

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

---

AM 3 of 2019

BETWEEN:                      NESHA ROSIC  
- Appellant

AND :                              IAN JONES  
- Respondent

BEFORE HON. JUSTICE NIU

Counsel :              Mr. To'imoana Taufaeteau for appellant.  
                                 Mr. 'A. Pouvalu for respondent.

Hearing :              8 October 2019 at Neiafu, Vava'u

Ruling :              9 October 2019

**RULING ON APPEAL**

- [1] The respondent brought a civil claim against the appellant in the Magistrate's Court for \$10,000 for defamation and the Court held that the defamation was proved and awarded \$1,000 as damages and court costs and lawyers fees of \$1,082, both sums to be paid within 100 days in default of which a distress warrant be issued.
- [2] The appellant has appealed that the Court's decision was against the weight of the evidence, that the respondent had failed to prove that he had been defamed and that the appellant's evidence ought to have been preferred because it was supported by documentary evidence. In the main he says that the Court failed to consider that the

words complained of by the respondent were proved to be true and which was a complete defence to the claim of defamation as is provided in S.14 of the Defamation Act. S.14 provides as follows:

*“14. In any civil action for defamation of character proof of the truth of the defamatory matter complained of shall be a complete defence.”*

[3] The words complained of were contained in an email which the appellant sent to the respondent but which was copied to several other people. It read as follows:

“Sent : 9/27/2017 10:58PM

To : Ian Jones <ianjones@hotmail.com> Bruno Toke  
<bruno.tokev@gmail.com> Rae Gill <rae@whaleswim.com>  
cc : annah.whaleswim@gmail.com, Vanessa Jones  
<vanessajones2007@gmail.com> Lolesio Liu  
<lolesio.lui@gmail.com> beth@tongamail.com.

Well Ian, we are all familiar with your antics when it comes to commercial relationships and it is an issue for you and VTA because you act as your own VTA in first place, and you are harbouring and abetting shady overseas outfit that operates in Tonga without licence and is banned from operating in Tonga according to Nuku'alofa Ministry of Labour and Tourism, in second place. That is why you jumped on this email quickly.

If somebody is operating in Vava'u illegally defrauding local establishments and Tonga in general for years, as Whale Swim Adventures IE Rae Gill and Annah Evington did, and Nuku'alofa Government tells me that they are banned from ever operating in Tonga for that reason and they were surprised they are still operating, then it tells me somebody is taking protection money allowing them to do that.

If any you in VTA think Annah and Rae can rip me off for \$9,725.00 for meals and transport for her group that she collected from that group way in advance in order to pass it to you as protection to operate illegally in Vava'u, you are out of your mind. I was here when VTA was founded as Bruno can

attest and for the last 14 years never seen VTA being corrupted as this privatized VTA.

Screw you all, Nesha.”

- [4] It was not disputed that that email was received by those other persons or that there was communication or publication of the statements in the email to those persons, as is required by S.15 of the Act which provides as follows:

*“15. No civil action for defamation of character shall be maintainable unless it is proved that the defamatory matter complained of –*

*(a) Referred to the plaintiff; and*

*(b) Was communicated by the defendant to a person other than the plaintiff.”*

#### **The evidence**

- [5] From the transcript, the respondent gave evidence that the statements in the email were false and that they defamed him and his business and has affected his business and the future of his business. He stated that he never received any money as protection money from Rae Gill for Rae Gill to operate his business illegally. He said he was told by the VTA (Vava'u Tourist Association) to resign from his position of vice president because of this email. He said his business has lost by 20% as a result of the email. His wife gave evidence and said that this email upset her very much and that what it said was all lies.
- [6] The transcript also showed that the appellant gave evidence and called 3 witnesses to give evidence but nothing in their evidence proved that -
- (a) the respondent was “harbouring” and “abetting” any “shady” overseas outfit,
  - (b) that operates in Tonga,
  - (c) without licence, and
  - (d) is “banned” from operating in Tonga; or that
  - (e) Rae Gill and Annah Evington were “illegally defrauding local establishments”,
  - (f) as Whale Swim Adventures, and
  - (g) that they are “banned from ever operating in Tonga”, and that

- (h) there is somebody who is taking protection money so they could continue to operate illegally, and finally,
- (i) that the \$9,725 was paid by Rae Gill to the respondent "as protection to operate illegally at Vava'u".

[7] What they proved was that "Whale Swim Adventures" did not have a business licence, because the computer search which was made, as to whether it had a business licence, was to enter the name of the entity as that of "Whale Swim Adventure". I put to Mr. Taufateau that a business licence would need to be issued in the name of a natural person or of an incorporated body, like a registered company, and the name "Whale Swim Adventure" was not of a natural person or of a registered company, and he agreed. I also put to him that the evidence given therefore fell short of proving that the person who owned "Whale Swim Adventure" did not have a business licence. He agreed.

[8] I am therefore satisfied that on the evidence given at the trial in the Magistrate's Court, the appellant was unable to prove the defence he raised, namely, that what were stated in the email were true, and I am satisfied that the Learned Magistrate was correct to have held that the respondent had proved his claim against the appellant.

### **Conclusion**

[9] Accordingly, I order that the appeal of the appellant is dismissed with costs to the respondent, the amount of which I shall order after hearing both counsel. I direct that Mr. Pouvalu files and serves the appellant's bill of costs by 10 October 2019 and I shall hear both counsel in chambers at **9:00am Friday, 11 October 2019**, unless the costs are otherwise agreed.

NEIAFU: 9 October 2019



Niu J  
JUDGE