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IN THE COURT OF APPEAL
CIVIL JURISDICTION
NUKU'ALOFA REGISTRY

AC 20/2022
[CV 9 of 2019]

106/06/23

BETWEEN:

[1] TONGA WEEKLY NEWSPAPER LIMITED

[2] FAKA'OSI MAAMA

Appellants

-and-

MELE TEUSIVI 'AMANAKI

Respondent

JUDGMENT OF THE COURT

Court: Randerson J
White J
Harrison J

Appearances: WC Edwards SC for the Appellants
Respondent in person

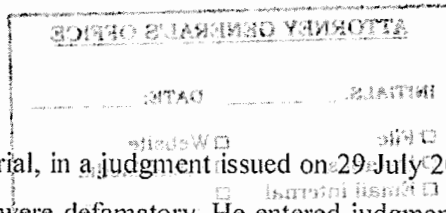
Hearing: 29 March 2023

Judgment: 6 April 2023

Introduction

[1] At all times Mele 'Amanaki was the Secretary General of the Public Service Association of Tonga (the PSA). In that capacity she issued a press release in 2014 critical of the then Tongan Government. The Tonga Weekly Newspaper (the newspaper), in which the government was the sole shareholder, responded by publishing three articles about and a photograph of Ms 'Amanaki.

[2] Ms 'Amanaki claimed that the articles and photograph were defamatory of her. She issued proceedings against the newspaper and its editor, Faka'osi Maama, in the Supreme Court of Tonga. Before trial, the Court entered judgment by default against Mr Maama on



liability. Following trial, in a judgment issued on 29 July 2022, the Lord Chief Justice found that the publications were defamatory. He entered judgment against the newspaper also and awarded Ms 'Amanaki general damages of \$30,000 and aggravated damages of \$20,000 jointly against the defendants . Both now appeal.

Background

[3] The facts are fully set out in the judgment under appeal. For the purposes of this appeal, we can summarise them as follows:

- (a) The PSA had for some years been negotiating with the Tongan Government for a Biennial Cost of Living Adjustment for its members. In 2013 it submitted a formal proposal to the government but it failed to reply. A subsequent direct submission to the then Prime Minister, Lord Tu'ivakano, met the same fate.
- (b) In 2014, in the ongoing absence of a reply from the government, the PSA issued a press release. Ms 'Amanaki was not named in the document. It called on Lord Tu'ivakano to resign as Prime Minister on the ground that he had directed an unlawful payment of TOP\$32 million to a company owned by a member of the royal family. It also called for legal action against a former prime minister for a similar payment of TOP\$22 million to the same entity. There was no evidence about whether the newspaper or other news outlets in the kingdom published the press release, but the Lord Chief Justice was satisfied that they likely had published it.
- (c) Lord Tu'ivakano reacted to the press release. He wrote two letters to the PSA denying its allegations of unlawful payments. He described them as "*political propaganda*". His correspondence recorded the government's decision to refuse to recognize the PSA's status as representing public servants and its intention to cease all future negotiations with the body. He sent copies of his letters to the chief executive officers of all government ministries.
- (d) On 13 March 2014 the newspaper published the Prime Minister's letters, not as reprinted text but as images, with an accompanying article. Together they

covered a full page of newspaper. Also included was a small photograph of Ms 'Amanaki in a black gown dancing at her niece's wedding. She does not complain about that photograph. However, the article concluded with a summary of Lord Tu'ivakona's second letter, referring to it in six places as a reply to letters from "*Mele 'Amanaki*", and opining that "*...it is very obvious the Mele 'Amanaki is using the Association to advance her political interests*". As the Lord Chief Justice noted, the newspaper treated Ms 'Amanaki as the PSA, not just one of its board members.

- (e) On 24 March 2014 Ms 'Amanaki, in her capacity as Secretary General of the PSA, replied to the Prime Minister's letters. Her letter addressed apparent legal difficulties facing the Prime Minister's stated refusal to recognize the Association's status and repeated its earlier calls for him to resign. Copies of this correspondence were sent to the newspaper with a request for it to publish but it failed to respond.

Impugned Publications

[4] Shortly beforehand, on 20 March 2014 the newspaper published a two page article by Dr Fotu Fisi'iahi, formerly a vice president of the PSA, which was critical of the Association's press release and its calls for the Prime Minister to resign. The article was accompanied by two photographs. We adopt the Lord Chief Justice's account of the circumstances as follows:

- [35] *On 20 March 2014, the newspaper published Dr Fisi'iahi's two-page article together with a photograph of the author in academic dress and another photograph depicting the Plaintiff sitting cross legged on the knee of a man seated on a couch in a room with a bed in the background. The man appeared to be asleep. The Plaintiff had her right arm around the man's shoulders and her right cheek was against his forehead. She was wearing a long sleeve dark top and a skirt, the side slit of which exposed part of her left thigh. The photograph was in black and white and measured somewhere between 1/6th and 1/8th of a page. The photograph is the subject of the Plaintiff's claim.*

[36] *The caption under the photograph of the Plaintiff read: "Mele 'Amanaki, the Secretary General of PSA and she is the one who wrote the letters which is supposed to be from PSA". The introduction to the article also referred to the Plaintiff as having written "the letter of PSA" to the Prime Minister.*

[37] *Dr Fisi'iahi deposed that he did not provide the photograph to the newspaper; that he respected the Plaintiff as a classmate from high school and a work colleague in Government, that her brothers were his friends whom he respected and that he "would never do such a thing as publishing an indecent photo of her in any newspaper".*

[5] The photograph of Ms 'Amanaki had been taken in January 2010. She was then attending a one-week meeting in China funded by the All China Federation of Trade Union Congress. She was there in her former capacity as Chair of the South Pacific Council of Trade Unions. Also present was a Fijian trade unionist, Daniel Urai. On Ms 'Amanaki's account, which the Lord Chief Justice accepted, she and Mr Arai had both attended a farewell reception along with about six other trade union friends. The group adjourned to a hotel room for concluding drinks. Mr Arai was the man shown in the photograph with Ms 'Amanaki. He had apparently fallen asleep from the effects of excessive alcohol consumption.

[6] The Lord Chief Justice found that the photograph was taken by another member of the group as a joke and was later emailed to Mr Arai along with other photographs taken that evening "*to surprise him*"; that the photograph was never intended by those present to be distributed beyond its members; that Ms 'Amanaki never gave permission for its publication elsewhere; and that she never again turned her mind to its existence. However, two years later it appeared on an anonymous website included within an article condemning Mr Arai and describing him as "*...asleep in the arms of Tongan trade unionist Mele 'Amanaki*". The article and photograph remain on the website.

[7] On about 27 March 2014 Ms 'Amanaki learned of the newspaper's publication of the photograph. She was shocked, and unaware that it had ever been published previously in Tonga. In evidence at trial Mr Maama said that one of his staff found the photograph online and he decided to publish it because he deemed it to be of "*public interest*". The Lord Chief Justice found that Mr Maama controlled all elements of the newspaper's publications about

Ms 'Amanaki; and that neither Mr Maama nor any of his staff attempted to contact Ms 'Amanaki before publishing the photograph. Shortly afterwards, acting on a direction from the PSA board, Ms 'Amanaki repeated her earlier requests of the newspaper to publish her replies to the Prime Minister's letters. The newspaper again failed to respond.

[8] On 11 April 2014 the newspaper republished the photograph, in black and white as previously. The accompanying article can no longer be located. The Lord Chief Justice accepted Ms 'Amanaki's evidence that the print size of the article was increased to half a page under the heading "*Disgrace to Tonga*". As a consequence of this second publication of the photograph, the executive board of the PSA called a special meeting to hear concerns from individual board members about their adverse perceptions of Ms 'Amanaki's behaviour while travelling overseas on the Association's behalf. In the event, after hearing from Ms 'Amanaki and others, the board accepted her account of the innocent circumstances in which the photograph was taken. Again, Ms 'Amanaki wrote to the newspaper to explain those circumstances, express her view that publication of the photograph was defamatory, and repeat her allegations about the government's unlawful payments. Again, the newspaper failed to publish her letter or respond.

[9] Whitten LCJ accepted Ms 'Amanaki's evidence about the importance of publication of a correction by the newspaper. She said that according to Tongan cultural norms most Tongans would view the photograph as improper or indecent without an explanation of its proper context and meaning. She was, it should be added, then a married woman with two teenage daughters.

[10] On 9 May 2014 the newspaper published the photograph for a third time. However, this time it was on the front page, in colour, and increased to more than half a page of print. A byline to the heading in larger than usual font stated.

"Mele 'Amanaki with the President of the Trade Union of Fiji, Daniel Arai. This photo and news has been distributed in Fiji and the world on the internet, which Mele is not happy with our newspaper to deregister, but it is not our photo or news. See inside"

[11] The article is fully reproduced in the judgment under appeal, but it is unnecessary for us to do so. What is relevant for these purposes is that it constantly repeats the theme of Ms 'Amanaki's alleged misconduct disclosed by the 2010 photograph. Some extracts will

suffice. The article refers to her as “...sitting on the lap of the leader of the trade union of Fiji which also showed that they are both drunk...it is being brought up as she is the leader of the PSA here in Tonga, this is something big...and she went overseas and conducted this indecent behaviour and it is a shame for Tonga and in the world...it is very much needed for Mele ‘Amanaki to resign as the image of Tonga is bad because of this woman.”

[12] These events triggered a raft of satellite defamation claims between various parties. A claim by Lord Tu’ivakano against Ms ‘Amanaki was discontinued after a decision by Paulsen LCJ that the payments which were the subject of Ms ‘Amanaki’s allegations were illegal. Otherwise it is unnecessary for us to refer that litigation.

Supreme Court

[13] Whitten LCJ summarized the essential elements of Ms ‘Amanaki’s claim as:

- (a) The newspaper and Mr Maama published, distributed and redistributed in all three publications the photograph of Ms ‘Amanaki which was “*not decent*” and made “*false and malicious statements and threats to defame and discredit her character after the PSA called on the Prime Minister to resign over the unlawful payments*”.
- (b) In their natural and ordinary meaning, the third publication of the photograph and accompanying article meant and were meant to mean that Ms ‘Amanaki was a prostitute, an irresponsible leader, a bad woman, a party girl and had acted wrongly.
- (c) The newspaper and Mr Maama published the material not caring whether it was true or not with the intention of injuring Ms ‘Amanaki’s reputation and character.
- (d) In publishing and republishing the material, the newspaper and Mr Maama were actuated by ill will, anger, malice and contempt in retaliation to the PSA’s call to the Prime Minister to resign.
- (e) The publications damaged Ms ‘Amanaki’s reputation and exposed her and her daughters to hatred, contempt and ridicule and caused them to be shunned by their peers.

[14] The Lord Chief Justice summarised the newspaper’s defence as being that:

- (a) The photograph was not defamatory;
- (b) Alternatively, the publication of the photograph and the articles were protected by the defence of qualified privilege because they were of matters of general public interest and were made bona fide by the newspaper in discharge of a legal, moral or social duty in which the newspaper and its readers were reciprocally interested¹
- (c) The newspaper attempted to maintain a balance between the conflicting calls for the Prime Minister to resign, the allegations made by Ms ‘Amanaki and the PSA, and the publication on the internet of a photograph of Ms ‘Amanaki and Mr Arai, and in that respect the newspaper performed and maintained its normal function of independently publishing the news and information for the benefit of its readers.

[15] Whitten LCJ noted that in argument Mr Edwards SC did not press the duty element of the qualified privilege defence. Nor did the newspaper rely on the defence of truth or justification. Instead Mr Edwards submitted that the photograph was not indecent or convey the imputations alleged by Ms ‘Amanaki but rather depicted “ *a lovely and friendly gesture to a fellow trade unionist ..*” notwithstanding Mr Maama’s allegation at trial that it caused the breakup of Mr Arai’s marriage. Alternatively, if the photograph was indecent, that indecency was created deliberately by Ms ‘Amanaki by “ *having the photograph taken and giving it out and subsequently having it leaked to the media* “. Alternatively, the defence of qualified privilege applied because the photograph was a matter of public interest and the newspaper bore no malice, hatred, ill will or intention to defame Ms ‘Amanaki.

[16] The Lord Chief Justice found that the photographic image was defamatory.² In summary that was because in “ *the ordinary and natural meaning of what it depicted , without a proper explanation of its provenance and context, and the purpose for which it was deployed by both defendants, it was calculated to, and did, damage [Ms ‘Amanaki’s] reputation, exposed her to contempt and ridicule and caused her to be shunned* “. In the absence of that proper explanation, he found that “ *...most Tongans were likely to have*

¹ Section 10 of the Defamation Act

² Section 2 of the Defamation Act

regarded it as indecent and interpreted it as [Ms 'Amanaki] having an improper relationship with Mr Arai" . In rejecting a submission that Ms 'Amanaki deliberately created an impression of indecency by posing for the photograph, Whitten LCJ found that it was the newspaper's publication of the photograph which imputed discreditable conduct to Ms 'Amanaki by creating a general or collective impression of unchastity or impropriety.

[17] In dismissing the newspaper's defence of qualified privilege as it applied to an affirmative claim of a reciprocal or common interest in publication, Whitten LCJ applied the three stage test formulated in *Reynolds*³ and found that:

- (a) first, the photograph was not a matter of real or sufficient interest to justify its publication. While the issue which triggered the initial publication - the PSA's call for the Prime Minister to resign following allegations of substantial unlawful payments - was indeed a matter of legitimate public interest, a photograph of Ms 'Amanaki taken four years earlier in a private setting was never part of or related to the story, especially where it was the PSA, not its Secretary General, which issued the press release and subsequent correspondence. It is not enough to assert that the defamatory material is presented against background material which is regarded as being in the public interest. The newspaper did not attempt to present the photograph as a real contribution to any public interest element of the originating article. The real reason for the two republications was Mr Maama's pursuit of a personal vendetta against Ms 'Amanaki after she complained about the newspaper's first improper use of the photograph, using its power of circulation to embarrass her as part of its retaliatory campaign.
- (b) second, for the same reasons, it was not reasonable to publish the photograph.
- (c) third, the publications of the photograph did not satisfy an examination into whether the steps taken to gather, verify and publish the information were responsible and fair. A number of factors were considered. But,

³ *Reynolds v Times Newspapers Ltd* [2001] 2 AC 127, applied in *Edwards v Tapueluelu* [2018] TOSC 21

decisively, neither the editor nor the newspaper took any steps at all for that purpose (Mr Maama admitted his negligence) in circumstances where the imputations conveyed by the photograph viewed in isolation from its provenance and context were serious and were likely to misinform readers. In this respect Whitten LCJ expressly rejected Mr Maama's evidence that he attempted to contact Ms 'Amanaki before publication to obtain her version of the relevant events surrounding the photograph

[18] The Lord Chief Justice was satisfied that, if his conclusion was wrong that the photograph was not published and republished on occasions of qualified privilege, the defence would have been defeated because the newspaper was actuated by ill will or used the occasions for an improper purpose. He was satisfied that Mr Maama was indifferent to the truth, and thus reckless. Mr Maama was to be treated as if he knew the untrue material to be false. The publications were not made bona fide. The factors outlined above led to his conclusion the newspaper and its editor were actuated by malice.⁴

[19] Having found against both the newspaper and Mr Maama on liability, Whitten LCJ awarded Ms 'Amanaki general damages of \$30,000 and aggravated damages of \$20,000. She had claimed amounts of \$600,000 and \$300,000 for general and aggravated damages respectively. He entered judgment jointly against both defendants for these amounts, and ordered them to pay costs.

Appeal

[20] Mr Edwards advances a number of grounds of appeal against the judgment on both liability and damages. We note, before addressing each submission, that despite Mr Edwards' assertions to the contrary, the appeal does not raise any novel or complex issues of defamation law. A detailed survey of the leading authorities is unnecessary. The principles applied in the Supreme Court are now well settled and will determine the result of this appeal.

(a) Publication

⁴ *Horrocks v Lowe* [1975] AC 135, applied in *Lange v Atkinson* [2000] 3 NZLR 385 at 401

[21] First, Mr Edwards submits that the Lord Chief Justice erred in finding that the newspaper and Mr Maama had defamed Ms 'Amanaki in circumstances where the publications were in fact a republication of a photograph, for which Ms 'Amanaki was originally responsible and took no steps to prevent; where Ms 'Amanaki deliberately positioned herself in a manner which was both uncommon and unflattering and in an unusual pose and ought to have known it was being published by the photographer; where Ms 'Amanaki was a senior administrator in the public service holding positions of trust and responsibility but chose to take a photograph of herself in a compromising position knowing well the likely consequences of publication, to which she contributed, and claiming that the photograph was a joke being played on an unconscious, unwitting and non-consensual person of whom Ms 'Amanaki took advantage and sought to denigrate; and the newspaper and its editor took no part in the original publication which caused the distribution and further publication of the photograph.

[22] We accept for these purposes that Ms 'Amanaki is to be treated by her participation as an original publisher of the photograph, and we accept that the newspaper and its editor played no part in it. In this respect Mr Edwards make much of the fact that the original photograph was published on the internet where it remains today. He says that all the newspaper and its editor did was to discover the photograph on that platform.

[23] However, the circumstances of Ms 'Amanaki's original publication, to the group present when the photograph was taken, are not the subject of her claim. Mr Edwards' detailed dissection of Ms 'Amanaki's motives in allowing herself to be depicted in a compromising pose is beside the point. His submission misapplies the principle of causation to assert that her publication in those circumstances, to that limited group and not to the internet, caused the newspaper to publish and republish it. Ms 'Amanaki's claim arises from the discrete circumstances and consequences of the newspaper's publication and republication of the photograph some years later . The operative cause of that publication and republication was Mr Maama's intervening decision to choose this particular photograph, rather than any other photograph which was publicly available. The Lord Chief Justice rightly found that this choice was consciously made for the express purpose of bringing Ms 'Amanaki's reputation into disrepute. In Mr Maama's own words, he chose it because he believed that Ms 'Amanaki had "*..lost her moral course*".

[24] Mr Edwards' argument does not challenge the heart of the Lord Chief Justice's finding that the photograph as published and republished by the newspaper, out of context and without an explanation, was defamatory of Ms 'Amanaki. When stripped to its essence, his argument is that she alone was responsible for, or at least contributed towards, the adverse imputations conveyed by the photograph. But that responsibility was limited to a small group. It did not extend to the subsequent publication on a Fijian website, for which another party was responsible. And it could not possibly extend to a decision for which the newspaper and its editor were solely responsible, to publish the photograph on three occasions at increasing levels of prominence designed to bring it specifically to the attention of the Tongan public at large.

(b) Damage

[25] Second, Mr Edwards submits that Whitten LCJ erred in finding that the newspaper and its editor had defamed Ms 'Amanaki where she failed to provide evidence that publication had affected her reputation; where she did not lose her position of employment with the PSA; where she considered that her personal position in Tonga had been diminished by the publications but her personal popularity and reputation had been improved by reason of her work and other professional associations with which she had since become involved; and where she herself had contributed to the publication by deliberately posing for the photograph.

[26] This argument is also misconceived in principle. The inquiry into whether a publication is defamatory is objective. The question is what the photograph would convey to the ordinary reasonable citizen of Tonga⁵. Ms 'Amanaki was not required to lead evidence that her reputation was in fact damaged or that she lost her position as a consequence of the publications.

[27] Ms 'Amanaki own opinion, given in answer to Mr Edwards in cross-examination, that her personal position in Tonga had been damaged could only possibly have been relevant to an assessment of damages (as we shall explain, we are satisfied that it was not relevant). But her opinion was irrelevant to the issue of whether the publication was defamatory. So, too, was her self assessment that her professional popularity and reputation had in fact

⁵ *Tikulja v Google LLC* (2018) 263 CLR 149 at [32]

improved since publication, which importantly she linked expressly to her own actions after publication. While it was also irrelevant to this inquiry that Ms 'Amanaki did not lose her position, the fact that the PSA Board called a special meeting after publication following concerns expressed by members is clear evidence of the extent of the damage caused to her reputation among a special group of the general public.

[28] Whitten LCJ correctly applied the objective test. As noted, he found that most Tongans were likely to have regarded the photograph in isolation as indecent and taken from it that Ms 'Amanaki was having an improper relationship with another man. It necessarily followed from that finding that the photograph was, as the newspaper and Mr Maama intended, damaging to her reputation and exposed her to contempt and ridicule and was thus defamatory.

(c) Truth and Qualified Privilege

[29] Third, Mr Edwards submits that the Lord Chief Justice erred in dismissing the affirmative defences for the reasons that the publication was truthful because Ms 'Amanaki, who is a well educated and experienced senior civil servant, deliberately posed in a compromising position and knew the consequences while travelling to Fiji on business in an official capacity and claimed to be playing a joke on a non-consenting unconscious man; and in these circumstances, and where she had as a representative of the PSA been an outspoken critic of the then Prime Minister and sought his resignation and had placed herself in a position where her character would be scrutinised once the photograph was discovered, the public has a right to know that during the course of her employment while overseas on work travel she takes compromising photographs of herself as a joke.

[30] This submission is an amalgam of arguments that the Supreme Court should have upheld the defences of truth and qualified privilege. However, the argument on truth is simply a variant on Mr Edwards' primary argument that Ms 'Amanaki was responsible for publication and the consequential damage to her reputation, and does not merit further consideration. We should add that it misconstrues the Lord Chief Justice's finding on truth. Contrary to Mr Edwards submission, he did not find that publication of the photograph was untrue. He found expressly that "...the imputations conveyed by the manner in which the

newspaper published the photograph were untrue". In reaching this finding he noted that neither the newspaper nor Mr Maama relied at trial on the defence of truth or justification.

[31] Mr Edwards' submission on qualified privilege is limited to the common interest limb as it was at trial. He pressed it firmly in argument on the premise that the photograph was relevant to Ms 'Amanaki's attack on the government.

[32] This argument must fail for the reasons given by the Lord Chief Justice. In legal terms, there was no reciprocity or commonality of interests in publication . It was the PSA, not Ms 'Amanaki, which criticised the government. The fact that she was a public figure who was photographed in a compromising position some years earlier was irrelevant to the subject of the PSA's criticism. The material was of no public interest whatsoever. But, even if it had been , that fact did not entitle the newspaper to drag in damaging allegations which made no real contribution to the public interest element of the underlying issue⁶. Moreover, the newspaper and its editor comprehensively failed the reasonableness and responsible journalism elements of the modern test. Even if they had satisfied those hurdles and established qualified privilege in the publications, the defence would have been defeated by the ample evidence that those publications were motivated by malice.

(d) Damages

[33] Fourth, Mr Edwards submits that the award of damages was excessive in circumstances where Ms 'Amanaki caused or contributed to publication of the photograph without any causal contribution by the newspaper or its editor, there was no damage to Ms 'Amanaki's reputation and nor did she lose her employment, and Ms Amanaki was not a high ranking citizen of Tonga and her reputation was not sufficient to warrant such a substantial award.

[34] We have already rejected the merits of these individual grounds when addressing the appeal against liability. We are not satisfied that any of them warrant interference with either of the two heads of the damages award or its total. The Lord Chief Justice had the benefit of hearing the evidence, enabling him to form a first-hand impression gained through the trial process of the cumulative impact of the newspapers' defamatory publications.

⁶ *Jameel v Wall Street Journal* [2006] 4 All ER 1279 (HL) at [51]

[35] In our view the repetition of the publications, coupled with the intemperate and inflammatory rhetoric which accompanied them, and the consistent refusal to publish Ms Amanaki's innocent explanation or correct its errors when pointed out, were of a particularly egregious nature. This conduct was plainly designed as part of a deliberate but high risk strategy of attacking Ms 'Amanaki's reputation with increasing intensity in retaliation for the PSA's criticisms, since vindicated, of the legality of the then government's substantial payments to third parties. Neither the newspaper nor Mr Maama can complain about the adverse financial consequences where their strategy had the desired effect but its foundation was fatally flawed.

[36] In fixing his awards, the Lord Chief Justice considered all the relevant factors in accordance with established authority.⁷ In summary he found that:

- (a) The publication imputed unchastity to Ms 'Amanaki. Thus she did not have to prove that she sustained any loss⁸. He rejected Mr Edwards' submission, repeated before us, that Ms 'Amanaki was only entitled to nominal damages.
- (b) General damage to reputation is to be presumed from a defamatory publication. Apart from vindicating that reputation, the purpose of an award is to provide consolation for personal distress and reparation for the harm suffered. In that respect the gravity of the defamation and Ms 'Amanaki's social standing were relevant. She was a person of good standing and repute, with a relatively high public profile. The publications had a distinctly adverse, if transitory, effect on Ms Amanaki's employment, leading to some PSA members calling for her dismissal. There was also the undeniable fact that many who read the publications believed and still believe them, sometimes known as the indelible stain of defamation.
- (c) The process of fixing an appropriate figure is one of impression, as we have noted, and is necessarily intuitive. In that exercise the whole

⁷ *Uren v John Fairfax & Sons Pty Ltd* [1966] 117 CLR 118 at 150; *Carson v John Fairfax & Sons Ltd* [1993] CLR 178 at 44

⁸ Section 17 of the Defamation Act

conduct of the publisher must be taken into account, as does the extent of publication. The newspaper was widely distributed on a weekly basis throughout Tonga and in other countries with a significant Tongan population, like New Zealand and Australia. Its conduct, as also noted, was particularly egregious and vindictive and in reckless disregard of the truth.

- (d) Finally, the importance of consistency in awards between closely comparable awards was recognised. The Lord Chief Justice surveyed a number of Tongan cases. He distinguished recent awards in New⁹ Zealand and Australia. He took particular account of the award in *Edwards v Moala*. There were some relevant similarities with this case. In 1999 the Supreme Court had awarded the successful plaintiff general damages of \$25,000 and aggravated damages of \$15,000. Taking account of inflation, the final awards in this case are significantly less.

[37] We endorse these specific findings. In total they justified what was a modest award in the circumstances of \$30,000 for general damages.

[38] We are not satisfied that the award of \$20,000 for aggravated damages was excessive. It was the minimum amount necessary to mark the aggravating conduct of the newspaper and its editor throughout the compounding series of three seriously defamatory publications.

[40] There is no cross appeal against the Lord Chief Justice's dismissal of Ms 'Amanaki's substantial claim for exemplary damages.

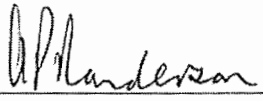
[41] Before us Ms 'Amanaki claimed that liability for the damages award should be fixed to run from the dates of publication, not from the date of judgment, and attract interest at a flat rate of 10%. We dismiss that argument. It was not the subject of a cross appeal and we note that liability for interest from the date of judgment is fixed according to a statutory rate.

⁹ *Edwards v Moala* [1999] TOSC 53

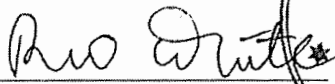
Result

[42] The appeal is dismissed.

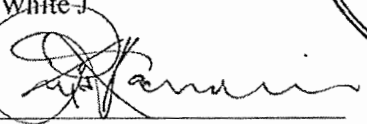
[43] As Ms 'Amanaki is self-represented, there will be no order for costs.



Randerson J



White J



Harrison J

