

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

2019-HC-DEM-CIV-SOC-247

BETWEEN:

DONALD RAMOTAR

Claimant

-and-

1. NATIONAL MEDIA AND PUBLISHING COMPANY LIMITED a company duly incorporated under the Companies Act 1991 of the Laws of Guyana with its registered address located and situated at 24 Saffon Street, Charlestown, Georgetown, Guyana.
2. NATIONAL MEDIA AND BROADCASTING COMPANY LIMITED a company duly incorporated under the Companies Act 1991 of the Laws of Guyana with its registered address located and situated at 24 Saffon Street, Charlestown, Georgetown, Guyana.
3. GLENN LALL
4. ADAM HARRIS

Defendants
Jointly & Severally

The Honourable Justice Navindra A. Singh, Puisne Judge

Mr. C. V. Satram representing the Claimant

Mr. Nigel Hughes representing the Defendants

Delivered March 12th 2021

RULING

The Claimant was at all material times the Former Executive President of the Co-operative Republic of Guyana having served in that capacity from 2011 to 2015

and a known and recognised political personality, locally and internationally for decades prior to being the Executive President of 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 and is a company duly incorporated under the laws of Guyana which carried out radio broadcasts via two FM frequencies to all three counties of Guyana, under the name of **Kaieteur Radio Today**.

The Third Named Defendant [TND] was and is the Publisher of the **Kaieteur News** newspapers and the servant and/ or agent of the FND and SND.

The Fourth Named Defendant [FoND] was the Editor of **Kaieteur News** and the servant and/ or agent of the FND.

The Claimant instituted this Claim on June 26th 2019 claiming damages against the Defendants for defamation as a result of the following publications;

- A full page publication in the **Kaieteur News** on June 5th 2019 which was republished as full page publications on June 6th, 7th and 8th, [**Exhibits “A”, “B”, “C” and “D”**] and half page publications on June 9th and 12th 2019

[**Exhibits “E” and “F”**] wherein the publication asserted that the Claimant “*signed away oil blocks to four companies who knows nothing about oil*” likening such alleged actions of the Claimant to corrupt transactions by Senegalese presidents.

- Further the full page publications [**Exhibits “A”, “B”, “C” and “D”**] invited the readers of the **Kaieteur News** to tune into the **Kaieteur Radio Today** to further learn about the comparison that was being advanced.
- A full page publication in the **Kaieteur News** on June 9th 2019 which was republished as a full page publication on June 25th [**Exhibits “G” and “K”**] wherein the publication contained images of bandits and asserted that the Claimant secretly transferred oil blocks to unknown persons.
- A full page publication in the **Kaieteur News** on June 12th 2019 which was republished as a full page publication on June 13th [**Exhibits “H” and “J”**] wherein the publication asserted that the Claimant and others took all of the good oil blocks and also containing the words “*Wake up GUYANA cat eating yuh din-naa!!*”.
- Radio broadcasts on **Kaieteur Radio Today** discussing the meaning of the aforementioned published articles [**Exhibits “A”, “B”, “C” and “D”**].

In their Statement of Defence filed on July 24th 2019 the Defendants pleaded justification.

At paragraph 1 of the Statement of Defence the Defendants admit that the radio broadcasts intended for any reasonable person to conclude that reference was being made to the Claimant.

The Defendants also pleaded the defence of *fair comment* at paragraph 12 of the Statement of Defence.

ISSUE I

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

LAW

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

Lord William Nevill v The Fine Art and General Insurance Company Limited [1897] A.C. 68 @ 72.

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 @ 456, (1970) 2 ALL ER 754 @ 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 it is clear from the evidence that while the Claimant was the President of Guyana he signed two (2) agreements granting two (2) Petroleum Prospecting Licences for the purpose of carrying out prospecting operations in what are known as the Kaieteur and Canje Blocks.

The Claimant testified that at the time of the signing of the agreements there was no confirmed commercial petroleum discovery in those Blocks.

The Claimant in his testimony explained the various reasons and thought processes that guided the signing of the agreement, such as the fact that there was a territorial dispute by Venezuela over the area and the fact that there was difficulty historically in generating interest in oil companies in the area and in fact the agreements were signed following applications by those companies being approved by the Guyana Geology and Mines Commission.

Though the reasons for signing the agreements granting the Petroleum Prospecting Licenses may not appear material to this trial, the existence of such facts, which could have been discovered by the Defendants and therefore ought to

have guided the publications, are important in the consideration of damages if the publications are found to be defamatory.

The Claimant established by evidence that he released a statement to the press on May 31st 2019 [**Exhibit “M1 - M4”**] days before the publications and broadcasts.

Mr. Glenn Lall, the TND, who also testified on behalf of the FND and SND, testified that he was unaware of the press release, however, the evidence establishes that the statement released to the press was published verbatim by the Guyana Times newspaper [**Exhibit “N4 - N8”**] and the Stabroek News newspaper [**Exhibit “N9 - N12”**] on June 1st 2019, two of the other three daily newspapers in Guyana and a news article appearing in the Kaieteur News newspaper [FND] on June 1st 2019 indubitably refers to the Claimant’s press release [**Exhibit “P1 - P2”**].

Mr. Glenn Lall disputes the Claimant’s assertion that “no oil was discovered at the time of the signing of the agreements”, however he did not lead any evidence to show otherwise.

Mr. Glenn Lall testified that the two (2) agreements signed by the Claimant gave the contracting companies “*exclusive rights to explore, develop and produce petroleum in an area of Guyana described therein as “Canje Block” and Kaieteur Block”*”. [**Exhibit “T2” - paragraph 5**].

The contracts [Exhibits “Q” and “U”] were tendered into the evidence at this trial by the TND and a simple cursory examination of the contracts reveal that the contracts only grant rights to the contracting companies to carry out prospecting operations.

Mr. Glenn Lall testified that the images in Exhibits “G” and “K” were intended to be images of bandits and/ or thieves and that he intended to convey that the Claimant took part of “the US\$100,000,000.00” and that he secretly collected monies in corrupt deals.

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 in **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.”

In addition, in this case, not only must each publication be construed as a whole but the context in which the words were used must be considered.

As stated by Lord Halsbury L.C. in the case of **Lord William Nevill v The Fine Art and General Insurance Company Limited**;

“ ... it is necessary to take into consideration, not only the actual words used, but the context of the words, and the persons to whom the communications were made.”

The publications, **Exhibits “A”, “B”, “C” and “D”** were further explained by a broadcast by the SND which, according to the unchallenged testimony of the Claimant, inferred that the Blocks were **“signed away”** and then sold for US\$100,000,000.00 from which the Claimant benefitted.

The publication, **Exhibit “G”**, coupled with the image of bandits, clarifies, in no uncertain terms, what **Exhibits “A”, “B”, “C” and “D”** are intended to convey, and **Exhibits “E” and “G”** were published in the same newspaper on June 9th 2019.

The publications, all being published within the space of three weeks, effectively fed off each other, increasing the rhetoric and creating links to make sure that

anyone reading or listening would unmistakably form the picture that the Claimant is a corrupt man, for instance having read **Exhibits “H” and “J”**, **Exhibits “G” and “K”** are easily connected and the message that the Claimant is corrupt conveyed.

Gatley on Libel and Slander 8th edition at paragraph 103 it is stated; “*A Defendant cannot defame and escape the consequences by any dexterity of style*” and while the statement therein was addressing the effect of the language as opposed to its form, this Court is of the view that the statement can equally be applied in this case based on how the publications complained of were published and linked to defame.

In addition the comparison of the Claimant purported actions to the stated actions of President Abdoulaye Wade, to wit, that President Wade signed away oil blocks to a convicted drug lord constitutes in itself a defamatory imputation and in fact Mr. Glenn Lall testified “*I agree that the ad was saying that the same thing happened in Guyana. That Ramotar did what President Wade did*”.

The publications unmistakably convey the impression that the oil Blocks were sold and/ or disposed of and no longer the property of Guyana when in fact the agreements signed by the Claimant only granted Petroleum Prospecting Licences for the purpose of carrying out prospecting operations in what are known as the Kaieteur and Canje Blocks, a fact that must have been known to the Defendants or easily discoverable by examining the contracts.

In applying the principle enunciated above to this case, the Court finds that the publications clearly attacked the Plaintiff's character, labelling him as a dishonest person that engages in fraudulent or criminal practices and further that he engaged in such conduct when he was the President of Guyana thereby stealing from the people [citizens] of Guyana.

Mr. Glenn Lall in fact testified "*I agree that it says that the blocks were given away secretly and in a corrupt manner*".

In this regard the Court finds that the publications are defamatory in nature and will now consider the defences advanced.

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.”

The Defendants have failed to lead any evidence or establish that;

- I. The signing of the agreements granting the Petroleum Prospecting Licences were done clandestinely by the Claimant, or
 - II. That the entities that received the Petroleum Prospecting Licences by the agreements were connected to the Claimant in any way, much less corruptly, or
 - III. That the Claimant benefitted financially from any sale/ transfer of the licences by those entities,
- that justifies such statements and inferences.

In fact the statement released to the press by the Claimant prior to the Defendants’ publications ought to have informed the Defendants and caused them to verify the truthfulness of the publications prior to publishing same multiple times.

The Court therefore finds that the defence of *fair comment* 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 any lengthy analysis of the evidence to determine if this defence was established.

It has already been shown that the Claimant did not sign any agreement/s for the production of petroleum.

The Defendants have failed to produce one iota of evidence to support the intended and conveyed message of the publications and broadcasts, to wit, that the Claimant signed the agreements to corruptly benefit and in fact did corruptly benefit.

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 Defendants’ publications and broadcasts cannot possibly be considered to be justified.

The publications and broadcasts 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 publications and broadcasts 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.

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].

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].

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 and is a very public figure who served in the highest public office of the land; 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 world wide web would have had the widest distribution possible. 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;
- (iv) the fact that the Defendants insisted on asserting the truth of the libel by persistence in the defence of justification;
- (v) the fact that the Defendants 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 as can be seen from the ultimate fate of the defences;
- (vii) the Defendants have not apologised or expressed any regret over the publication of the libel, in fact, Mr. Glenn Lall, while testifying on behalf of the FND, SND and TND further used the witness box to make statements

attacking the Claimant's character, to wit, "*I am saying that Donald is a corrupt man*" and "*I am calling for Ramotar to be investigated for corruption and crime against the people of Guyana*";

(viii) the TND, testifying on behalf of himself and the FND and SND used his testimony to continue to cast aspersions on the Claimant's character knowing that they were not in possession of evidence to substantiate same;

(ix) the fact that not only did the Defendants not have in their possession evidence to support their contentions in the publications, they in fact had in their possession information that contradicted the publications prior to publishing;

(x) 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.

This 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** [295-W of 2014] 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.

In **Winston Brassington v National Media Publishing Co. Inc. and Harris**

[360-W of 2014] the Plaintiff herein was awarded damages in the sum of \$10,000,000.00 for libel alleging dishonesty and criminal conduct.

CONCLUSION

Taking all of these matters into account, damages are assessed in the sum of \$20,000,000.00, which includes an assessment of aggravated damages.

In the circumstances, the Court awards the sum of \$20,000,000.00 as damages for defamation to the Claimant against the Defendants jointly and severally.

The Court awards interest on the said award at the rate of 6% per annum from June 26th 2019 to March 12th 2021 and 4% per annum thereafter until fully paid.

The Court awards the sum of \$2,400,000.00 as prescribed costs to the Claimant against the Defendants jointly and severally.

Justice N. A. Singh