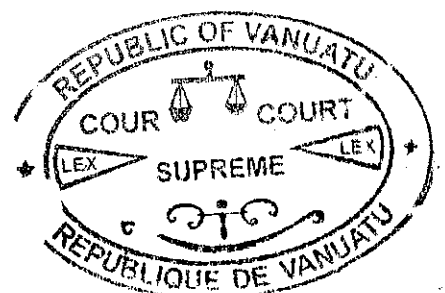
33. This was in response to an earlier email by the claimant to the defendant of 8.13am on 3rd August 2020 which reads:

‘ U must confirm, where can I serve the Court documents concerning my case against you and your business in Vanuatu. To your sweet home? Or Ur darling agents? I need immediate response from you. ’

34. Regarding this email there is no third party involved as identified by the claimant. Nasser Asasi was the defendant’s agent and may still be. The email was passing between themselves. The subject matter was service of Court documents and it was the claimant who started the chains of emails flowing. But it goes further to reveal how the defendant had assisted the claimant financially with his loans. Despite that favour all he gets in return is a Court claim. It is frustrating and annoying in the circumstances. The words said and complained of by the claimant are, in my view not defamatory.

The 4th August 2020 email

35. The claimant annexes this email as “FA6” to his affirmed statement. Again the claimant has not quoted the whole text, just the middle portion. It was an email sent by the defendant to Tukana of Manono Motors at 1:52 pm. The subject is “ *Important Court Documents.*”



36. Tukana of Manono Motors then sent or forwarded it to their lawyer Mr Tom Joe Botleng at 14:22pm on 4th August 2020. It was copied to the claimant.

It reads:

*“ Good afternoon lo yutufala. Find below latest email from Alex. Very serious threat. Have a read and advise . Regards,
Sent from Outlook mobile.”*

37. The subject is “ *Important Court Documents.*” It is not about the claimant. It was sent to Manono Motors. I doubt if it was intended by the defendant that the claimant should be copied. If it was, the defendant himself could have copied it. Therefore the words complained of by the claimant has not been shown to have been made by the defendant to a third party. And the words complained of could not be said to have been published by the defendant. And the words complained of are not defamatory, in my view.

The Result

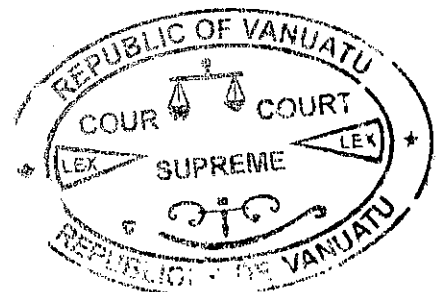
38. From those findings I am not satisfied the claimant has made out his case of defamation against the defendant. They are frivolous and vexatious claims. Accordingly all his claims fail and are dismissed.

The Counterclaim

39. I now turn to the Counter-claim of the defendant.

40. There was no proper counter-claim filed by the defendant despite indicating so in his response and despite Mr Asasi filing a counter-claim with the defence on 28th September 2020. He raises the VT 80 million damages for hurt and defamation in his statement of 21st September 2020.

41. I have indicated at the outset of my discussion at [19] that these claims have arisen as acts of revenge against each other. They are both frivolous and vexatious claims. As such no relief can be made in favour of the defendant either.




Conclusion

42. The claims of the claimant are dismissed. Costs lie where they fall and each party will bear their own costs.

DATED at Port Vila this 18th day of February 2022

BY THE COURT


OLIVER A. SAKSAK
Judge

