

IN THE SUPREME COURT OF BELIZE, A.D., 2000

ACTION NO. 518

(BETWEEN

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(GILDA LEWIS

PLAINTIFF

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(AND

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(BOARD OF TRUSTEES, UNIVERSITY OF BELIZE

(DR. ANGEL CAL

DEFENDANTS

Before: Hon Justice Sir John Muria

21 May 2010

Counsel:

Lionel Welch Esq., for the Plaintiff

Dr. Elston Kaseke for the Defendants

RULING

MURIA J: By their application dated 26 March 2010 the

applicants/defendants seek four orders. However, in his submissions, Dr.

Kaseke of Counsel for the applicants basically prays for two orders, namely:

1. *An order striking out the Claimants' statement of claim because it failed to be accompanied by a certificate of Truth as required by CPR 3.12; and*
2. *An order striking out paragraphs 11 and 20 of the Claimant's Statement of claim for failure to give particulars of the allegation of 'malice' as contained in the said paragraphs.*

The application is supported by a brief affidavit sworn to by Dr. Angel Cal, the second applicant/defendant and filed with the application on 26 March 2010.

Certificate of Truth - CPR 3.12

There can be no question about the requirement under Rule 3.12 that a Statement of Case must be verified by a Certificate of Truth. Equally, the Court has the power under Rule 3.13(1) CPR to strike out a Statement of Case which has not been verified by a Certificate of Truth. That power, of course, is discretionary.

The submission by Dr. Kaseke is that given the requirement of Rule 3.12, the mandatory language used in the Rules, and there being no explanation offered by the claimant for the failure to accompany the Statement of Case with a

Certificate of Truth, the claimant's Statement of Claim should be struck out. Reference was made by Counsel to the *English White Book 2000* page 353, paragraph 22.0.2 on the justification for the requirement of the Certificate of Truth.

Mr. Welch of Counsel for the respondent/claimant on the other hand, did not deny that there is no Certificate of Truth accompanying the Statement of Claim. Counsel, however, submitted that the omission of the Certificate of Truth is not fatal to the claimant's case. Mr. Welch sought to fortify his client's case by submitting further that the case was commenced in 2000 by a Writ prior to the adoption of the new Rules. The Statement of Claim and the Defence were also filed prior to the adoption of the new Rules. The case then went through Case Management procedure.

In those circumstances, Mr. Welch submitted, the requirement for Certificate of Truth had already gone past. In any case, Counsel submitted, the defendants knew what the case was against them and as such the omission of the Certificate of Truth is not critical to the claimant's case.

Despite the forceful submission by Dr. Kaseke, I feel that there is merit in the argument advanced by Mr. Welch. The Statement of Claim was filed on 7/01/05 and the Defendants filed their Defence on 31.01.05. The new Rules

came into effect on 04/04/05. The case was then brought under the workings of the new Rules on 08/12/05 at the Case Management Conference during which directions were made for standard disclosure and preparation of witness statements by witnesses. The omission of the Certificate of Truth was not the fault of the claimant nor was it a requirement at the time when the statement of Claim was prepared and filed. For those reasons the complaint about the omission of the Certificate of Truth in this case is clearly not sustainable.

Even if by some route (which I doubt), the requirement of Certificate of Truth can be brought into this case, the omission to include a Certificate of Truth is not fatal to the claimant's case. Counsel made reference to the cases of *Tomasa Alamilla et al v. Ignacio Reyes* (30/01/06) Supreme Court Claim 331/2006; *Bula Holdings & Others v. Roche & Others* [2008] 1 EHC 208; *Blackstone, Civil Practice, 2004* p. 275; *Shakira Dixon v. Donald Jackson* (30 September 2005) Supreme Court of Jamaica Claim NoCLD042/2002. As Mr. Welch submitted, and the Court accepts, the Writ being issued, the Statement of Claim filed and the Defence filed, the defendants knew and still do what the case is against them. The absence of a Certificate of Truth is therefore not fatal to the claimant's case.

Asked by the Court whether or not our Courts in Belize have dealt with the issue of the absence of a Certificate of Truth in a Statement of Case, Mr.

Welch stated that he was unable to find any decision by our Courts on the issue. Despite Counsel's insistence that he was not able to find any case at all decided by the Courts in Belize on the issue, this Court had decided in ***Shawn Sparks v. Mellissa Juda Luca*** (15 June 2009) Supreme Court NO. 372 of 2009 that the omission of Certificate of Truth as required by ***Rule 3.12 CPR*** is not fatal to Claimant's Statement of Case. Such an error is only as to form rather than substantive and as such it should not stand in the way of achieving the overriding objective of the Rules. The case of ***Shawn Sparks*** followed the English Court of Appeal case of ***Hannigan v Hannigan & Others*** (18 May 2000); [2000] EWCA Civ 159 where it is said that "*the overriding objective of the Rule is not furthered by arid squabbles about technicalities*" since the defendants knew what the case was against them. I urge legal practitioners not to lose sight of judicial authorities pronounced by our own Courts. Apart from their rationale, they are the start of developing our own Belizean jurisprudence.

Paragraphs 11 and 20 of the Statement of Claim

The objection taken on paragraphs 11 and 20 of the Statement of Claim is that they do not meet the pleading requirements in defamation cases, that is, they lack sufficient particulars. On that basis, Dr. Kaseke says the paragraphs should be struck out.

Mr. Welch on the other hand argues that the shortfall in the particulars in the two paragraphs complained of can be cured by requests for further and better particulars. I have to say that I agreed with Mr. Welch's argument, despite the firm submission by Dr. Kaseke for two reasons. First, the matters alleged in paragraphs 11 and 20 of the Statement of Claim have been denied by the defendants in their Defence and the claimant would have to prove them as the trial. Secondly, should further information (the term used in the old Rule is 'further and better particulars') is required, the defendants can request much information from the claimant. If the request is made by but the claimant does not give the information requested, then the defendants can make an application to compel the claimant to give the information. See Rule 34.1 and 34.2. CPR.

In those circumstances, I do not think that it would be proper to order paragraphs 11 and 20 to be struck out.

Issues of Special Damages and Loss of Earning to 75 Years

These issues are raised in the Statement of Claim and in defendants' Defence. They are issues properly left for trial. To determine those issues at this stage would be to do so without the benefit of the evidence necessary to prove or disprove them.

Conclusion

Having heard submissions by both Dr. Kaseke of Counsel for the applicants/defendants and Mr. Welch of Counsel for the claimant, and having anxiously considered the arguments presented, I came to the conclusion that the defendants' application for striking out the claimant's Statement of Claim ought not to be granted and it is refused.

The other two orders sought in the applications deal with defendants' disclosure made on 06/03/06 and setting down for trial. Although Counsel had not addressed these orders, I feel I should address them by simply giving the direction on the file, namely that-

The defendants' disclosure dated 06/03/06 be disclosure for purposes of the trial; and

The Court to fix the date for trial and notify the parties.

Costs of the application be costs in the cause.

Hon Justice Sir John Muria
Justice of Supreme Court