

TRINIDAD AND TOBAGO.

**IN THE HIGH COURT OF JUSTICE
(Sub-Registry, San Fernando)**

H.C.A. No. S-634 of 1999

Between

RAJNIE RAMLAKHAN

Plaintiff

And

TRINIDAD AND TOBAGO NEWS CENTRE LIMITED

First Defendant

And

RAMJOHN ALI

Second Defendant

Before the Honourable Mr. Justice J. Tam

Dated the 29th May 2009

Appearances:

Mr. A. Ramlogan for the plaintiff

Mr. V. Maharaj for the defendants

Decision on Damages

1. On the 14th February 2005 I delivered my decision at first instance and dismissed the plaintiff's claim for damages for defamation. The plaintiff successfully appealed that decision and the case has now been remitted to me for an assessment of the damages. It is my understanding that the second defendant is now deceased. In my decision on the 14th February 2005, I indicated that I found the matters complained of by the plaintiff to be a serious charge and to be defamatory of her. I maintain the view that the mischief complained of is serious indeed and I believe it is necessary to repeat a part of what I said on the 14th February 2005.

2. At all material times the plaintiff was a prominent columnist and a cultural and religious activist employed with the Daily Express newspapers. She also served on the executive of a Hindu religious organization known as the Hindu Women's Organization. She was a post-graduate student of history at the University of the West Indies. The first defendant was the proprietor and publisher of a weekly newspaper called the Sunday TNT Mirror. This newspaper had a wide circulation throughout Trinidad and Tobago, the Caribbean and, I was told, North America, though I believe that in this last instance circulation would have been confined mainly to among the West Indian population in North America and, in particular, among Trinidadians and Tobagonians residing there. The second defendant was at all material times the author of a weekly column entitled, "Against All Flags", published in the Mirror and was also known by the sobriquet, "The Flagsman".

3. From July 1998 to May 1999, the second defendant wrote 4 articles concerning the plaintiff in his weekly column. These were printed, published and widely circulated by the defendants. The relevant portions are as follows –

- (a) On Sunday the 19th July 1998 under the headline **"Rushing headlong into a racial abyss"**, the words *"That is why I have openly and constantly condemned Indian racists like Maha Sabha secretary general Sat Maharaj, Sabha executive member Devant (the Deviant) Maharaj, and the posse of rabid, poisonous Indian Apan Jhatists (advocates of "Straight Hair" supremacy) such as Noor Kumar Mahabir, Kamal Persad, Sam Siewah, Rajnie (Godzilla) Ramlakhan, and not forgetting that notorious Shithouse Writer, Anil Mahabir, a UNC wannabe politician."* (The United National Congress, or UNC, is a major political party in Trinidad and Tobago and at one time formed the government of the country. I do not think it will be overstating the case to say that most of its supporters are of East Indian descent. The Sanatan Dharma Maha Sabha, or Maha Sabha for short, is a major, if not the major, Hindu organisation in the country);
- (b) On Sunday the 9th August 1998 under the headline **"A double door unit for Anil ... for when Keith Smith done sue him"**, the words *"And when are at it KG, give some serious attention to that Rani (Queen) of Racism, Rajnie Ramlakhan, whose racist thought processes are as hideous as her physiognomy"*. (The article carried a photograph of the plaintiff above the caption "RAJNIE RAMLAKHAN... Rani (Queen) of Racism in the Express". Ironically, "KG" refers to Mr. Kenneth Gordon, who at the time might have been the Chief Executive of the Express Daily newspaper, a newspaper with arguably the largest circulation at the time, and in which the plaintiff was a weekly columnist. I say

“ironically” because I intend to rely heavily on the guidance arising from a suit filed by Mr Gordon against a former Prime Minister and which I will refer to in due course);

(c) On Sunday 6th December 1998 under the headline **“Job gets stiff pressure from Bas and Anil... but Rajnie favoured for another Cobo Award”**, the words **“RAJNIE RAMLAKHAN**

- She too racial
- She hates the people she resembles. What irony!
- She resembles an aborigine but hates Black people
- She is definitely a racist cobo
- She too ugly and stink and she hates nigger people
- She hates Christians and Blacks but worships Sai Baba who is a Dougla”

This article also carried a photograph of the plaintiff above the caption **“RAJNIE RAMLAKHAN... obtusely racist bias”**); and

(d) On Sunday the 2nd May 1999 under the headline **“Industan racists expose their hand”**, the words *“I don’t know why Express columnist Rajnie Ramlakhan, the poisonously racial Indian Apan Jhatist, is so boldface.”* (This article too carried a photograph of the plaintiff above the caption, **“RAJNIE RAMLAKHAN... vile outpourings”**).

4. Subsequent to the filing of the Writ of Summons and Statement of Claim, the defendants printed and published five further articles concerning the plaintiff as follows –

(a) On Sunday the 18th July 1999 under the headline **“Courthouse clothes drying on the line as ... Rajnie sues Flagsman – for calling her a racist”**. (This article carried a caricature of the plaintiff above the caption, **“RAJNIE RAMLAKHAN... kyah, kyah, kyah!”**);

(b) On Sunday the 1st August 1999 under the headline **“Cobos in cyberspace... and introducing the Sawatee Saltfish”**, the words **“...facially grotesque poisonously racist, ethnically warped Indian woman”** (This article carried a caricature of the plaintiff above the caption, **“Queen Cobo RAJNIE RAMLAKHAN... everybody laughing... kyah, kyah, kyah!”**);

(c) On 1st March 2002 under the headline **“Landmark Press Freedom lawsuit vs. Mirror starts in High Court... I am not a racist – former Express columnist”**. (This article may have been published in the Friday Mirror, which is a sister newspaper also published by the first defendant.)

- (d) On Sunday the 3rd March 2002, under the headline “**Dey want to jail de Flagsman!**”;
and
- (e) Also on Sunday the 3rd March 2002, under the headline “**Former Express columnist sues the Flagsman: Rajnie: I was called as ‘racist pig’ at UWT**”.

5. In the case of the last three articles, these were published after the trial had begun and was still pending. In the case of the third article, the second defendant is not the writer. In the case of the fifth article, it is not clear if the writer is the second defendant. All five articles were however published by the first defendant.

6. The plaintiff’s claim for libel rests wholly upon the four articles published prior to the action. The five subsequent articles have been pleaded in relation to the plaintiff’s claim for aggravated damages. At the trial on the 25th February 2002, Counsel for the plaintiff had indicated to the court that his client was not pursuing a claim for exemplary damages, but was seeking aggravated damages. Such a claim really forms part of the claim for general damages. The duty of the court where such damages are claimed is to consider whether there are factors that have contributed to the worsening of the injury suffered by the plaintiff and, if so, to consider awarding an increased sum to compensate the plaintiff accordingly. To put it another way, in words of the ordinary man, if the court finds that insult has been added to the injury, that is an aggravating factor that can increase the award of damages. In this case I find that there are many factors that justify the claim for aggravation and I shall refer to these in due course.

7. There is no claim for special damages in this action. The plaintiff’s claim is for general damages only, which are at large. Further, in the case of libel, damage is presumed. I believe the words of Jamadar, J. in **H.C.A. No. Cv 1443 of 1997 Kenneth Gordon v. Basdeo Panday** (at pages 75-76) adequately summarises the approach to be taken by the court in assessing the damages:

‘The purpose of general damages is to compensate the plaintiff for the effects of the defamatory statement(s) and are said to serve three main functions: as a consolation for the distress, hurt and humiliation caused; to repair injury to reputation; and as a vindication of reputation (see Gatley, 9th ed., para. 9.2) The plaintiff is therefore entitled to an award which satisfies the above three factors and therefore account must be had of, *inter alia*, the seriousness of the defamation, the mode and extent of its publication and the extent to which the defendant persisted

with the allegations ((see Gatley, 9th ed., para. 9.2). As Lord Atkin aptly put it, in *Ley v Hamilton* (1935) 153 L.T. 384 at 386:-

“It is precisely because the real damage cannot be ascertained and established that damages are at large. It is impossible to track the scandal, to know what quarters the poison may reach: it is impossible to weigh at all closely the compensation which will recompense a man or a woman for the insult offered or the pain of a false accusation. No doubt in newspaper libel juries take into account the vast circulations which are justly claimed in present times.” ’

8. 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 core attributes of his personality, the more serious it is likely to be”: per Sir Thomas Bingham, M.R. in **John v MGN Limited** (1977) QB 586 at 607. In the instant case, the first defendant is the publisher of the newspaper and the second defendant was at all material times an assistant editor and a senior columnist. This was not a case of reporting the news or repeating something that someone else had said about the plaintiff. The offending articles contained the defamatory statements that emanated from the second defendant himself. In the articles, the plaintiff is bluntly referred to as an “Indian racist”, as “Rajnie (Godzilla) Ramlakhan”, as “that Rani (Queen) of Racism”, as being a person whose “racist thought processes are as hideous as her physiognomy”, as being “too racial”, as hating “the people she resembles”, as resembling “an Aborigine but hates Black people”, as “definitely a racist cobo”, as being “too ugly and stink” and hating “nigger people”, as hating “Christians and Blacks” but worshipping “Sai Baba, who is a Dougla”, as possessing “obtusely racist bias”, as being an “Industan” racist, and as being a “poisonously racial Indian Apan Jhatist”.

9. In Trinidad and Tobago, some 80 percent of the population is comprised of persons of two main ethnicities - persons of African descent and those of East Indian descent. The plaintiff is of the latter. She has been clearly labelled as a racist in this small society where the overall population is about 1.5 million people. To my mind, this is a most serious charge. It is small wonder therefore that after the publication of the articles some persons began referring to her as a racist. Friends, co-workers, university lecturers and acquaintances grew cold in their manner towards her and began to shun and/or avoid her completely. Some persons did not want to be

seen in her company. She even received threats of physical harm such as rape and murder, taunts and intimidating e-mail messages. She was no longer invited to write articles for different publications. Even some persons of Indian descent avoided her. She was ostracised and became an outcast. She contemplated leaving the country to reside elsewhere.

10. There can be little doubt of the plaintiff's great emotional pain and distress as a result of these articles. There is some indication that it led to her having to seek medical attention. Counsel for the plaintiff has submitted that as a woman, the libel was especially vile and despicable because it referred to her as being "too ugly" and "stink". And in one of the articles published after the case had been filed, she is referred to as being "facially grotesque". Further, the court notes that in an article published by the first defendant on the 25th October 2002, that is, on the last date of the hearing of the evidence at the trial, the plaintiff is referred to in a headline as "being so ugly, no man would ever want her... not even a rapist". The article itself purports to be a report of what was said by witnesses during the case, but the point is that the defendants were quite prepared, even while the trial was taking place, to continue to repeat unsavoury and distasteful remarks about the plaintiff. It is clear to me that the defendants were wholly unrepentant and deliberately persisted in their deplorable conduct and that the justice of the case will not permit the court to overlook their actions. In my view, these are serious aggravating factors, quite apart from the serious nature of the defamatory articles complained of. Some other aggravating factors are -

- The lack of any apology: The defendants have never apologised for their conduct in publishing the defamatory articles. They appear to remain wholly unrepentant.
- The billing of the case as an attack on press freedom: They published a report under the headline: "Landmark Press Freedom lawsuit vs. Mirror starts in High Court... I am not a racist –former Express columnist". In my view, they sought to market the litigation, to sensationalise the case and to continue to ridicule the plaintiff in her pursuit of it. I believe the impression they tried to create is that the plaintiff was being silly, stood little or no chance of success and was really unjustified in complaining.
- The act of publication of matters during the trial: The very act of continuing to publish articles reporting on the trial, to my mind, reinforces the defendants' lack of any form of regret for the hurt, distress and plight of the plaintiff. It seems to me that their intention was not so much to report objectively on the trial, as to sensationalise chosen aspects of it

- to boost the sale of newspapers. In other words, to continue to profit from their wrongful conduct.
- The attempt to influence me in one article published during the trial: I was reminded by Counsel for the plaintiff that during the trial the defendants had on Sunday the 3rd March 2002 published the article (already referred to above) under the headline “**Dey want to jail de Flagsman!**” and in which the second defendant had stated that he knew and was friendly with my uncle and in which he also described me as being “meticulous” and “cool”. Although I had not seen or read the article until it was brought to my attention during the trial, I subsequently formed the view that it was a foolish and ill-advised attempt to influence me. While I do not think that I was influenced by it, nevertheless I saw it as an attempt by the defendants to gain an unfair advantage.
 - The malicious nature of some of the articles – Headline of 25th October 2002: “Ramlakhan so ugly, no man would ever want her... not even a rapist”.
 - The wide publication of the libel: The defendants were at all material times the publishers and assistant editor, respectively, of a widely circulated newspaper. They themselves have from time to time attested to this. The libel is contained in four articles written over an eight-month period. There were at least 5 subsequent articles that referred to the plaintiff in the most derogatory of terms.

11. I believe that the **Gordon v. Panday case** (supra.) is relevant to the instant case. In that case Mr. Gordon, a prominent citizen of Trinidad and Tobago, a highly successful businessman with a distinguished career in the news media business, public affairs and commerce, and a past Government Minister, was awarded the sum of \$600,000.00 as damages, inclusive of a factor for aggravation. Mr. Gordon was not only widely respected in this country, but also in the wider Caribbean and, I dare say, beyond. He had been labelled a “pseudo racist” by the then Prime Minister of Trinidad and Tobago during a feature address at an Indian Arrival Day celebration that was widely covered by all of the local media houses. The Prime Minister’s remarks had then been reported by several media houses locally, regionally and perhaps even internationally. The trial judge found that the meanings to be attached to the allegations of the Prime Minister were that Mr. Gordon was “a racist without any integrity, a false racist”, who was “a hypocrite pretending to be a racist when he is really exploiting racism for personal gain and advantage”, and further, that Mr. Gordon was opposed to national unity, the best interest of the country, owed no real loyalty to the nation and nation building, or to authentic news coverage and/or reporting and that his only loyalty was to himself. Both the trial judge and the Court of Appeal appear to

be of the view that the term “pseudo racist”, so defined, was even more defamatory and more serious than to be called a mere racist, if I may be permitted to put it that way.

12. The Court of Appeal by a majority decision reduced the damages awarded to \$300,000.00 on the basis that the trial Judge’s award tended to represent the higher end of the scale of awards for defamation in this country and that there were factors that warranted an award more to the centre of the scale. Hamel-Smith, J.A. referred to two local cases (Civil Appeal No. 125 of 1987 **Solomon v. Trinidad Publishing Company Limited** and **Forde v. Shah** (1990) 1 TTLR 73) where then landmark awards of \$150,000.00 and \$100,000.00 (the latter inclusive of exemplary damages of \$10,000.00), respectively, had been made some 13 to 14 years prior to 2003 (now 19 to 20 years ago) and remarked that “Given the passage of time, the relentless pursuit by the press for sensationalism with little concern for reputation and the fall in the value of money over the ensuing period, if both cases had to be decided today, it is quite likely that the respective awards would have been in the vicinity of the award made by the trial judge...”. In other words, if the cases of **Solomon** and **Forde** were to be tried in 2003, it is quite possible that an award in the region of \$600,000.00 might have been appropriate. In **Solomon’s case**, the plaintiff had been accused of shooting at the home of the Chief Justice and in **Forde’s case**, the plaintiff had been accused of contracting aids, transmitting the disease to a Government Minister and subsequently dying. In my view, and bearing in mind the remarks of Hamel-Smith, J.A., the libel in the instant case is even greater than in these two cases. They were contained in a series of articles over a prolonged period of time. I also consider that there are serious aggravating factors as outlined above, and I also bear in mind that we are now in the year 2009.

13. As I understand it, the trial judge’s award in **Gordon’s case** was reduced primarily because the evidence did not reveal that Mr. Gordon, subsequent to the publication, had remained anything other than a successful businessman who continued to be highly respected throughout the Caribbean in the media field. Hamel-Smith, J.A. felt that whatever injury to feelings and loss of reputation he might have suffered would to some extent have been cushioned by the outpouring of support that he received from his colleagues in the media, here and abroad. He said the case was unusual because the press appeared to be strongly condemnatory of the appellant (the Prime Minister) and sympathetic to Mr. Gordon. That was so no doubt because Mr. Gordon was one of them, so to speak, and had on more than a few occasions spoken out in favour of freedom of the press and the media, having worked for most of his long and successful career in the media field. In the instant case, there are no such factors to give solace and comfort to the

plaintiff. I consider that the plaintiff, while obviously not as prominent a citizen as Mr. Gordon, nevertheless would have suffered greater injury to her feelings and reputation than he did. She was shunned by many persons who knew her and who had previously associated with her. She was subjected to racist slurs and other similar derogatory remarks from strangers and she had to endure threats to her physical safety. In a community as small as Trinidad and Tobago, this might well have been too much for anyone to bear. The fact that she chose to remain might well say something of her character and determination.

14. I bear in mind that it has been 6 years since the decision of the Court of Appeal in the **Gordon case**. I also bear in mind the fall in the value of money and the effect of inflation over that period. I am of the view that a reasonable sum to be awarded as general damages, inclusive of aggravated damages, to compensate the plaintiff for the serious distress, hurt and humiliation suffered, for the injury to her reputation, and as a vindication of reputation, is \$700,000.00. I further award interest on this sum at 6 percent per annum from the date of the service of the Writ of Summons on the first defendant. In keeping with the direction of the Court of Appeal, the defendants shall be liable to pay the plaintiff's costs to be taxed in default of agreement.

Joseph Tam
Judge