

CASE TRANSLATION: DUBAI

CASE CITATION:

Case number 2009/37784, Bur Dubai

NAME AND LEVEL OF COURT:

Headquarters of the Dubai Court

DATE OF DECISION:

30 May 2011

MEMBERS OF THE COURT:

Judge Jamal Mohammed Aljabiliy

LAWYERS FOR THE APPELLANT:

**Abdul Hameed Al Kumity, Al Kumity
Advocates**

Digital evidence; alleged defamatory comments published on the internet; police investigation; alteration of evidence

Judgment

In the name of H.H. Sheikh Mohammed bin Rashid Al Maktoum – Ruler of Dubai

In open court held at the headquarters of the Dubai Court on 30/5/2011

Presided by Judge Jamal Mohammed Aljabiliy

Case number 2009/37784, Bur Dubai

Against

Resident Mark Timothy Townsend, 49, British national, after consideration of the evidence.

Whereas the Public Prosecution referred the defendant to the Bur Dubai police station on 6/4/2009.

First – the plaintiff Khaleej Times, represented by its managers and officials, has been subject to defamation due to the online publication of libelous statements on the Khaleej Times employees' section on complaintsboard.com quoted as follows:

'The paper is run very unprofessionally, without any ethics of journalism being followed...Some unsuccessful female job seekers recently claimed that the duo are also womanizers, they demand sex in exchange of employment, if the candidate refuses, she is told that she has been unsuccessful at the interviews...Why should old employees... be sacrificed at the expense of these sex/monetary hungry hooligans drawing fat salaries for nothing?'

and as detailed in the investigative report.

Second – using equipment and services provided by the Emirates Telecommunications Corporation to injure the feelings of the plaintiff's managers and representatives as described above.

The plaintiff demanded his punishment in accordance with Article 372 of the Federal Penal Code No. 2/1987 and its amendments as of 2006.

In the presence of all parties, the defendant denied the charges, and his solicitor submitted a request note claiming lapse of right due to the passage of more than three months, setting out that there was no case to answer, acquitting the defendant. The defendant's solicitor waived the summoning of electronics experts and requested the court's judgment. The court delayed the ruling to 27/4/2011 to finalize the case review.

After the court thoroughly and carefully perused the available records and became fully aware of the circumstances of the case, the court has not been provided with any evidence that demonstrates that the defendant committed the two crimes attributed to him. This is evident to the court from the plaintiff's deposition, available from the record, and the Public Prosecution's investigation report that does not conclude beyond reasonable doubt the defendant is the perpetrator, besides indicating that the defendant's name is the one mentioned in the articles published on the website. The court does not see why the defendant would implicate himself, especially since it is on the record that the plaintiff Khaleej Times has laid off a significant number of its employees, including the defendant, and cannot specify who would commit the action described. Moreover, the technical reports do not point to the perpetrator of the article, and the telecommunications company failed to name the person who published the articles via the IP address, because of the passage of over

a year since the incident, and its inability to provide this information as mentioned in its letter sent to the Public Prosecution on 17/5/2010.

Based on the foregoing, the court acknowledges the defendant's defense against the charges set forth during the investigation and the court session, and finds him innocent pursuant to Article 211 of the Criminal Procedures Law.

Based on the foregoing,

The court finds the defendant Mark Timothy Townsend innocent of the charges set forth.

Judge

Jamal Aljabiliy

30/5/2011

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Commentary

In June 2009 a criminal complaint was filed at Bur Dubai police station alleging libel in a crudely written blog based on a pseudonym 'msend' that loosely resembles the name of the British journalist Mark T. Townsend, the full text reads as follows:

We are group of Khaleej Times employees, having worked in the company for last 15 years and more. The new management under Rahul Sharma and Ovais Subhani are getting rid of the old staff without any due consideration, just giving them termination letters without any warning, claiming that it is recession period, yet they keep employing new people at very high and unjustifiable salary.

The slogan "Keeping track of change" is really changing the entire hardworking manpower of the organisation. The paper is run very unprofessionally, without any ethics of journalism being followed, people are being victimised, the old staff are demoted from senior position to nothing, and on demotion some of them are told that they are no longer productive to the organisation, a good example is suchitra steven samuel, of weekend magazine, who recently won an

award for journalism, she was shown the door 2 weeks ago, reasons that she is not a professional journalist, rumours have it that more employees are due to be sacked in a couple of days from every section.

Those who have been reshuffled in the organisation are: Mehre Alam, former Senior Chief Sub Editor, now junior sub editor, Patrick Michael former Weekend Editor, now Chief Reporter, Meraj Rizvi former UAE Editor, now Reporter, Neville Parker former Managing Editor (dismissed before due retirement), Mark Townsend former Business Editor (sacked) others either demoted or sacked are senior staff from Circulation, Marketing, Supplements, Drivers, Time office, HR department, Advertisement etc the list is endless. Last week, more staff, engaged during the previous management were given their termination letters for no apparent reasons. More people to be terminated is going on by HR Manager Servine Ghandour who also sits with the duo to prepare the list, so that the old staff can be wiped out from the organisation.

Now for us, the long time employees who are still working dedicately with the organisation want the UAE government through the Labour Ministry to put an end to these uncalled terminations, we also appeal to the Board members, chairman of Khaleej Times, the Indian Embassy, Pakistan Embassy, Phillipines Embassy, Sudanese Embassy and all other embassies whose nationality work in Khaleej Times, to intervene and investigate our complains. We also call on the relevant authorities to suspend Mr. Rahul Sharma and Mr. Subhani and their associates, to pave way for further investigations.

Some unsuccessful female job seekers recently claimed that the duo are also womanizers, they demand sex in exchange of employment, if the candidate refuses, she is told that she has been unsuccessful at the interviews, all these complains must be investigated immediately, by both the board of Khaleej Times and the Government, before it is too late and freeze all termination until investigations are finalised.

Why should old employees who have been performing so well in the organisation for the last 2 decades and more, be sacrificed at the expense of these sex/

monetary hungry hooligans drawing fat salaries for nothing? why not sack the newly engaged staff who are earning AED 20, 000 per month and above, yet they are unproductive and are only surviving there, either because they are friends to the duo (from the previous employment) or offer sexual favours, PLEASE UAE GOVERNMENT HELP US, WE ARE SUFFERING ON THE QUIET, PLEASE INVESTIGATE THIS ISSUE IMMEDIATELY, faithfully yours, expatriates and a group of long time employees of Khaleej Times.

Located at the following URL: <http://www.complaintsboard.com/complaints/khaleej-times-c186693.html?page=3>

It is relatively easy to deduce the text is unlikely to have been written by a native English speaker. Nevertheless, in August 2009, the Criminal Investigation Department asked Mr Townsend to attend an interview at two hours notice, during which his passport and laptop were seized. He was detained for several hours and subject to two stressful interviews without the presence of a lawyer. Mr Townsend strongly disassociated himself from the contents of the blog. Mr Townsend indicated that a search of the IP (Internet Protocol) address would quickly exonerate him, but it does not seem as if this line of enquiry was ever followed up, even though one of charges against him included alleged the misuse of the UAE telecommunications system.

After several months, the file was sent to the public prosecutor. In February and March 2010 Mr Townsend was interviewed on two occasions by the senior public prosecutor. At the second interview, the prosecutor presented Mr Townsend with a copy of the same blog posting, but with the name 'mark townsend' now inserted in the space of 'msend'.

Mr Townsend subsequently faced charges of criminal libel and misuse of the UAE telecommunications system under Article 372 of the UAE Penal Code. He appeared in court on nine separate occasions. The prosecution witness never appeared, despite five separate requests from the court. The learned judge entered a verdict of not guilty on 30 May 2011.

Mr Townsend received help from the following organizations in dealing with his case: Committee for the Protection of Journalists; Doha Centre for Media Freedom; Fair Trials Abroad; Index on Censorship; International

Senior Lawyers Project; Media Legal Defence Initiative; Nieman Foundation at Harvard University; Reporters Without Borders and the US Department of State.

From the facts of this case, it appears that (i) the investigating authorities failed to conduct a diligent investigation, and (ii) a person unknown altered the evidence to present false evidence before the court. The learned judge was bound to give the prosecution an opportunity to present its case and put relevant witnesses forward to be cross examined.