

IN THE HIGH COURT OF THE SUPREME COURT OF JUDICATURE OF
GUYANA

2019-HC-DEM-CIV-SOC-81

BETWEEN:



COEN JACKSON

Claimant

-and-

RUEL JOHNSON

Defendant

The Honourable Justice Navindra A. Singh, Puisne Judge

Mr. Nigel Hughes and Ms. Savannah Barnwell representing the Claimant

Mr. Ganesh Hira representing the Defendant

Delivered November 19th 2021

RULING

The Claimant was at all material times a teacher/ educator in the State of Guyana.

The Defendant was at all material times the Cultural Policy Advisor at the Ministry of Education in Guyana.

The Claimant claims damages against the Defendant for defamation as a result of several statements that he published about the Claimant on the social media platform, Facebook, which the Claimant asserts were false and derogatory.

The alleged defamatory statements are;

“The sort of predator behavior that Jackson engaged in at Bishops is rife at private schools.”

“His dismissal from Bishops was based on the Ministry’s half-assed investigation, one that did not dig anywhere near deep enough but found enough merit in reports of his behavior to dismiss him.”

“... his [Telford Layne] daughter was in the same class with at least two of Jackson’s victims.”

“There is the woman in her thirties who he molested near the bathroom when she was a twelve year old and he had now started teaching. Down to his methodology at Bishops has been independently confirmed by multiple victims, including luring them to the little room at the top of the school.”

“Typical of pedophile cowardice to hide behind a complicit victim.”

“He can explain his spotty employment history up until Bishops, including short stints at private and public institutions all of which feature multiple reports of victimizing students. One girl from TI he harassed and offered sex for grades until her sister reported him to the principal. His tenure there didn’t last long after that. Ms. Humphrey might want to be aware that when Mr. Jackson is seeking sympathy from his former victims, she’s the person he dangles in front of them to protect himself. Phone calls, texts, Skype. Except of course when he can’t help himself and starts propositioning again. This is the sort of hubristic delusion you find with career pedophiles.”



“Ms. Humphrey is either trapped in a Stockholm Syndrome bubble since she fourteen or she’s complicit.”

“His problem isn’t that he likes vagina. His problem is that he targetted the young and vulnerable, making him a pedophile who believed he was getting with it on a technicality.”

“As far as has been communicated to me, girls were his overwhelming but not exclusive targets.”



The Claimant claims that the statements have irrevocably damaged his reputation and has subjected him to public ridicule, contempt, hatred and embarrassment.

In the Statement of Defence filed on June 20th 2019 the Defendant pleaded the defences of **justification** at paragraphs 3 and 5 and **fair comment** at paragraph 6.

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

In addition to the facts stated above, at the trial of the action, the Defendant testified;

"I did post that this is the behaviour of career pedophiles.

I was referring to Jackson as a career pedophile."

"Suggestion: You have no verification of the statements made to you.

Answer: I don't.

I agree that I still went ahead and published."

"I published that he lured multiple victims to the room at the top of the school.

Question: Have you provided the names or statements from these multiple victims?

Answer: No.”

“My general charge against Jackson is that he engages in pedophilia and he is a coward.”

“Question: Do you have any publication referring to him as a pedophile?”

Answer: I can't recall any.”

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 Oxford Languages dictionary a “**paedophile**” is *a person who is sexually attracted to children* and according to the Merriam-Webster dictionary, a “**pedophile**” is *one who is affected with pedophilia* and defines “**pedophilia**” as *sexual perversion in which children are the preferred sexual object*.

The Defendant, by his testimony, essentially accepted this meaning of the word. He did not attempt to advance any other meaning and in fact made it clear in his testimony that he was saying the Claimant is a pedophile.

In any event, the meaning intended by the the Defendant in the use of that word in this case would have been irrelevant and immaterial. [Bonnick v Morris]

The Court finds that the natural and ordinary meaning and/or inferential meaning of the word “**pedophile**” and the meaning that it would immediately convey to a reasonable reader is that the Claimant is sexually attracted to children and has acted and continues to act on that perverse attraction, thereby engaging in immoral and criminal practices.

The Court finds that the word “**pedophile**” as used by the Defendant is defamatory.



The Court also finds that the Defendant's statement that the Claimant was dismissed as a teacher from Bishops based on the Ministry's investigation to also be defamatory.

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 [1956] 1 All ER 991 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 Claimant's character, labelling him as a pedophile who actively pursued children to satisfy this sexual perversion, which is criminal conduct, without setting out, factually, any conduct of the Claimant that justifies such a comment.

There were clear imputations of fact which the Defendant failed to substantiate at the trial and therefore, the Court finds that the defence of *fair comment* is not available to the Defendant.

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 Defendant failed to produce one iota of evidence to support either that the Claimant is a pedophile or that he was dismissed from his job, for any reason, or at all.



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 used to describe the Claimant and the assertion that he was dismissed could not possibly be considered to be justified. The word and statements are therefore defamatory of the Claimant and would tend to lower his standing in society in the estimation of right-thinking members of society.



CONCLUSION

The word and statements published and complained of by the Claimant are clearly defamatory to the Claimant.

ISSUE II

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

LAW

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

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

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].




Winston Brassington v National Media Publishing Co. Inc. and Harris [High Court of Guyana per Singh J.] [360-W of 2014 (Demerara)] [Judgment delivered February 12th 2021].

Donald Ramotar v National Media Publishing Co. Inc. Et Al [High Court of Guyana per Singh J.] [2019-HC-DEM-CIV-SOC-247 (Demerara)] [Judgment delivered March 12th 2021].

Atlantic Fuels Inc. and Vanwest-Charles v National Media Publishing Co. Inc. and Lall [High Court of Guyana per Singh J.] [2019-HC-DEM-CIV-SOC-297 (Demerara)] [Judgment delivered November 5th 2021].

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 Claimant's personal integrity and professional reputation and the Claimant was accused of being a pedophile while serving as a high school teacher; this indeed makes the libel very grave;
- (ii) the nature of the libel was bound to cause distress, hurt and humiliation to the Claimant;
- (iii) the publication being disseminated via the social media platform, Facebook and the Defendant testified that at the time he had about 5000 followers. It is also a well established and accepted fact that material published on the world wide web is available for public consumption for eternity;
- (iv) the fact that the Defendant insisted on asserting the truth of the libel by persistence in the defence of justification;
- (v) the fact that the Defendant insisted on pursuing the defence of fair comment despite there being no factual basis for such a defence;
- (vi) the manner in which the defences were pleaded, using the pleadings to further cast aspersions on the Claimant's character knowing that they were not in possession of evidence to substantiate the pleadings;
- (vii) the Defendant has not apologised or expressed any regret over the publication of the libel.
- (viii) the Defendant used the trial to again repeat the statements knowing that he had no evidence to justify them;
- (ix) the need to re-establish and vindicate the Claimant'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.

A review of the awards in recent cases in Guyana reveals; 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 [September 2020] the Plaintiff 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.

In Winston Brassington v National Media Publishing Co. Inc. and Harris [February 2021] the Plaintiff was awarded damages in the sum of \$10,000,000.00 for libel alleging dishonesty and criminal conduct.

Donald Ramotar v National Media Publishing Co. Inc. Et Al the Plaintiff was awarded damages in the sum of \$20,000,000.00 for libel alleging dishonesty and criminal conduct.

Atlantic Fuels Inc. and Vanwest-Charles v National Media Publishing Co. Inc. and Lall the Claimants were awarded damages in the sum of \$10,000,000.00 for libel alleging dishonesty and criminal conduct.

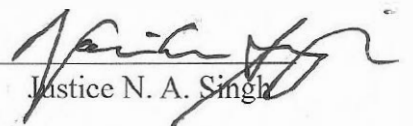
Taking all of these matters into account, damages are assessed in the sum of \$5,000,000.00, which includes an assessment of aggravated damages.

In the circumstances, the Court awards the sum of \$5,000,000.00 as damages for defamation to the Claimant against the Defendant.

The Court awards interest on the said award at the rate of 6% per annum from March 5th 2019 to November 19th 2021 and 4% per annum thereafter until fully paid.

The Court awards the sum of \$1,000,000.00 as costs to the Claimant against the Defendant which sum is to be paid on or before January 7th 2022.




Justice N. A. Singh