

IN THE HIGH COURT OF THE SUPREME COURT OF JUDICATURE
CIVIL JURISDICTION

BETWEEN:

WINSTON BRASSINGTON

Plaintiff

-and-

1. NATIONAL MEDIA AND PUBLISHING
CO. INC. a limited liability company duly
incorporated under the Companies Act
1991 and whose registered address is at 24
Saffon Street, Georgetown.

2. ADAM HARRIS

Defendants
Jointly and Severally

The Honourable Justice Navindra A. Singh, Puisne Judge

Mr. Timothy Jonas S.C. representing the Plaintiff

Mr. Nigel Hughes representing the Defendants

Delivered February 12th 2021

RULING

The Plaintiff was at all material times the Executive Director of the National Industrial and Commercial Investments Limited, a government owned investment company, [hereinafter referred to as NICIL], and a financial advisor to the Government of Guyana. He is also a well known figure in Guyana.

The First Named Defendant [FND] was and is a company duly incorporated under the laws of Guyana which published a daily newspaper, under the name of Kaieteur News, that enjoyed national and international circulation through

physical distribution of newspapers and electronic distribution via the world wide web.

The Second Named Defendant [SND] was the editor of Kaieteur News and also a journalist and columnist with the said Kaieteur News.

The Plaintiff claims damages against the Defendants for defamation as a result of a publication in the Kaieteur News on July 30th 2014 wherein the following words, comprising part of the complete publication, were published;

“Brazzy, that fat crook, think that dem boys is lil babies. He trying fuh put pacifier in dem mouth by filing not one, not two, but 13 law suit against dem.

He accustom to putting thing in bag and this would be nothing strange to that fat crook.” [Exhibit “B”]

In the Statement of Defence filed on November 19th 2014 the Defendants denied that the publication concerned the Plaintiff [paragraph 4], yet they pleaded justification at paragraph 8.

Nevertheless, by his “*Answers to Interrogatories*” filed on February 2nd 2015, the SND confirmed that the words “*Brazzy, that fat crook*” and “... *that fat crook*” as published in the Kaieteur News on July 30th 2014 were intended to refer to the Plaintiff and further it was intended that persons reading the publication would infer that the words referred to the Plaintiff.

The Defendants also pleaded the defence of *fair comment*.

ISSUE I

In this regard the issue that fall to be determined by the Court is whether the words were defamatory and if so, whether the defences of justification and/ or fair comment can prevail.

LAW

Mc Pherson v Daniels (1829) 10 B & C 263.

Kemsley v Foot [1952] 1 All ER 501.

Lewis v Daily Telegraph Ltd; Lewis v Associated Newspapers Ltd [1963] 2 All ER 151.

Associated Leisure Ltd (Phonographic equipment co ltd) v Associated Newspaper Ltd (1970) 2 QB 450 at 456, (1970) 2 ALL ER 754 at 757-8 CA.

Bonnick v Morris [2003] 1 LRC 663.

Joseph and others v Spiller and another (Associated Newspapers Ltd and others intervening) [2011] 1 All ER 947, [2010] 3 WLR 1791.

Ali v Duke [2017] 1 LRC 371.

FACTS

The facts are as stated above.

ANALYSIS

In **Ali v Duke** Justice Rajkumar conducted a comprehensive examination of the authorities with respect to judicial guidance on determining whether the alleged offending words in a publication are defamatory.

With respect to the authorities providing judicial guidance in relation to the natural and ordinary meaning of words, he referred to two cases in particular which this Court will apply.

In **Lewis v Daily Telegraph Ltd; Lewis v Associated Newspapers Ltd** Lord Reid stated:

“What the ordinary man would infer without special knowledge has generally been called the natural and ordinary meaning of the words. But that expression is rather misleading in that it conceals the fact that there are two elements in it. Sometimes it is not necessary to go beyond the words themselves as where the plaintiff has been called a thief or a murderer. But more often the sting is not so much in the words themselves as in what the ordinary man will infer from them and that is also regarded as part of their natural and ordinary meaning”.

And Lord Nicholls in **Bonnick v Morris** stated @ [9]:

*“As to meaning, the approach to be adopted by a court is not in doubt. The principles were conveniently summarised by Sir Thomas Bingham MR in **Skuse v Granada Television Ltd** [1996] EMLR 278 at 285–287. In short, the court should give the article the natural and ordinary meaning it would have conveyed to the ordinary reasonable reader of the Sunday Gleaner, reading the article once.*

The ordinary, reasonable reader is not naïve; he can read between the lines. But he is not unduly suspicious. He is not avid for scandal. He would not select one bad meaning where other, non-defamatory meanings are available. The court must read the article as a whole, and eschew over-elaborate analysis and, also, too literal an approach. The intention of the publisher is not relevant.”

Having examined the authorities including the aforementioned pronouncements Justice Rajkumar stated **Ali v Duke @** [32];

“In that context the words used must be examined to ascertain:

(a) as a question of fact the single meaning of the various words used;

(b) whether, reading the letter as a whole the words in their natural and ordinary meaning would convey to a reasonable reader who is not naïve but not unduly suspicious and not avid for scandal, a meaning defamatory of the claimant;

(c) whether the words used would convey to a reasonable reader an implied meaning or an inferred or indirect meaning that is defamatory of the claimant.”

This Court finds favour with this approach and therefore adopts and applies it.

According to the Merriam-Webster dictionary a “**crook**” is *a person who engages in fraudulent or criminal practices* and according to the Oxford English dictionary, a “**crook**” is *a person who is dishonest or a criminal*.

Mr. Glen Lall, who described himself as the Publisher of the FND, testified on behalf of the FND and baldly asserted that the words used in the article and in the context used “*hardly convey the meaning ... that the Plaintiff is dishonest, had been guilty of criminal activity and was habitually guilty of criminal activity and had engaged in criminal fraud for personal gain.*”

Mr. Lall did not venture an explanation or advance any theories for his conclusion. In any event the meaning intended by the publisher, [the Defendants], in the use of the word/s to mean is irrelevant and immaterial. [**Bonnick v Morris**]

The Court finds that the natural and ordinary meaning and/or inferential meaning of the word “**crook**” and the meaning that it would immediately convey to a reasonable reader is that the Plaintiff is dishonest and engages in fraudulent or criminal practices.

With respect to the defence of *fair comment* pleaded by the Defendants, it must first be noted and understood that in terms of reliance on English authorities, the position in Guyana would be pre-1952, since the **Defamation Act 1952** of England specifically addresses this defence.

The pre-1952 position is laid out in **Kemsley v Foot** [@ 506] per Lord Porter;

“In a case where the facts are fully set out in the alleged libel, each fact must be justified and if the defendant fails to justify one, even if it be comparatively unimportant, he fails in his defence.”

The elements of the defence were authoritatively set out in the judgment of the Supreme Court in **Joseph and others v Spiller and another (Associated Newspapers Ltd and others intervening)** which stated;

*“Sitting in the Court of Final Appeal of Hong Kong in **Tse Wai Chun v Cheng** [2001] EMLR 777 Lord Nicholls of Birkenhead was concerned with the ingredients of malice that can defeat the defence of fair comment. Before considering that question he set out at paras 16–21, under the heading “Fair Comment: The Objective Limits” what he optimistically described as five “non-controversial matters”, which were “well established” in relation to the defence of fair comment:*

“[i] . . . First, the comment must be on a matter of public interest

*[ii] Second, the comment must be recognisable as comment, as distinct from an imputation of fact. If the imputation is one of fact, a ground of defence must be sought elsewhere, for example, justification or privilege. Much learning has grown up around the distinction between fact and comment. For present purposes it is sufficient to note that a statement may be one or the other, depending on the context. Ferguson J gave a simple example in the New South Wales case of **Myerson v Smith's Weekly** (1923) 24 SR (NSW) 20, 26:*

'To say that a man's conduct was dishonourable is not comment, it is a statement of fact. To say that he did certain specific things and that his conduct was dishonourable is a statement of fact coupled with a comment.'

*[iii] Third, the comment must be based on facts which are true or protected by privilege: see, for instance, **London Artists Ltd v Littler** [1969] 2 QB 375, 395. If*

the facts on which the comment purports to be founded are not proved to be true or published on a privilege occasion, the defence of fair comment is not available.

[iv] Next the comment must explicitly or implicitly indicate, at least in general terms, the facts on which it is based.

*[v] Finally, the comment must be one which could have been made by an honest person, however prejudiced he might be, and however exaggerated or obstinate his views: see Lord Porter in **Turner v Metro-Goldwyn-Mayer Pictures Ltd** [1950] 1 All ER 449, 461, commenting on an observation of Lord Esher MR in **Merivale v Carson** (1888) 20 QBD 275, 281. It must be germane to the subject-matter criticised. Dislike of an artist's style would not justify an attack upon his morals or manners. But a critic need not be mealy-mouthed in denouncing what he disagrees with. He is entitled to dip his pen in gall for the purposes of legitimate criticism: see Jordan CJ in **Gardiner v Fairfax** (1942) 42 SR (NSW) 171, 174.*

These are the outer limits of the defence. The burden of establishing that a comment falls within these limits, and hence within the scope of the defence, lies upon the Defendant who wishes to rely upon the defence.

[vi] A Defendant is not entitled to rely on the defence of fair comment if the comment was made maliciously.”

With respect to the second proposition stated above, the Court went on to further state;

“Jurists have had difficulty in defining the difference between a statement of fact and a comment in the context of the defence of fair comment. The example

in Myerson v Smith's Weekly (1923) 24 SR (NSW) 20, 26 cited by Lord Nicholls is not wholly satisfactory. To say that a man's conduct was dishonourable is not a simple statement of fact. It is a comment coupled with an allegation of unspecified conduct upon which the comment is based. A defamatory comment about a person will almost always be based, either expressly or inferentially, on conduct on the part of that person. Judges and commentators have, however, treated a comment that does not identify the conduct on which it is based as if it were a statement of fact. For such a comment the defence of fair comment does not run. The defendant must justify his comment. To do this he must prove the existence of facts which justify the comment."

In applying the principle enunciated above to this case, the Court finds that the publication clearly attacked the Plaintiff's character, labelling him as a dishonest person that engages in fraudulent or criminal practices, without setting out, factually, any conduct of the Plaintiff that justifies such a comment and therefore, the Court finds that this defence is not available to the Defendants.

With respect to the defence of justification, the basis of the defence is a claim that the statement is one of truth, since, as stated by Littledale J in Mc Pherson v Daniels (1829) [*@ 272*];

"The law will not permit a man to recover damages in respect of an injury to a character which he does not or ought not to possess."

Gatley on Libel and Slander [12th edn, 2013] [para 11.20] states as follows;

“Under the defence of truth, if a publication contains defamatory statements both of fact and of opinion, then the defendant must prove that the statements of fact are true and that the statements of opinion are correct.”

It is not at all necessary to embark upon an analysis of the evidence to determine if this defence was established. The Defendants failed to produce one iota of evidence to support the particulars of justification pleaded [paragraph 8 of the Statement of Defence].

Further, despite veiled attempts to establish vague malfeasance through unsavoury cross examination of the Plaintiff, no material evidence was garnished to support a plea of justification.

It will indeed serve the practice well to recount the words of Lord Denning MR in the case of **Associated Leisure Ltd (Phonographic equipment co ltd) v Associated Newspaper Ltd**;

“Like fraud, counsel must not put a plea of justification on the record unless he has clear and sufficient evidence to support it.”

On the evidence, the word/s used to describe the Plaintiff could not possibly be considered to be justified. The words are therefore defamatory of the Plaintiff and would tend to lower his standing in society in the estimation of right-thinking members of society.

CONCLUSION

The words published and complained of by the Plaintiff are clearly defamatory to the Plaintiff.

ISSUE II

What quantum of damages is the Plaintiff entitled to be awarded.

LAW

John v MGN Ltd [1996] 2 All ER 35.

Ojukwu v Nnoruka [2000] 1 NWLR (PT 641) 348 CA.

Glen Lall and National Media and Publishing Company Limited v Walter

Ramsahoye [2016] CCJ 18 [AJ].

Murseline Bacchus v Charandass Persaud Et Al [High Court of Guyana per Morris-Ramlall J.] [266-W of 2013 (Berbice)] [Judgment delivered April 1st 2019].

Vishnu Persaud v Vincent Alexander Et Al [High Court of Guyana per Sewnarine-Beharry J.] [2018-HC-DEM-CIV-SOC-359] [Judgment delivered August 18th 2020].

Winston Brassington v National Media Publishing Co. Inc. and Harris [High Court of Guyana per Corbin-Lincoln J.] [295-W of 2014 (Demerara)] [Judgment delivered September 16th 2020].

Lyndon Amsterdam v Vahnu Manickchand Et Al [High Court of Guyana per Sewnarine-Beharry J.] [487-W of 2013 (Demerara)] [Judgment delivered December 11th 2020].

ANALYSIS

Sir Thomas Bingham expounded the principles governing award of compensatory damages in the following passage in **John v MGN Ltd** [@ 48];

“The successful plaintiff in a defamation action is entitled to recover, as general compensatory damages, such sum as will compensate him for the wrong he has suffered. That sum must compensate him for the damage to his reputation; vindicate his good name; and take account of the distress, hurt and humiliation which the defamatory publication has caused. In assessing the appropriate damages for injury to reputation the most important factor is the gravity of the libel; the more closely it touches the plaintiff’s personal integrity, professional reputation, honour, courage, loyalty and the core attributes of his personality, the more serious it is likely to be. The extent of publication is also very relevant: a libel published to millions has a greater potential to cause damage than a libel published to a handful of people. A successful plaintiff may properly look to an award of damages to vindicate his reputation: but the significance of this is much greater in a case where the defendant asserts the truth of the libel and refuses any retraction or apology than in a case where the defendant acknowledges the falsity of what was published and publicly expresses regret that the libellous publication took place. It is well established that compensatory damages may and should compensate for additional injury caused to the plaintiff’s feelings by the

defendant's conduct of the action, as when he persists in an unfounded assertion that the publication was true, or refuses to apologise, or cross-examines the plaintiff in a wounding or insulting way.”

In assessing the appropriate quantum of damages in this case the Court takes into consideration the following;

- (i) the libel attacked the Plaintiff’s personal integrity and professional reputation and the Plaintiff was a very public figure serving in an office that essentially handled matters of public concern; this indeed makes the libel very grave;
- (ii) the nature of the libel was bound to cause distress, hurt and humiliation to the Plaintiff;
- (iii) After the publication the Plaintiff and his family members, including his school aged children were confronted and humiliated with the publication;
- (iv) the publication being disseminated via the world wide web would have had the widest distribution possible. In fact Mr. Glen Lall testified “*By 2014 Kaieteur News had the widest distribution in Guyana and I think the widest readership online.*” And of course it is a well established and accepted fact that material published on the world wide web is available for public consumption for eternity;
- (v) the fact that the Defendants insisted on asserting the truth of the libel by persistence in the defence of justification;
- (vi) the fact that the Defendants insisted on pursuing the defence of fair comment despite there being no factual basis for such a defence;

- (vii) the manner in which the defences were pleaded, using the pleadings to further cast aspersions on the Plaintiff's character knowing that they were not in possession of evidence to substantiate the pleadings as can be seen from the ultimate fate of the defences;
- (viii) the fact that despite Mr. Glen Lall acknowledged that the Plaintiff requested a retraction, [*"I did receive a letter from the Plaintiff asking for a retraction."*], the Defendants refused to retract the libel;
- (ix) the Defendants have not apologised or expressed any regret over the publication of the libel.
- (x) the need to re-establish and vindicate the Plaintiff's reputation.

In addition, in the case of **Ojukwu v Nnoruka**, the Court of Appeal of Nigeria held that in a case of defamation, where the Defendant sets up the defence of justification, but fails to prove or justify it, such a course must attract aggravated damages.

The Court has examined the ruling by the Caribbean Court of Justice [CCJ] in **Glen Lall and National Media and Publishing Company Limited v Walter Ramsahoye** and while the Court upheld the award of the trial judge the Court did not pronounce on the quantum awarded by the trial judge since the gist of the judgment was that the Court found no justification to interfere with the award of the trial judge in consideration of the principles that dictate when an appellate Court should interfere.

In this regard, while the award by the trial judge in that case is noted, this Court does not consider itself confined by such award since it ought not to be constituted as a precedence to be followed.

Having stated that, it must nevertheless be noted that the reach of the publication has certainly increased tremendously since that award and that was a substantive factor that the trial judge took into consideration in arriving at the award.

In more recent cases in Guyana, in **Murseline Bacchus v Charandass Persaud Et Al**, an Attorney-at-Law was awarded damages in the sum of \$6,500,000.00 for libel alleging dishonesty and criminal conduct.

In **Vishnu Persaud v Vincent Alexander Et Al**, a former Deputy Chief Elections Officer of Guyana was awarded damages in the sum of \$4,000,000.00 for libel alleging dishonesty.

In **Winston Brassington v National Media Publishing Co. Inc. and Harris** the Plaintiff herein was awarded damages in the sum of \$5,000,000.00 for libel alleging dishonesty and criminal conduct.

In **Lyndon Amsterdam v Vahnu Manickchand Et Al** an Attorney-at-Law was awarded damages in the sum of \$4,000,000.00 for libel alleging dishonesty and criminal conduct.

Taking all of these matters into account, damages are assessed in the sum of \$10,000,000.00, which includes an assessment of aggravated damages.

In the circumstances, the Court awards the sum of \$10,000,000.00 as damages for defamation to the Plaintiff against the Defendants jointly and severally.

The Court awards interest on the said award at the rate of 6% per annum from July 30th 2014 to February 12th 2021 and 4% per annum thereafter until fully paid.

The Court awards the sum of \$1,000,000.00 as costs to the Plaintiff against the Defendants jointly and severally.

Justice N. A. Singh