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**IN THE SUPREME COURT OF TONGA
NUKU'ALOFA REGISTRY
APPELLATE JURISDICTION**

AM 27 of 2015

BETWEEN: KALESITA LATU

Appellant

AND: NUKONUKA UELE

Respondent

BEFORE LORD CHIEF JUSTICE PAULSEN

**Counsel: Ms. M. Palelei for the Appellant.
Mr. O. Pouono for the Respondent.**

Date of Hearing: 20 April 2016.

Date of Ruling: 22 April 2016

RULING

[1] This is an appeal from a ruling of the Magistrates' Court in a civil action. On 4 June 2015, Magistrate Ma'u held that Ms. Kelesita Latu (the plaintiff at trial and the appellant in the present case) (Ms. Latu) and Ms. Nukonuka Uele (the defendant at trial and the respondent in the present case) (Ms. Uele) had each successfully established their respective claim and counterclaim for defamation. The parties' entitlements to damages were off-set one against the other and no costs were awarded. Ms. Latu now appeals this decision.

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The facts

- [2] It appears from the ruling that the facts were found by the Magistrate at the trial to be as follows.
- [3] On 15 November 2014, Ms. Latu was attending the Musie cemetery located in Navutoka with her husband, Mr. Fetu'u Latu (Mr. Latu), her three children, 'Emeline, Kakala and 'Alisi, and two others, Latu Militoni and Sione Fisi. Ms. Latu and her family were at the cemetery as a grandchild of Ms. Latu had been buried there the previous day (14 November 2014) and they were visiting the grandchild's grave.
- [4] Ms. Uele was also at the cemetery at this time, attending to the grave of her mother, 'Ataivai Muli, as she had been informed that the grave and the body of her mother had been damaged. It is not clear how Ms. Uele came to know about the condition of her mother's grave. Upon inspecting her mother's grave, Ms. Uele identified that her mother's body had been wrapped in a type of leaf that was thought to be used for destroying demonic spirits.
- [5] Ms. Uele collected the leaves in a plastic bag and then approached Ms. Latu and the group of people she was sitting with at her grandchild's grave. An exchange between the parties then occurred, although the order of events is not entirely clear from the translated version of the judgment and evidence presented at trial. However, the statements which are the subject of Ms. Latu's claim and Ms. Uele's counterclaim were made during this exchange and it

is therefore sufficient to focus on the evidence presented regarding these statements.

- [6] On the evidence presented by Ms. Latu in her claim and at trial, she asked what the leaves were after Ms. Uele threw the leaves at the group. Ms. Uele responded that she had found the leaves, which were used to cure a disease, at her mother's grave and that she was going to fight Ms. Latu. Ms. Latu then advised Ms. Uele to attend the police station to deal with matters. At this point Ms. Uele attempted to fight Ms. Latu and Mr. Latu pushed Ms. Uele away from his wife. Ms. Uele then yelled, according to the translation, "eat your mother who fucked relatives" at Ms. Latu and her children. Ms. Latu and the witnesses she called at trial denied the allegations made by Ms. Uele in her counterclaim that she was called a "stupid whore" or that she was told to "eat your mother who died in a sinful way".
- [7] In her evidence at trial and counterclaim, Ms. Uele did not dispute that she made the statement the subject of Ms. Latu's claim. However, she did argue that she said these words directly to Ms. Latu and not to the entire group of people at the grave of Ms. Latu's grandchild. She further argued that she made this statement in response to statements made by Ms. Latu's children, allegedly at Ms. Latu's instigation, calling her a "stupid whore" and telling her to "eat your mother who died in a sinful way".
- [8] At the hearing, both Ms. Latu and Ms. Uele called witnesses in support of their respective accounts of events and both made submissions to the Magistrate before judgment was entered.

[9] The Magistrate found on the balance of probabilities that Ms. Uele had made the statement "eat your mother who fucked with relatives" to Ms. Latu's children and that Ms. Latu's children did tell Ms. Uele to "eat your mother who died in a sinful way" and called her a "stupid whore", as Ms. Latu instructed them to do. He considered that the words spoken were defamatory and therefore did not dismiss either the claim or the counterclaim.

The grounds of appeal

[10] The grounds of appeal advanced by Ms. Latu amount to this. That Ms. Uele had pleaded in her statement of defence that it was Ms. Latu's children who had spoken words to the effect that Ms. Uele was a prostitute and that Ms. Latu's witnesses confirmed that no such words were in fact ever spoken. Even if the words were spoken by Ms. Latu's children, it was argued that Ms. Uele had to sue them for any damage to her reputation, but they were not parties to the action.

Discussion

[11] On an appeal such as this where the appellant seeks to challenge a primary finding of the trial Magistrate, this Court will only interfere if the Magistrate's finding was demonstrably improbable or contrary to the established facts or documents. That is not the case here.

[12] In his ruling the Magistrate found at paragraph 32 that words to the effect that Ms. Uele was a "stupid whore" and that she should "eat

her mother who had died in a sinful way" were uttered. He found that they were uttered by Ms. Latu's children, but at both paragraph 32 and 33 he said that Ms. Latu had persuaded her children to say those words. There was evidence available to the Magistrate from which he was entitled to make those findings. I refer to the evidence that the words were uttered given by Taufa Ma'u. Ms. Uele's third witness, Fane Fekau, is particularly important in this respect also as she said, inter alia, that Ms. Latu demanded that her daughter 'Emeline address Ms. Uele as a "whore".

[13] It is well established that a defendant in an action for defamation will be liable for any publication of defamatory words which she has authorised or in which she has participated. In this case the Magistrate found that Ms. Latu authorised the utterance of the defamatory words. There was evidence upon which he was entitled to make that finding. For that reason the appeal must fail.

Result

[14] The appeal is dismissed.

[15] Mr Pouono wisely accepted that it was best for all involved if costs should lie where they fall and I so order.



A handwritten signature in black ink, appearing to read "O.G. Paulsen", is written over a large, empty oval shape.

O.G. Paulsen

NUKU'ALOFA: 22 April 2016 **LORD CHIEF JUSTICE**