

IN THE SUPREME COURT OF TONGA
Appellant Division

AM 01-2009

MAKELETA UASI
Appellant

V

SETAITA 'AHOKAVA
UINA 'AHOKAVA
RespondentsBEFORE THE HON MR JUSTICE SHUSTER
MR K PIUKALA FOR THE APPELLANT
MR S T FIFITA FOR THE RESPONDENTS
JUDGMENT DELIVERED 27th MARCH 2009JUDGMENT AND RULING

This Appeal concerns a ruling in the Magistrates Court concerning civil case no. 245/08- a civil dispute concerning an allegation of defamation

On the 20th January 2009 the presiding Magistrate at LOPAUKAMEA made an order as follows.

1. UINA "AHOKAVA you are guilty of the charge
2. Pay \$100.00 within 2 weeks if not a distress warrant will be issued against you.
3. Each party is to pay his own costs

Notice of Appeal against the Magistrates Ruling was issued on 20th January 2008-9 and signed by MAKELETA UASI for the appellant. The Notice of appeal was duly served on the Supreme Court. The substantive hearing of this appeal took place on the 13-03-2009 with written judgment reserved until the 27th March 2009.

THERE ARE EIGHT GROUNDS OF APPEAL

1. This is a civil matter and the learned Magistrate has erred in law thus making an unconstitutional decision as stated above
2. According to the Appellants (Makelete UASI) evidence given under oath, the defamatory statements shown in civil case CV261/08 were statements incited by both defendants, however the 2nd defendant has apologised to the appellant and asked the Appellant to forgive him because it was the 1st defendant who started the slander.
3. The same explanation was given by Uilou SIALE who heard and saw UNIA apologise to Makeleta which is shown in the civil case number 261?08 instructed by Setaita 'Ahokava

4. If there was any fact then the defendant wouldn't dispute in open court or during the course of the trial, if those facts are not disputed then it is held to be true since it was not disputed
5. But it was surprising to the Appellant when Magistrate Poto covered up for the defendant Sataita "Ahokava since it was a civil case stating there was no evidence. But how about the statement given under oath by the appellant and Uilou SIALE?
6. This is an unfair decision, made by the learned presiding Magistrate, No legal foundation in law, thus made an unconstitutional decision.
7. And any further grounds at the time of hearing this matter
8. The counsel for the Appellant has a feeling that the said Magistrate has a personal feeling with him. There are numerous appeal made by this Counsel against the decision of the said Magistrate.

THEY PRAY FOR

- The decision made by the learned Magistrate be quashed, and the case returned to the lower court to proceed with another Magistrate.
- A strong direction to the Magistrate to avoid this kind of performance
- Any further orders that this honourable Court deem just.

THE MAGISTRATES FINDINGS OF FACT

According to the court record the Magistrate heard and considered oral evidence as per the court record.

After hearing the evidence the Magistrate concluded as follows:-

- In section 13 of the Constitution, there shall be no other reason for proceeding with the case, but what is shown on the face of the indictment. Now regarding Setaita 'Ahokava, witness number 2, there is no evidence given by her. I therefore discharge her from this case.
- The charge of Uina, according to Makeleta, she went to apologize to her. And that you were telling the truth, which was revealed to you by Setaita, in which that truth or fact was not questioned

Therefore there are three elements to defamation:-

- 1. Slander of defamation has taken place
- 2. The defamatory statements cause ridicule
- 3. It lowers the reputation of the plaintiff, since she is a married woman, and the defamatory statements have exposed her to hatred, contempt, causing her to be shunned.

MAGISTRATE'S JUDGMENT

Of concern, the Magistrate in this case did not appear to make or record any FINDINGS OF FACT UNLESS one looks at the record. Using item 3 above, under the heading there are shown three elements to defamation, quote, "It lowers the reputation of the plaintiff,

since she is a married woman, and the defamatory statement have exposed her to hatred, contempt causing her to be shunned.)

Neither did the learned Magistrate ask either of two counsels who appeared before him, for written submissions before he pronounced verdict and sentence-as below.

1. UINA "AHOKAVA you are guilty of the charge
2. Pay \$100.00 within 2 weeks if not a distress warrant will be issued against you
3. Each party is to pay his own costs

There was no means enquiry carried out.

SUPREME COURT RULING

I heard oral argument from both the appellant and the respondent in this matter on the 13th March 2009 and I reserved judgment of this matter until today. I have considered carefully all that was said in the Supreme Court and considered the paperwork submitted from the lower Court.

I have also considered the case of *Pa'ila v Ma'u (2002) TLP 114*- which clearly says - that a Higher Court will only interfere with the factual findings of a lower court in the clearest of cases- For example - if the appellant court was able to conclude the Magistrate's decision was unsound- or that the Magistrate clearly came to the wrong conclusion. In this case I can find no factual findings.

RULING

This case is a confusing case- that is primarily because the lower court record lacks detail and there are no Findings of Fact recorded for this case. In all future cases involving both civil and criminal cases then the Magistrates are to formally record their findings of fact and they are to formally ask for written submission from defence counsel appearing before them. The Magistrate is then to formulate and deliver in open court a written judgement because only if they adopt these principles will ordinary people obtain true justice

ORDER

This case is remitted back to the Magistrates Court for a rehearing before a different Magistrate, because I can find no findings of fact and I conclude the Magistrate may have come to or reached the wrong conclusion.



Shuster J
Judge of the Supreme Court