

# COURT OF APPEAL FOR ONTARIO

CITATION: *Alli v. Shakur*, 2025 ONCA 703

DATE: 20251017

DOCKET: COA-25-CV-0040

Lauwers, Dawe and Rahman J.J.A.

BETWEEN

Ejjaz Alli

Plaintiff (Appellant)

and

Yasir Shakur and Saiyaf Alli

Defendants (Respondents)

Oleg M. Roslak, for the appellant

Rohan Haté, for the respondents

Heard: October 2, 2025

On appeal from the judgment of Justice Jasmine T. Akbarali of the Superior Court of Justice, dated December 13, 2024, with reasons reported at 2024 ONSC 6934.

## REASONS FOR DECISION

[1] The appellant Ejjaz Alli is the uncle of the respondents, first cousins Yasir Shakur and Saiyaf Alli.<sup>1</sup> Ejjaz started two defamation actions. The statements of

---

<sup>1</sup> To avoid confusion, we use the parties' first names. No disrespect is intended.

claim in both actions were issued on the same day. Together, these actions form the litigation context.

[2] This is an appeal of the motion judge's decision to dismiss one of the actions, which we will call "the first action," on a motion for summary judgment. We dismiss the appeal for the following reasons.

### **The First Action**

[3] In the first action, Ejjaz alleged that Yasir and Saiyaf made two defamatory statements about him:<sup>2</sup>

- (1) In May or June of 2019, Yasir allegedly texted Saiyaf that Ejjaz sexually assaulted a member of his own family; and
- (2) In August of 2021,<sup>3</sup> Saiyaf allegedly repeated the content of the alleged text message to Ejjaz's sister, Bibi Nazeeman Mohamed ("Bibi Mohamed").

[4] Both Yasir and Saiyaf deny the existence of the alleged text message. Neither Ejjaz nor Bibi Mohamed have ever seen the alleged text message.

---

<sup>2</sup> Ejjaz originally pleaded four categories of defamatory statements but narrowed his claim to just two. It is only these two alleged statements that are at issue on appeal.

<sup>3</sup> The facts as well as the decision below inconsistently refer to this conversation as having taken place in 2021, 2023, or 2024.

[5] The motion judge found that summary judgment was appropriate for both alleged defamatory statements and that there was no genuine issue requiring a trial.

### **The Second Action**

[6] To complete the overall litigation context, in the second action Ejjaz sued Saiyaf and his mother, Bibi Nesha Rahamatun Alli (“Bibi Alli”), who is also Ejjaz’s sister-in-law, for related allegedly defamatory comments. Ejjaz claims that Bibi Alli made false and defamatory statements about him on August 1, 2021, to the effect that he had sexually assaulted her on two occasions. Ejjaz alleges these statements were made to persons including Saiyaf; Ejjaz’s siblings including his brother and Bibi Alli’s husband, Ashraf Alli; and other members of Ejjaz’s family. He also alleges that either Bibi Alli or Saiyaf sent a false and defamatory email to his siblings from Ashraf Alli’s email account accusing him of sexually assaulting Bibi Alli once and attempting to do so on other occasions. Finally, he pleads that Bibi Alli and/or Saiyaf made other false and defamatory statements about him to other individuals, accusing him of sexual assault. The second action was not the subject of the summary judgment motion or this appeal.

### **Discussion**

[7] This appeal relates to the first action. That action and this appeal were limited to only the alleged text message accusing Ejjaz of sexual assault sent by

Yasir in 2019 and the alleged repetition of the contents of this text message by Saiyaf to Bibi Mohamed in a telephone call.

[8] The motion judge ordered cross-examinations of Bibi Mohamed and Saiyaf. Saiyaf denied possessing the text message. Bibi Mohamed testified that she never saw the text message but heard of it from Saiyaf, who told her about the text and its contents accusing Ejjaz of rape in a phone call on August 3, 2021. The motion judge accepted Saiyaf's evidence that he never made the alleged defamatory statement and rejected Bibi Mohamed's evidence. She also found that Bibi Mohamed's testimony that Saiyaf told her about the existence of the text message to be inadmissible hearsay evidence in relation to the action against Yasir. Saiyaf's statement would have been threshold admissible against Saiyaf as an admission.

[9] Ejjaz argues that the motion judge should have admitted Bibi Mohamed's evidence about Saiyaf's statement under the principled exception to the hearsay rule (necessity and reliability). In our view, even if Bibi Mohamed's evidence could be considered necessary, the motion judge found that her evidence was not credible. Even if the motion judge had ruled that Bibi Mohamed's evidence was admissible against Yasir, it is clear from her reasons for granting summary judgment in favour of Saiyaf that she found that evidence to be unreliable and would have placed no weight on it against either Yasir or Saiyaf.

[10] The motion judge made credibility findings to which we defer. She preferred Saiyaf's evidence where it conflicted with Bibi Mohamed's evidence. Saiyaf's evidence did not give rise to the credibility concerns the motion judge had about Bibi Mohamed's evidence: *Alli v. Shakur*, 2024 ONSC 6934, at para. 55. We see no error in the motion judge's rejection of Bibi Mohamed's evidence that she was told of the alleged text message.

[11] The motion judge, at para. 48, dismissed the action against Yasir on the following basis:

There is no admissible evidence before me to prove the existence of a text message in which the plaintiff is called a rapist. However, there is evidence, from [Saiyaf], [Yasir] and the search of their telephones, that no such text was ever sent or received. I find that no text was sent by [Yasir] to [Saiyaf] in which [Yasir] called the plaintiff a rapist.

Ejjaz argues that this misstates the evidence. The telephones in question no longer exist. But this does not defeat the motion judge's finding that no admissible evidence of the text message exists.

[12] The motion judge also dismissed the action against Saiyaf, finding he never made the alleged defamatory statement. She found Bibi Mohamed was "mistaken in her belief that a text message accusing the plaintiff of sexual assault was discussed during the conversation she had with [Saiyaf] on August 3, 2024": *Alli*, at para. 56. These findings of fact are entitled to appellate deference.

[13] Ejjaz argues the motion judge erred by dismissing the action against Saiyaf notwithstanding Saiyaf's admission that, in phone calls with family members on August 1, he mentioned someone else might come forward with accusations against Ejjaz. Ejjaz argues that, in substance, this is the same allegation as the one contained in his pleadings, that Saiyaf repeated to Bibi Mohamed an allegation of sexual assault about Ejjaz. He submits the motion judge simply found the allegation came from a different source than Yasir's text.

[14] The motion judge, at para. 8, noted the following evidence about conversations that took place on August 1:

[O]n August 1, 2021, Ashraf Alli was ill with brain cancer, and was having difficulty communicating due to throat problems he was having as a result of chemotherapy and medication. On that day, his wife, [Bibi] Alli, told him that she had been sexually assaulted by his brother, [Ejjaz], in the past. The evidence indicates that Ashraf Alli told some of his siblings (who are also [Ejjaz's] siblings) what his wife had said. At this point in time, Ashraf Alli's condition was making his communication difficult, so some of what he conveyed was done through [Saiyaf], who was asked to speak on the phone with [Bibi] Mohamed and convey to her what Ashraf Alli was saying about [Ejjaz].

[15] The motion judge revisited this conversation at paras. 22-23 of her reasons:

[Saiyaf] gave evidence about a telephone call with [Bibi] Mohamed, which I reference briefly above. This call occurred when his father, Ashraf Alli, who was then ill with brain cancer and had difficulty communicating, had just learned from his wife, [Bibi] Alli, that the plaintiff had

allegedly sexually assaulted her. [Saiyaf] says his father asked him to communicate what he was saying to [Bibi] Mohamed over the phone, and that during this call, Ashraf Alli said something about a text message, but it had nothing to do with [Yasir] or [Saiyaf]; he did not know what it was about.

[Bibi] Mohamed gave evidence that there was a phone call between her and [Saiyaf] on August 1, 2021, right after Ashraf Alli learned of [Bibi] Alli's allegations of sexual assault. She testified that there was a second call between her and [Saiyaf] on August 3, 2021, when she states [Saiyaf] told her about the text message.

[16] Ultimately, the motion judge concluded that "Ashraf Alli made reference to a text message in the conversation he and [Saiyaf] had with [Bibi] Mohamed on August 1, 2024, during the conversation where [Bibi] Alli's allegations of sexual assault against the plaintiff were discussed": *Alli*, at para. 56.

[17] We would not give effect to Ejjaz's argument because it is inconsistent with his decision to narrow his claims on the summary judgment motion in the court below. At the time of the summary judgment motion, the alleged defamatory statements consisted of a text message containing a sexual assault allegation from Yasir and the repetition of that message by Saiyaf to Bibi Mohamed. The motion judge found the repetition of this text on August 3 did not take place. She found that while there was reference to a text in the August 1 conversation, this reference was made by Ashraf Alli. The admission Ejjaz points to on appeal is not the same as the defamatory statement pleaded in the narrowed first action because it is not the repetition by Saiyaf of a purported text from Yasir accusing Ejjaz of sexual

assault. The motion judge properly granted summary judgment on the allegations that were the subject of the first action. These allegations should not be conflated with the statements made on August 1. We note the August 1 conversation is the subject of a separate action brought by Ejjaz – the second action.

[18] In the alternative, Ejjaz seeks leave to amend his pleadings in the first action to incorporate Saiyaf's admissions about statements he made to Bibi Mohamed on August 1. This argument is also inconsistent with Ejjaz's decision at the summary judgment motion to abandon his claim against the defendants for making "other false and defamatory statements" and to pursue only his claims based on the 2019 text message and alleged August 3 repetition of it. We would not give effect to this argument.

[19] Additionally, Ejjaz argues that because the issues in the second action substantially overlap with the issues in the first action, summary judgment in the first action is effectively partial summary judgment. He argues granting summary judgment in the first action introduces the risk of inconsistent findings between both actions, given that the second action will continue.

[20] The motion judge rejected this argument because Ejjaz had the option of starting a single action but chose not to do so, and he could have moved to join the actions later, but he did not. We agree with the motion judge and see no reason to relieve Ejjaz of the consequences of his strategic choice.

[21] We reject Ejjaz’s argument that the second defamation action is an impediment to summary judgment in the first. We observe that the narrowing of the first action minimizes, if not eliminates, any overlap between the two actions. The allegations in the first action are not relevant to the allegations in the second. As narrowed by Ejjaz, the actions are distinct.

[22] Finally, Ejjaz argues this case was inappropriate for summary judgment because it required significant determinations of credibility to be made. Based on Ejjaz’s narrowed claims in the first action, the motion judge recognized the need for a limited determination of the credibility of Saiyaf and Bibi Mohamed on the issue of whether a conversation about the text message took place. She relied on her fact-finding powers at r. 20.04(2.1) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194. Given the limited nature of the issues before the motion judge and the evidence relevant to those issues, and the distinct nature of the claims raised by the first and second actions, Ejjaz has not shown it was in the interest of justice to exercise these fact-finding powers only at a trial.

### **Disposition**

[23] The appeal is dismissed with costs fixed in the agreed upon all-inclusive sum of \$20,000, payable by the appellant to the respondents.

“P. Lauwers J.A.”  
“J. Dawe J.A.”  
“M. Rahman J.A.”