

IN THE HIGH COURT OF SIERRA LEONE(GENERAL CIVIL DIVISION)

BETWEEN:

HASSAN LEIGH - PLAINTIFF

AND

MAJOR SA FALAMA - DEFENDANT

E. A. Tarawallie Esq. for the Plaintiff

S. A. Conteh Esq. for the Defendant

RULING DELIVERED THIS 15th DAY OF JUNE 2022 BY HONOURABLE MRS. JUSTICE JAMESINA E. L. KING J.A

1. The Plaintiff/ Applicant by Notice of Motion dated 27th August 2021 applied for an order that this Honourable Court strikes out the Defendant/Respondent's Counterclaim in this action on the basis that the same does not disclose any reasonable cause of action, pursuant to Order 21 Rule 17(1)b of the High Court Rules, 2007.
2. The said Notice of Motion was supported by the affidavit of Hassan Leigh the Plaintiff/Applicant, sworn to on 21st August 2021 together with the exhibits attached to it. The Plaintiff's claim against the Defendant is for general damages for personal injuries, false imprisonment, exemplary damages and special damages, recovery of Le632,000 and a Tecno Spark 6 Phone and costs. The Defendant filed an appearance, defence and counter claim.
3. It is the Plaintiff/Applicant's belief based on information from his Solicitors that the counterclaim filed by the Defendant, praying inter alia general damages for defamation in its entirety and with specific reference to paragraph 22 appears to be extremely vague, confusing and unclear as to what it seeks to achieve. He further stated that he is informed by his Solicitors and verily believe that the particulars of defamation do not correlate with the allegation of defamation, and as a result the counterclaim does not disclose any reasonable cause of action.
4. Paragraph 22 of the counterclaim referred to states as follows:
"22. That as a result of the foregoing, the Plaintiff went to senior Officers of the Military where he smeared the name of the Defendant thus causing serious injury to his persons and personality."

Particulars of Defamation

- i. The Defendant was transferred from Battery Commander of the Republic of Sierra Leone Armed Forces to a general duty officer attached to the Military College.
 - ii. The Defendant was passed off for promotion."
5. There is an affidavit in opposition by Major S.A. Falama the Defendant herein sworn to on 28th November 2021 together with the exhibits attached to it. In his affidavit the Defendant recounted the actions of the Plaintiff that gave rise to the institution of the action for defamation, as he claimed that the Plaintiff smeared his name to senior officers of the military which caused him to be transferred.
6. Both Counsel for the parties made submissions to the Court. The substance of Counsel for the Plaintiff's submissions was that paragraphs 1 – 21 of the Defence and Counterclaim did not state how the defamation occurred or took place, paragraph 22 lacks details whether the alleged defamation was oral or in written form. He further submitted that the counterclaim was filed to delay the claims of the Plaintiff. He also submitted that the counterclaim did not state that as a result of the defamation he suffered loss.
7. Counsel for the Defendant submitted that the reference to O21 R17 (1)(b) relied on by the Plaintiff that the counterclaim is scandalous and vexatious is at variance with his Notice of Motion, which states that it discloses no reasonable cause of action. He relied on O18 R2 (1) that a counterclaim is as good as an originating process and must be weighed on its own merits devoid of the Writ. He submitted that the counterclaim met the requirements for an action alleging defamation and any further information will be disclosed at the trial, which Counsel for the Plaintiff is seeking to block. He submitted that the publication of the Plaintiff tarnished the character of the Defendant to his superiors in the military and also to the general public. He referred to Clerk & Lindsell of Torts, 15th Edition at page 897 at paragraph 20-03 which states that the plaintiff must in his pleading be able to set out with reasonable certainty the alleged defamatory words, and must state that the imputation published is false, and it is usual, though not necessary, to allege that it is malicious.
8. In reply Counsel for the Plaintiff stated that Counsel for the Defendant's submission that the information required will be answered when the case proceeds to trial runs contrary to the idea of full and frank disclosure and akin to trial by ambush or surprise. He reiterated that the Defendant must tell the court in what manner he was defamed, whether it was written words, spoken words or innuendo. He also submitted that the particulars of defamation have no nexus to defamation but are particulars of injury. He referred to Supreme Court Practice 1991 Vol 1 Order 82 under paragraph 82/b/2 at page 1550 -1551, and submitted that the Defendant must be able to couch the defence appropriately, and provide sufficient information regarding defamation.
9. From the submissions, I understand the complaint of the Plaintiff/Applicant to be that the Counter claim does not state the facts of defamation, the words complained of,

whether they were writing in oral form or were innuendos. Paragraph 18/7/13 of the Supreme Court Practice supra provides that in defamation actions, the words complained of must appear in the body of the pleading. The requirement to give particulars reflects the overriding principle that the litigation between the parties, and particularly the trial, should be conducted fairly, openly, without surprises and, as far as possible, so as to minimize costs. See paragraph 18/12/2 Supreme Court Practice supra.

10. In libel actions, the indorsement on the writ must state sufficient particulars to identify the publications in respect of which the action is brought, the precise words must be set out. See para 18/12/24 of Supreme Court Practice and *Harris v Warre* 1879 4 C.P.D. 125, and *Collins v. Jones* 1955 2 All E.R. 145, C.A. For slander, the precise words used and names of the persons to whom they were uttered must be set out in the statement of claim. Save in very exceptional circumstances, the plaintiff will not be allowed to prove at the trial publication to any person who is not named or identified in the statement of claim. See paragraph 18/12/42 Supreme Court Practice.
11. The question is does the counterclaim in this matter lack the necessary particulars the Plaintiff is entitled to. I have read the Defence and Counterclaim and in particular paragraph 22 and 23 which apparently makes reference to the defamation. As submitted by Counsel for the Plaintiff, I agree that the said paragraphs do not have specific particulars of the words complained of and how they were published. The said paragraphs leave the Plaintiff and the Court to speculate what were the words used to smear the name of the Defendant and what were the false reports made about the incident narrated which are defamatory of the Defendant. If the Plaintiff should respond to the allegations, it is but fair that they should be precisely set out in the particulars.
12. It is clear that the Defendant has averred giving particulars of the impact or injury he suffered as a result of the defamatory comments. It is noted that these words may have been made within the context of the incident of the alleged impersonation and arrest of the Plaintiff as a military personnel and what ensued thereafter as spelt out in the Defence but the counterclaim is devoid of the specific words defamatory of the Defendant.
13. The next issue is does the Counterclaim disclose a reasonable cause of action? A reasonable cause of action is a cause of action with some chance of success when only the allegations in the pleadings are considered. If the Statement of Claim disclose some cause of action, or raise some question fit to be decided by the Court, the mere fact that the case is weak, and not likely to succeed is no ground for striking it out. See Supreme Court Practice at page 349 under the rubric "*No reasonable cause of action or defence*".
14. The jurisdiction to strike out must be used sparingly as its exercise deprives a party of access to establish rights by way of trial and the opportunity to cross-examine and test the evidence presented. I will refer to Supreme Court Practice para. 18/19/13 which

states that where a pleading is defective only in not containing the particulars to which the other side is entitled, application should be made for particulars, and not for an order to strike out the pleading on the ground that it discloses no reasonable cause of action.

15. It is this court's view that in the absence of particulars, the Plaintiff/Applicant's application to this Court should have been for further and better particulars and not one for striking out the counterclaim on the basis that it discloses no reasonable cause of action.

16. Having regard to the pleadings, I am of the view that the Defendant's counterclaim discloses a cause of action as it cannot be described as a hopelessly useless claim to be discountenanced. What it lacks is to set out clearly the words complained of alleged to be defamatory, the form they were published and the specific names they were made to. Without attempting to comment on the Defendant's chances of success, which will depend on the evidence led at the trial, I believe that the parties are entitled to have their day in court and present their case for determination of the issues and their claims.

17. O. 21 Rule 12 (6) of the High Court Rules empowers the Court to order a party to serve on any other party particulars of claim or matter stated in the pleading or a statement of the nature of the case on which he relies and this may be made on such terms as the Court thinks just. Pursuant to this provision it is my view that justice will be served for the particulars of the Defendant's defamation claim to be provided to the Plaintiff so that he can adequately respond to the same.

18. In the circumstances, and having regard to the above, the Plaintiff/Applicant's application in the Notice of Motion dated 27th August 2021 to strike out the Defendant/Respondent's counterclaim is refused and I make the following orders:

1. Within 14 days of this Order the Defendant shall provide the Plaintiff with the particulars of the claim of defamation and in particular the following:
 - i. Exact words complained of alleged to be defamatory;
 - ii. Whether the words were spoken or in writing or any other permanent form or if they consisted of innuendos the particulars of same.
 - iii. When they were made and to whom giving details of the names of the persons they were made to and the circumstances and context made.
 - iv. Any other facts on which the claim of defamation is made for the Plaintiff to respond accordingly.
2. In his particulars, the Defendant shall comply with Order 21 R 12 (10) of the Rules.
3. The costs of this application be costs in the cause.

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HON. MRS. JUSTICE JAMESINA E. L. KING J. A