

1984 November 12

[TRIANTAFYLIDIS, P., L. LOIZOU AND HADJIANASTASSIOU, JJ.]

ETERIA ELLINIKE EKDOSIS "GLAFX LTD."

*Appellants-Defendants.*

v.

VASO LOIZIA,

*Respondent-Plaintiff*

(Civil Appeal No. 5728).

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*Libel—Defences—Truth of the publication and fair comment on a matter of public interest—Principles applicable—Section 19(a) of the Civil Wrongs Law, Cap. 148.*

5 *Damages—Libel—Principles on which Court of Appeal interferes with an award of damages made by the trial Court—Award of £1000 in this particular case not so extremely large as to make it an entirely erroneous estimate of the damage.*

10 In its issue of the 20th September 1974 "Mesimvri", a daily afternoon newspaper which was owned by the appellants, published an article\* which was held by the trial Court to be defamatory of the respondents. The trial Court, further, held that for the appellant to avoid the consequences of a defamatory publication they had either to prove the truth of the publication or fair comment; and that in the defence of truth both the alle-  
15 gations of facts as well as the comment in so far as it contained statements or conclusions of a defamatory character should be proved by the defendant as true. It further said that the defendant should not only prove that the facts were correctly stated but that, also, any comments thereon were correct. Re-  
20 garding the defence of fair comment the trial Court stated that by virtue of s.19(b) of Cap. 148 if the matter complained of was a fair comment on some matter of public interest it shall be a defence; and went on to state that the defendant should prove that the basis of the facts on which the comment was based<sup>1</sup>

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\* The article is quoted in full at pp: 731-732 post.

existed and could sufficiently constitute the basis of the comment; and that it is not necessary to prove the truthfulness of all the facts alleged and that the matter should be one of public interest. The trial Court after rejecting the defence of truth, dealt with the defence of fair comment and said that there was no statement of facts besides those referred to in the publication; and that the main facts on which the comment was based were untrue. The trial Court awarded to the plaintiff £1000 as damages; and hence this appeal. 5

*Held*, (1) that the trial Court approached correctly the factual and legal issues of the case and its exposition of the Law regarding the defence of "truth" and "fair comment" on a matter of public interest was correct; and that, further, it properly came to the conclusion, having regard to the evidence before it and the law applicable to the matter, to reject both these defences. 10 15

(2) That the amount of £1000 damages is not so extremely large as to make it an entirely erroneous estimate of the damage; and that, accordingly, the appeal must be dismissed.

*Appeal dismissed.*

Cases referred to: 20

*Shatterland v. Slopes* [1925] A.C. 55;

*Crawford v. Albu* [1917] A (South Africa 102);

*General Press Agency v. Christofides* (1981) 1 C.L.R. 190 at pp. 201-202;

*Constantinides v. Koureas* (1978) 1 C.L.R. 139 at p. 147. 25

### Appeal.

Appeal by defendant 1 against the judgment of the District Court of Nicosia (Stylianides, P.D.C. and P. Michaelides, D.J.) dated the 14th May, 1977 (Action No. 5048/74) whereby they were adjudged to pay to plaintiff the sum of £1000.- as damages for libel. 30

*A. Eftychiou*, for the appellants.

*E. Efstathiou*, for the respondent.

*Cur. adv. vult.*

TRIANTAFYLLIDES P.: The judgment of the Court will be delivered by Mr. Justice Hadjianastassiou.

HADJIANASTASSIOU J.: This was an appeal against the judgment of the Full District Court of Nicosia whereby the appellants  
5 -defendants were adjudged to pay £1,000 to the respondent-plaintiff as damages for libel.

*The Facts:*

In its issue of the 20th September, 1974 "Mesimvrini", a  
10 daily afternoon newspaper, which is owned by the appellants published the following article:

"Φαίνεται ότι το κομπλεξικόν δεσποινάριον, πού φέρει βαθμόν 'Υπαστυνόμου είναι άμετανόητον.

15 Διότι δέν έξηγηίται άλλως τó φαινόμενον νά μñν παρουσιάζεται εις τήν έργασίαν του άπό διμήνου και σκανδαλωδώς νά άμοίβεται. Τó φαινόμενον είναι άπαράδεκτον. 'Αλλά τó έξοργιστικόν εις τήν προκειμένην περίπτωσιν είναι ότι τó κορίτσι αύτό νομίζει ότι δικαιούται νά γυρίζη εις τás ρύμας και τás άγύϊας τής Λευκωσίας έπικεφαλής άναρχικών στοιχείων, έξάπτων τά μίση και πάθη, διεγείρον τήν ματαιάν  
20 έπιθυμίαν αύτου και τών όμοίων του νά έλθη ό προσφιλής ήγέτης διά νά μπορούñν νά άλωνίζουñ άνενόχλητοι.

Δέν κατενόησεν όμως ότι παρήλθεν άνεπιστρεπτι ή βασιλεία των. Νομίζομεν ότι καθήκον του 'Υπουργού τών 'Εσωτερικών κ. Νίκου Κόσιη και του 'Αρχηγού τής 'Αστυνομίας κ. Σάββα  
25 'Αντωνίου είναι νά καλέσουñ τó δεσποινάριον αύτό και νά του δηλώσουñ σαφέστατα ότι έδω δέν είναι κράτος άναρχικών πού τó ύποδαυλίζουñ άνθρωποι κατέχοντες άξίωμα εις τήν 'Αστυνομίαν.

30 'Εάν δέν άρέση στήν κοπέλλα, μπορεί νά πηγαίñη σπίτι της, όχι νά εύρίσκειται εις τás τάξεις του 'Αστυνομικού Σώματος και νά συνωμοτή κατά του κράτους".

("It seems that the complexical little lady who bears the rank of Inspector is unrepentant.

35 Because the phenomenon of not presenting herself to work and being scandalously paid cannot be explained otherwise. This phenomenon is unacceptable. The out-

ragous thing in the present case is that this girl thinks that she has a right to go round the streets of Nicosia, as a leader of anarchists, exciting hatred and passion, rousing the vain wish of him and his likes for the return of the beloved leader so that they can go about unobstructed.

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But she did not understand that their reign has passed without return. We think it is the duty of the Minister of Interior Mr. Nicos Koshis and the Chief of Police Mr. Savvas Antoniou to call this young lady and state to her clearly that this is not a state of anarchists which is incited by persons holding a rank in the Police Force.

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If the girl doesn't like it, she can go home, but not stay in the ranks of the Police Force and conspire against the state").

Respondent alleged in her statement of claim that the Article referred to her and constituted an actionable defamation: Appellants in their defence contended that the publication in question did not refer to the respondent, that its contents were true and that in any event it constituted a fair comment on a matter of public interest. Prior to, and after the publication, respondent was a female sub-inspector serving in the Police Force. She was well known in Cyprus and apparently to the readers of "Mesimvrini". Georghios HjiNicolaou, the person who is under the law responsible for the newspaper, in giving evidence for the appellants admitted that the publication referred to the respondent; and in the course of the trial learned counsel for the appellants in cross-examining the witnesses for the respondent and in examining in chief the witnesses for the appellants was referring continuously to the respondent as the person to which the publication referred.

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After hearing evidence the trial Court found that the publication referred to the respondent; and that it was defamatory of her because it tended to expose her to hatred, contempt and ridicule and it, also, attributed to her the crime of conspiracy and conduct unbecoming of a member of the police force. Thereafter the trial Court proceeded to state that for the appellants to avoid the consequences of a defamatory publication they had to prove one of the two defences which they put forward, that is the truth of the contents of the publication or fair comment.

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In dealing with the defence of truth the learned trial Judges referred to the provisions of section 19(a) of the Civil Wrongs Law, Cap. 148 which read as follows:

“In an action for defamation it shall be a defence –

- 5 (a) that the matter of which complaint was made was true: Provided that where the defamatory matter contains two or more distinct charges against the plaintiff, a defence under this paragraph shall not fail by reason only that the truth of every charge is not proved, if the defamatory matter not proved to  
10 be true does not materially injure the plaintiff’s reputation having regard to the truth of the remaining charges”; and went on to state that in the defence of truth both the allegation of facts as well as the comment in so far as it contains statements or conclusions of a defamatory character should be proved by the  
15 defendant as true; and that the defendant should not only prove that the facts are correctly stated but that, also, any comments thereon are correct. The trial Court referred in this respect to *Shatterland v. Slopes* [1925] A.C. per Cave L.C. at p. 55 per Lord Finlay at p. 62 and per Lord Carson at p. 95; and they  
20 went on to state that the defendant in support of the defence of truth may rely not only on facts known to him at the time of the publication but, also, on facts which he was not aware of (*Crawford v. Albu* (1917) A. (South Africa 102) ). Finally the trial Court made it clear that the defendant should prove  
25 that the substance of the libel is true.

- Regarding the defence of fair comment the trial Court stated that by virtue of s.19(b) of Cap. 148 if the matter complained of was a fair comment on some matter of public interest it shall be a defence; and went on to state that the defendant should  
30 prove that the basis of the facts on which the comment was based existed and could sufficiently constitute the basis of the comment; and that it is not necessary to prove the truthfulness of all the facts alleged and that the matter should be one of public interest.

- 35 After dealing extensively with the facts of the case the trial Court rejected the defence of truth. In dealing with this defence the trial Court said:

“It was submitted by the defence that the participation of the plaintiff in a procession to the office of the Presidency

which was organised by the civil servants trade union and in which public officers, police constables and private individuals amongst whom displaced persons participated, claiming the return of the President of the State Archbishop Makarios to his seat was sufficient proof of the main part of the libel 5

The police as an organ of the state is in the wide sense the protector of the rights of the citizen which fall within its competence and of the state structure and other organs and powers of the state which are based on the Constitution of the state and the will of our people. We limit ourselves to the obligation of the police and we do not extend to the rights and obligations of the citizens because this does not arise in this case. 10

The President of the Republic according to the Constitution was and is the Archbishop of Cyprus Makarios. To this office he was elected by the people. Forces of violence guided from abroad sought his overthrow. But even if he was abroad he continued to be the President of the Cyprus State, both under internal and international law. He was the one that was accepted by the international community as leader of the Cyprus state. 15 20

Respect to the Constitution and to the laws enacted by the House of Representatives is one of the fundamental obligations of the citizen. Citizens are moreover, entitled and bound to oppose by all means anyone seeking to abolish by force the constitutional order and the rights of the people. It was the duty of the citizens and more the duty of police organs to defend the Republic against foreign and internal enemies. It was the duty and obligation of the police to support constitutional order which was overthrown by the use of force. 25 30

Plaintiff did nothing beyond this, according to the evidence adduced. She was struggling for the restoration of constitutional order. This is far from being a conspiracy against the state. The claim of the people for restoration of constitutional order is not an act of anarchy". 35

In dealing with the defence of fair comment the trial Court said that there was no statement of facts besides those referred

to in the publication; that the main facts on which the comment was based were untrue; and in view of its conclusion that the facts were not proved it deemed it unnecessary to consider whether the comment was reasonable or malicious.

5     Thereafter, the trial Court proceeded to assess the damages and in dealing with this aspect said:

10            “In assessing damages the Court may take into consideration the conduct of the plaintiff, her personality and position in the society and in the service, the nature of the defamatory publication, the matter and extent of the publicity, the absence of apology and the whole conduct of the defendants from the publication and up to the delivery of judgment. The Court may take into consideration the conduct of the defendant, prior to the action, after 15 the filing of the action, and in Court in the course of the trial as well as the conduct of counsel for the defendant who cannot put himself forward as a shield for the protection of his client by undertaking the responsibility for the mode of handling of the case.....”

20            Plaintiff for more than 20 years has been a member of OHEN (Orthodox Christian Union of Girls); she took part in the liberation struggle of 1955–59, she was arrested and jailed initially for 18 months and was subsequently re-arrested and was amongst the last ones to be released. 25 She has for two decades exhibited intensive social, humanitarian and religious activity. She was tortured by the British and was imprisoned by the Coup d’etat forces. She is known all over Cyprus for her character and she enjoys general esteem. She is a police officer with many capabilities, of an excellent character and she is loved and 30 esteemed by her colleagues in the Central Information Service where she is serving”.

35            In awarding to the respondent the aforesaid amount of £1,000 the trial Court said that at the time of the publication the newspaper was circulating in 3,000 copies daily, and proceeded to state the following:

          “**No apology was made. On the contrary, there was put forward the defence of truth and fair comment. The handling of the case in the course of the trial aggravated the position**

of the defendant. We can say, however, that Georghios HjiNicolaou in giving evidence exhibited to some degree his appreciation to the plaintiff and did not follow in his evidence the line of cross-examination of the witnesses for the plaintiff by counsel for the defendant. This will be taken into consideration according to its merits". 5

*The appeal:*

As against the above judgment the defendant took the present appeal on the following grounds:

- (a) That the trial Court erroneously decided that the publication in question was defamatory; 10
- (b) That the trial Court erroneously decided that the publication in question referred to the respondent.
- (c) That the trial Court erroneously rejected the defence of fair comment on a matter of public interest; 15
- (d) That the trial Court erroneously rejected the defence of "truth" taking into consideration the evidence adduced and particularly the contents of the publication in question and the evidence of the respondent;
- (e) That the trial Court erroneously assessed the factual and/or legal issues of the case; 20
- (f) That taking into consideration the evidence adduced the amount of £1,000 damages was excessive and/or very high.

Regarding grounds (a) — (e) above, having anxiously considered what has been submitted by learned counsel for the appellants, in support of those grounds, and in the light of the evidence, we have arrived at the conclusion that there is no merit in such grounds, because the findings of the trial Court that the publication in question was defamatory and it referred to the respondent was amply warranted by the evidence before the trial Court. Furthermore, the trial Court approached correctly the factual and legal issues of the case and its exposition of the law regarding the defences of "truth" and "fair comment" on a matter of public interest was correct; and properly came to the conclusion, having regard to the evidence before 25  
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it and the law applicable to the matter, to reject both these defences.

*Damages:*

Now regarding the award of damages, let me repeat what  
5 I said in the case of *General Press Agency v. Christofides*, (1981)  
1 C.L.R. 190 at pp. 201-202:-

“We are aware of course that awards by a judge sitting  
alone may more easily be upset than those made by juries,  
but as the damages are essentially a matter of impression  
10 and or common sense, see Lord Wright in *Davies v. Powell  
Duffryn* [1942] A.C. p. 616, this Court of Appeal will  
not readily interfere, unless the judge has misapprehended  
the facts or has taken into account irrelevant factors or  
applied a wrong principle of law”.

15 Further, I would reiterate what I stated in *George Constanti-  
nides v. Nicolaos Koureas*, (1978) 1 C.L.R. 139 at p. 147:

“We are aware, of course, that this Court will not usually  
reverse the decision of the trial Court on the question of  
the amount of damages, unless it is satisfied either that  
20 the Judge acted on some wrong principle of law or that  
the amount awarded was so extremely large or so very  
small as to make it an entirely erroneous estimate of dam-  
age. This principle was held in a number of cases to be  
applicable to actions for libel and also for slander”.

25 For the reasons we have advanced at length, we have reached  
the conclusion that in this particular case the amount of £1,000  
damages is not so extremely large as to make it an entirely  
erroneous estimate, and in these circumstances we would not  
interfere with the judgment of the trial Court.

30 The appeal is, therefore, dismissed with costs.

*Appeal dismissed with costs.*