

IN THE HIGH COURT OF SOLOMON ISLANDS
Civil Jurisdiction

CIVIL CASE NO. 147 OF 2020

BETWEEN: DR. GANESHWAR CHAND CLAIMANT

AND: SOLOMON STAR LIMITED FIRST DEFENDANT

AND: THE EDITOR OF SOLOMON START NEWSPAPER SECOND DEFENDANT

AND: ANDREW FANASIA THIRD DEFENDANT

Counsel

Mr P Afeau for the Claimant

Mr. M Pitakaka for the Defendant

Date of Hearing: 7 March 2024

Date of Decision: 27 March 2024

Lawry PJ

Ruling

1. Following trial the Court found that the Claimant was defamed by articles appearing in the Solomon Star newspaper both in print and on line. Not all the allegations made were defamatory. The most serious is the allegation that he corruptly engaged 'relatives' and 'cronies' to work at SINU and abused his power to do so. Similarly that he acted corruptly and in breach of the privacy and policies of the University.

2. The allegations are less serious than in most cases alleging defamation to come before this Court. However, the repetition of the allegations with no attempt to prove the truth of them is more blatant than in some of the other cases alleging defamation. It is clear that there was a degree of malice involved.
3. Counsel for the Claimant has helpfully referred to the Court to the Court of Appeal decision in **Solomon Star Ltd v Wale** [2016] SBCA 10. The Court of Appeal gave guidance to the Courts in how to approach aggravated damages. The Court said at paragraph [11]:

"Damages, should they conclude an element for intentional republication and/or rebroadcasting would be at a much higher note than the present award."

Later at Para [18] the Court discussed punitive and exemplary damages then said of aggravated damages:

"Aggravated damages may be indicated having regard to the conduct of the publisher towards the victim. As the learned trial judge correctly said, exemplary damages are not intended to be compensatory whereas aggravated damages are."

4. Turning then to other cases referred to by counsel. This Court in **Goh v Tuhonuku** [2016] SBHC 175 awarded \$500,000.00 for defamation of the complaint. The circumstances in that case were much more serious than the present case. In **Goh's** case the judge found direct evidence of malice and use of language to inflame the public organisation. The Judge recorded:

"to blame Mr. Goh for the Chinatown destruction and riots is beyond reason and devastating racist after the event. For the 1st Defendant obviously associates Mr. Goh with the ethnic division seen as "Chinese when blaming him for the riots. Later the Court referred to the republication demonstrating malice."

5. As the Judge said:

"the facts are not dissimilar to those before my brother Judge Faukona J who awarded \$200,000 in the case of Wale. For that, case considered matters amounting to treasonous conduct while the defendant in these proceedings presumes conduct of the Claimant provoked riots' action synecious to the state. The Judge went on to say that, racial verification should not be countenanced as a means to the defendant ends."

"To suggest this Claimant deferred to have his home torched by the mob because he provoked the act rather exacerbates the offensive libel."

6. The defamatory publication in **Dettke v Tradewinds Investment Company Ltd** [2016] SBHC 144 also involved a much more serious allegation than the present one. That is partly because the attack was on a politician and a Minister of the Crown that suggested he was dishonest, a corruptible character and not fit to be a Member of Parliament. For someone who is dependent on facing the electorate for every term of Government, such allegations were potentially devastating. A politician is after all wholly dependent on

the public perception of his suitability for public office. In that case, \$100,000.00 was offered with an apology and consent to summary judgment being entered, marked out that case as different from the present.

7. In *McNeil v Solomon Star* [2023] SBHC 41, the character of the Commissioner for lands was questioned. The defamatory publication suggested he should be removed from office for granting titles to foreigners, especially Asians. The publication was seen as inflaming anti-China sentiments in the country, working against the relationship the Government was developing with the Peoples' Republic of China. The article contained the following:

"They are concerned and some even suggest that the man should be giving the marching orders. The problem is that Mr McNeil is married to a Choiseul woman and any move to remove the man has to come from the Prime Minister himself, the source said."

This Court awarded damages of \$50,000 and \$20,000 aggravated damages.

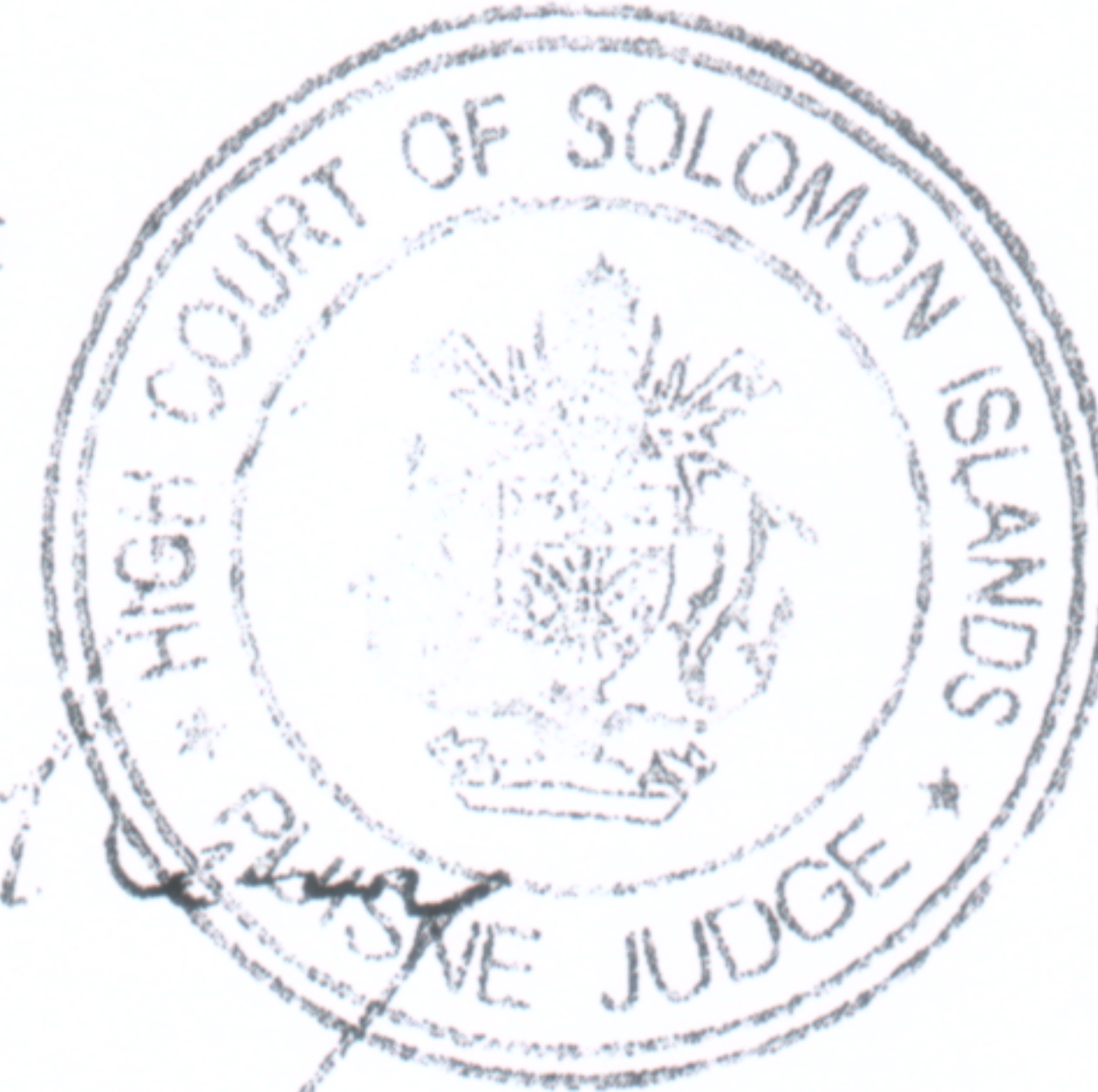
8. In assessing the level of damages, the Claimant was not a politician whose future was dependant on public opinion. The Defamatory material was no more serious than in the McNeil case. There was however the opportunity to apologise and refrain from further publication when asked to do so. The Defendants response was to republish the defamatory material.
9. In the circumstances, I consider the damages should not exceed \$50,000 general damages but this is a case where the continued attacks and republishing justify an award of aggravated damages. Counsel has submitted that publication led to the termination of the Claimant's contract as vice Chancellor. There has been no evidence put before me that could lead to that conclusion.
10. In the circumstances, the aggravated damages are limited to \$25,000.00. Regarding costs they should follow the event however, there was no effort to prove the truth of the allegations. In these circumstances indemnity costs are appropriate.

ORDERS

1. **The Defendants are to pay the Claimant damages fixed at \$50,000.00 together with aggravated damages of \$25,000.00**

2. The Defendant are to pay the costs of the Claimant on an indemnity basis, if not agreed then to be taxed.

By the Court



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Hon. Justice Howard Lawry
Puisne Judge