



S.C.
1962

BASMA
v.
SIERRA
LEONE
ADMINIS-
TRATOR AND
BASMA
Bankole Jones
J.

Section 14—"The title of the Official Administrator . . . shall relate back to, and be deemed to have arisen upon the death of, the owner of such estate as if there had been no interval of time between such death and appointment."

Section 15—"The Official Administrator . . . shall be deemed a trustee within the meaning of any imperial statute or local Ordinance, now or hereafter to be in force, relating to trusts and trustees."

I apprehend all this to mean that the first defendant, immediately after the death of the deceased, stepped into his shoes as a statutory trustee with no power whatever of sale unless in compliance with section 21 (1) of the Act referred to above.

It must be remembered that the Administration of Estates Act applies to the provinces in respect of the estates of deceased non-natives: see section 1. I, therefore, find that the first defendant acting in his capacity as Official Administrator ought not to have sold the buildings of the deceased, which I have held formed part of the land, without the consent of the plaintiff or an order of court or a judge having first been obtained. In doing so, I find, with respect, that he was wrong and I accordingly declare the sale to be of no effect and I order that it be set aside. The plaintiff will have the costs of this action as only relates, of course, to the first defendant.

[SUPREME COURT]

PRINCESS JAMES Plaintiff
v.
HUGO CHARTERIS, W. SPEAIGHT & SONS AND GEORGE
NEWNES LTD. Defendants

Freetown
Dec. 14,
1962
Bankole Jones
J.

[C.C. 472/59]

Tort—Libel—Imputation of smuggling, adultery and violation of insurance law—Damages.

Plaintiff was a married woman and a trader carrying on business in Koindu, Sierra Leone, near the Guinean and Liberian borders. First defendant was a journalist. Second defendant was the printer and third defendant the proprietor and publisher of "The Wide World," a monthly magazine with a wide circulation in Sierra Leone and elsewhere. In the issue of that magazine for July 1959, a story appeared which contained, inter alia, the following passages:

"Every Saturday she ran a market single-handed. All the stalls were hers and her monthly turnover in cash was about £10,000. Yet the store she lived in and her personal effects . . . would scarcely fetch £100. She had six children all by different husbands, receiving the best private education in Freetown. . . . She also ran a fleet of lorries on which no company would grant an insurance policy. Every week or so she would simply write one of them off and get another—and the one that was lost would become another landmark, upside-down . . . at the bottom of a watercourse, or skewed sideways into the bush. . . . Such misfortunes counted as less than nothing by Mrs. James.

“ Could she, I asked, tell me something about the diamond trade and smuggling? . . .

“ We told her that at Sefadu the British security officer had advised us against the risk of crossing into Liberia without visas. He had said that the Customs might skin us before they let us go. Mrs. James told us: ‘ If you want to cross into Liberia today, just ask me. I’ll give you “ visas.” And, I can assure you, you won’t be skinned by Customs; they depend on me for everything: food, drink, tobacco—everything. I’ll give you a letter for Joe. . . .’

“ Mrs. James sat down to write out her long ‘ visas ’ in beautiful flowing copperplate while we wandered out into the village.”

There was also a photograph of the plaintiff, beneath which appeared the caption “ Did Mrs. James, the wealthy storekeeper, know anything about the Bearded Diamond?”

Plaintiff brought suit for libel against the defendants, alleging that by the above words the defendants meant and were understood to mean that she:

“ (1) was dealing in the smuggling of diamonds and/or otherwise trading illicitly as her turnover was alleged to be 100 times more than the stock in the stalls;

“ (2) had six children by six different men whilst living with her lawful husband;

“ (3) contrary to the laws of Sierra Leone ran a fleet of lorries uninsured because their condition was so bad that no insurance company would grant her an insurance policy on any of them;

“ (4) as a result of her illegal dealings, she had so much money that she could afford to give her children the best private education in Freetown and could abandon any of her lorries involved in an accident and damaged and purchase another in its place;

“ (5) issued ‘ visas ’ unlawfully for persons wishing to cross the border from Sierra Leone into Liberia or in the alternative was a party in aiding and abetting persons in crossing the border into Liberia without visas by being in a position to influence the Customs authorities in Liberia by supplying them with food, drink and tobacco.”

The first defendant admitted that he had published the words to the second and third defendants. The second and third defendants admitted liability in respect of the words “ She had six children all by different husbands,” but, as to the other words, they denied that they bore the meaning imputed to them in the plaintiff’s statement of claim.

Held, for the plaintiff, (1) the words published were libellous, because they tended to disparage plaintiff in the conduct of her business and also reflected unfavourably on her personal character.

(2) The publication of plaintiff’s photograph in this context injured her reputation and brought her into contempt and ridicule, and was therefore libellous.

(3) Plaintiff was entitled to £7,500 damages, and also to an injunction restraining the defendants from further printing, publishing or distributing the libel.

Miss Frances Wright and Claudius D. Hotobah-During for the plaintiff.

Samuel Beccles-Davies for the first defendant.

Charles S. T. Edmondson for the second and third defendants.

BANKOLE JONES J. The plaintiff in this case was at all material times a married woman and a trader carrying on business in a town called Koindu in the then Protectorate of Sierra Leone now the provinces in the State of Sierra Leone. This town lies only a few short miles from both the Guinean and the Liberian frontiers respectively. The first-named defendant, Hugo Charteris, is a writer, author and journalist. The second-named defendants are the printers and the third-named defendants are the proprietors and publishers of "The Wide World," a monthly magazine having a wide and extensive circulation throughout Sierra Leone and elsewhere. In the issue of that magazine for July, 1959, and at pages 162-171, there is a continuation of a story, captioned "Police Whistles in the Forest," written by one, Hugo Charteris.

The alleged offending portions of this story are to be found at pages 163 and 165 respectively. At page 163 is to be found the following passages:

"Every Saturday she ran a market, single-handed. All the stalls were hers and her monthly turnover in cash was about £10,000. Yet the store she lived in and her personal effects—in K . . . that is—would scarcely fetch £100. She had six children all by different husbands, receiving the best private education in Freetown. It was said that she had visited Manchester, to advise manufacturers on the taste of African ladies in everything from invisible wire-spring girdles, worn around the navel and never removed, to the splendid variegated boubous which make a native market one vast explosion of brilliant colours. She also ran a fleet of lorries on which no company would grant an insurance policy. Every week or so she would simply write one of them off and get another—and the one that was lost would become another landmark, upside-down like a dead beetle at the bottom of a watercourse, or skewed sideways into the bush. Africans tend to drive like they drum, whole-heartedly. Such misfortunes counted as less than nothing by Mrs. James.

"Could she, I asked, tell me something about the diamond trade and smuggling? Her manner changed. There was a time, she said, when she held a diamond trading licence, but no longer. We said we would like to cross into Liberia and along the 'diamond route,' then visit the airstrip and the Liberian mine alongside.

"We told her that at Sefadu the British security officer had advised us against the risk of crossing into Liberia without visas. He had said that the Customs might skin us before they let us go. Mrs. James told us: 'If you want to cross into Liberia today, just ask me. I'll give you "visas." And, I can assure you, you won't be skinned by Customs; they depend on me for everything: food, drink, tobacco—everything. I'll give you a letter for Joe.' This remarkable statement, spoken in a rapid mixture of broken English and Creole, gave us the most extraordinary impression of life on the frontier.

"Mrs. James sat down to write out her long 'visas' in beautiful flowing copperplate while we wandered out into the village."

At page 165 a photograph is published of the plaintiff, the caption beneath which reads: "Did Mrs. James, the wealthy storekeeper, know anything about the Bearded Diamond?"

The plaintiff says that by the said words the defendants meant and were understood to mean that she:

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- “(1) was dealing in the smuggling of diamonds and/or otherwise trading illicitly as her turnover was alleged to be 100 times more than the stock in the stalls ;
- “(2) had six children by six different men whilst living with her lawful husband ;
- “(3) contrary to the laws of Sierra Leone ran a fleet of lorries uninsured because their condition was so bad that no insurance company would grant her an insurance policy on any of them ;
- “(4) as a result of her illegal dealings had so much money that she could afford to give her children the best private education in Freetown and could abandon any of her lorries involved in an accident and damaged and purchase another in its place ;
- “(5) issued ‘ visas ’ unlawfully for persons wishing to cross the border from Sierra Leone into Liberia or in the alternative was a party in aiding and abetting persons in crossing the border into Liberia without visas by being in a position to influence the Customs authorities in Liberia by supplying them with food, drink and tobacco.”

As a consequence, the plaintiff alleges that she has been seriously injured in her character, credit and reputation and has been brought into public scandal, odium and contempt because the said words were falsely and maliciously written, printed and published of her in the way of her business and in relation to her conduct therein.

The first defendant in his defence denies writing or causing to be printed or published of the plaintiff or of her in the way of her business or in relation to her conduct therein the words complained of. At the trial, however, his counsel said that his client was admitting liability for publication but only to the second and third defendants, who were entitled to have withheld publication. The second and third defendants admit that they printed and published the words and photograph complained of but deny that the same or any of them refer to the plaintiff. At the trial, however, their counsel admitted liability in respect of the words “She [the plaintiff] had six children all by different husbands,” because, as he conceded, to all those knowing the plaintiff in Sierra Leone and elsewhere these words bore the secondary meaning that she had these six children by different men whilst living with her lawful husband, a meaning which is clearly libellous of and concerning the plaintiff. As to the rest of the words, counsel denies that they bore the meaning imputed to them in the plaintiff’s statement of claim.

The plaintiff gave evidence that in February, 1957, and at no other time in her life, she offered hospitality to two white men and an African who arrived at Koindu and spent the night in her house. One of the white men told her he was called Hugo Charteris. The next day a conversation took place between them in the course of which he asked her about diamonds. She told him that she once had a licence to buy diamonds but this had been revoked. She wrote a note which she handed to a guide to give the Customs officers at the Liberian border in order to enable them to cross over because she knew how difficult it was for white men to be allowed into that territory. She did this only to help and did not regard her note as a “visa.” She told this Hugo Charteris of her visit to Manchester but said nothing about what appeared in the offending words in the story. She allowed him to take a picture of her store in which her boys were weighing palm kernels. She was then sitting at the end corner

of the store and did not realise that her picture as well had been taken. She first realised this when she saw it in a copy of "The Wide World" magazine of July 1959. Before they parted Hugo Charteris gave her a present of an Army Bible on which he wrote his name and which contained his photograph. Apart from all this, there is evidence that more than one person in Sierra Leone read the publication and saw the photograph of the plaintiff. Some of these persons expressed the view that the plaintiff "was a high-class prostitute and a disgrace to the community, particularly in helping the smuggling of Sierra Leone diamonds over the boundary." Also her child, then about 15 years of age, studying in England, saw and read the publication and wrote to tell her about it. The plaintiff was terribly hurt about all this and was upset and in a confused state of mind for a long time.

On the evidence, I have come to the clear conclusion that the gentleman who called himself Hugo Charteris and to whom the plaintiff proffered hospitality in February 1957, is the same gentleman named as the first defendant and who wrote and published the words complained of as well as the photograph of the plaintiff. It makes no difference whether he only published them to the second and third defendants. He would be equally liable if they were printed and published in the magazine referred to and found to be libellous. Now, apart from the words for which the second and third defendants have admitted liability, a question I have to decide is whether the other words bore or were capable of bearing any of the secondary meanings imputed to them by the plaintiff and, if so, whether they in fact tended to disparage the plaintiff in her business and in relation to her conduct of it.

Now, at the request of the first defendant's solicitor on an application for further and better particulars, the plaintiff's solicitor delivered the facts she relied upon in support of the meaning alleged in paragraph 4 of the amended statement of claim mentioned above. These were the particulars she gave:

- "(1) All the plaintiff's customers and friends in Koindu knew that her premises and stock were far in excess of £100 and it was common knowledge to the people there that it was not possible to make by lawful trade solely a monthly turnover of £10,000. Since the date of the publication of the article the plaintiff has been brought into hatred and contempt by the allegation that she was trading illegally and, therefore, was able to make a monthly turnover of £10,000.
- "(2) All the friends of the plaintiff knew that she had been married only once and had previously assumed, rightly, that all her children were by her lawful husband. Since the date of the publication of the article, however, the plaintiff has been brought into ridicule and contempt by the allegation that she had each of her children by a different man.
- "(3) Section 3 of No. 3 of 1949, Motor Vehicles (Third Party Insurance) Ordinance, 1949, reads: '(1) Subject to the provisions of this ordinance no person shall use, or cause or permit any other person to use, a motor vehicle unless there is in force in relation to the user of that motor vehicle by such person or such other person, as the case may be, such a policy of insurance or such a security in respect of third party risks as complies with the provisions of this ordinance. (2) If a person acts in contravention of this section he shall be liable on summary conviction to a fine of £100 or to imprisonment for one year or to both such fine and imprisonment. . . .' The plaintiff had only one

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lorry which was insured, no insurance company had ever refused to grant an insurance policy on any lorry she had ever owned.

“(4) The plaintiff had never at any time abandoned any of her lorries involved in an accident, nor had she ever had occasion to purchase a new one as replacement out of her own moneys.

“(5) The plaintiff had never been appointed by any government as a person authorised to issue and stamp visas and indorsements on passports.”

I accept generally the meaning placed by the plaintiff on the words published and find that they not only tended to disparage her in her business and her conduct of it but also involved a reflection on her personal character and trading reputation. I find that no one who knows the plaintiff in Sierra Leone where the magazine was sold out or elsewhere, reading the words in the context in which they appear in the story, can hardly fail to regard her as a woman of loose character who made her wealth by illicit trafficking in diamonds and indulged in other criminal practices in the pursuit of her business. Also, although in the publication it is stated that “actual names have been altered,” yet not only has the plaintiff’s true name been used but her photograph as well was published. Whilst it may be true that the publication of a person’s photograph without his consent is not actionable, however much annoyance it may cause to his personal feelings, yet if it is published in such a context as to injure his reputation or bring him to contempt or ridicule, which I think was the case here, it is libellous in law. On a consideration of the entire context, I find that the publication of the plaintiff’s photograph together with the caption “Did Mrs. James, the wealthy storekeeper, know anything about the Bearded Diamond?” was unwarranted and clearly libellous.

Having found that the words and photograph complained of were libellous in the manner alleged, I have now to assess the quantum of damages which ought to be awarded to the plaintiff. In doing so, I am bound to take into consideration the following matters, namely, (1) that on the evidence, the publication had a wide and extensive circulation in Sierra Leone, the home of the plaintiff, and also elsewhere; (2) that since the writ was issued in October 1959, all the defendants refused to withdraw the libel and/or offer an apology except in the case of the second and third defendants, who by their counsel at the trial on November 30, 1962, offered a verbal apology in court only as regards a portion of the libellous statements and none as regards the other portions. Such conduct on the part of the defendants, in my view, must aggravate the damages against them.

Counsel for the plaintiff referred me to some English cases as a guide to the question relating to the award of damages: I have read them all. For my part, I think that the facts disclosed in this case are really bad and suffocatingly so and call for an award of substantial damages. In the circumstances I award the plaintiff the sum of £7,500 against all the defendants jointly and severally. I also grant the injunction sought, namely, restraining the defendants and each of them, their servants and agents from further circulating or otherwise printing, circulating and distributing or otherwise publishing any copies of the said story containing the said libel.

The plaintiff will have the costs of this action against all defendants jointly and severally.