

**THE REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**CV 2011-00264**

**BETWEEN**

**NIZAM MOHAMMED**

**Claimant**

**AND**

**THE TRINIDAD EXPRESS NEWSPAPER LIMITED**

**OMATIE LYDER**

**RIA TAITT**

**Defendants**

**Before The Hon. Madam Justice C. Gobin**

**Appearances:**

**Mr. Fyard Hosein SC with Mr. R. Heffes-Doon**

**instructed by Ms. N. Alphonso for the Claimant**

**Mr. Farees Hosein instructed by Ms. Ramjohn for the Defendants**

**JUDGMENT**

1. The claimant Mr. Nizam Mohammed is a senior attorney-at-law in practice for over 37 years. On the 21<sup>st</sup> July 2010 the claimant was appointed by the President of The Republic to the office of the Chairman of The Police Service Commission. Sometime on the very evening of that appointment, the People's National Movement held a meeting in St. James. The 3<sup>rd</sup> defendant, Ria Taitt, the Political Editor of the Express Newspaper, an experienced reporter on political matters and a journalist of some 28 years experience, attended the meeting. She made notes and carried some sort of recording device.

2. On Friday 23<sup>rd</sup> July 2010 in an article written by Ms. Taitt and published in the Express under the headline “Treasury Empty, public servants cautioned: Watch It” the following words were printed:

***“Baptiste-primus said she had written to President George Maxwell Richards raising objections to the appointment of former Speaker of the House Nizam Mohammed to the Police Service Commission.***

***She said the basis of her objection was the PSA’s experience with Mohammed, whose services the PSA had contracted on a particular matter. She said that this encounter led to the PSA referring Mohammed to the Disciplinary Committee of the Law Association which made an order against him.***

***Baptiste-Primus said that the President’s Secretary responded to her letter saying that it had come too late, since Parliament was due to debate the notifications the next day. The President’s Secretary added that her letter was nevertheless forwarded to Prime Minister Kamla Persad-Bissessar”.***

3. On that very day, Ms. Baptiste-Primus contacted the paper to indicate that she was not referring to Mr. Mohammed when she made the statement. Indeed it turns out she had not named the attorney at all. As a consequence, the following day, in a small column headed “Correction”, the paper published along with two other corrections the following words “What Jenny said” -

***“Speaking at the People’s National Movement meeting in St. James on Wednesday, Baptiste-Primus said the PSA had contracted the services of an attorney and ended up taking him to the Disciplinary Committee of the Law Association which eventually made an order against him, Baptiste-Primus never named the attorney, as was stated in the article. It was not Mohammed she was referring to. The error is regretted”.***

What is clear from the chronology is that on the very day of the publication, the defendants were put on notice that a grave error had been made by the reporter.

4. This was a most serious libel, the words published were highly defamatory and injurious to the claimant's professional reputation. Since Ms. Baptiste Primus never identified Mr. Mohammed as the attorney to whom she was referring, the resulting report constituted pure misinformation. Against that background, I have returned to the defendants pleading, to more closely consider the defendants' case and conduct in this matter.

5. At paragraph (6) of their defence, the defendants raised a defence of qualified privilege. The pleading at para. (6) k, m, n, o, p are set out:

- (k) Ms Taitt attended the meeting and wrote the article reporting on what "she heard and witnessed".
- (m) It was wholly justifiable to include the words complained of in the article as the 3<sup>rd</sup> defendant was present and witnessed for herself the speakers.
- (o) The 3<sup>rd</sup> defendant honestly believed the information reported in the Article to be accurate at the time of publication having regard to the statements made by the speakers at the public political meeting in St. James.
- (p) In the circumstances the defendant had a moral and social duty to write and publish the article and the public had an interest in receiving the information.

6. What is pleaded is irreconcilable with the truth of the matter, which is that the speaker never said what Ms. Taitt reported. In her witness statement, Ms Taitt

explained that it was not that Ms. Baptiste-Primus said Mr. Mohammed's name as she had reported, but that when the speaker made the statement without naming the lawyer, that some persons in the crowd began to shout Mr. Mohammed's name. Ms. Baptiste did not correct them. This is the basis on which the reporter, without any further investigation wrote so defamatory an article. In the circumstances, I consider her leap to be attributable to sheer recklessness.

7. The defendants appeal for the protection of qualified privilege and their claims to responsible journalism are without merit since the defendants took absolutely no step to verify the report before it was published. No effort was made to make contact with or to seek a comment or confirmation from Mr. Mohammed. Here was an attorney, who had a high public profile apart from his professional one, and who was, but a phone call away. An entire working day intervened between the meeting and the publication. The defendants' actions in this instance did not approach the standard of responsible journalism which would warrant protection.

8. In the light of the defence I have considered the effect of the publication of the "correction". It is clear from the evidence of the editor that what was published was not intended to be an apology to Mr. Mohammed. Indeed from the evidence, the paper distinguishes what are the regular "corrections" from "apologies" in the "legal" sense. In situations such as Mr. Mohammed's, the defendants rely on the advice of their attorneys and if an apology is deemed necessary one would be

prepared by the attorney and published. In this case no apology or retraction has appeared to date. The claimant's attorney sought both mere days following the publication. There was no response, other than a request for an extension of time.

9. Having regard to evidence as to the circumstances under which the "correction" appeared, I reject the defendants' case that this should be considered as mitigating the injury to the claimant's feeling. From the tone of it, and the evidence, I find that this was published for Ms. Baptiste-Primus' comfort and protection. Nothing in it was intended to be directed to Mr. Mohammed. Viewed in its proper context it conveys not just further disregard for the feelings of the claimant, but an obvious lack of atonement for the error, and insensitivity as to the effect of it.

### **Damages**

10. An allegation that the Disciplinary Committee has made an order against an attorney because he has not discharged his duty to a client is a grave one. It carries an imputation that the body, statutorily constituted and vested with a duty to discipline lawyers has heard evidence and made findings of professional misconduct. It further imputes incompetence, dishonesty, lack of fitness for one's profession, lack of professional ethics. This was a most serious libel when view in context.

11. The late Justice of Appeal Wendell Kangaloo, in 2009 while acting as Chief Justice, addressed the new lawyers. He said:

“Strive to become the best lawyer you can, but do so with integrity and professionalism because it is only if you follow this advice that your good name, which at the end of the day is all you have, will be remembered”.

For lawyers, the importance of reputation cannot be overstated. A lawyer’s reputation for honesty, integrity, ethical behaviour and professional competence are worth more than all the financial rewards a successful practice may bring. Lawyers are repeatedly warned too, warned of how easily reputation may be lost, by breaches of the code of conduct, by misdeeds and misbehaviour. It is against this background that the ruling in this case is to be understood, for it is one thing for a lawyer by his own conduct to cause damage to his professional reputation. It is quite another for such injury to be the result of unjustifiable and reckless press reporting.

12. In arriving at the quantum of damages I have considered the authorities and the following factors -

- (1) The gravity of the libel.
- (2) The recklessness of the reporter.
- (3) The failure to proffer a proper apology or to publish a retraction.
- (4) The failure to respond to the pre-action letter.
- (5) The conduct of the defence and the insistence upon defending the claim on the basis of qualified privilege when the reporter could not have believed the truth of what she said Ms. Baptiste-Primus said of Mr. Mohammed at the meeting, because the reporter never heard the speaker say it of him.

- (6) The reporter had no duty to report Ms. Baptiste-Primus as saying something of Mr. Mohammed that she did not say and the public had no right to receive the reporter's misinformation.

**Disposition**

13. There shall be judgment for the claimant. I award damages inclusive of aggravated damages in the sum of \$325,000.00. The defendants will pay the claimant's costs on the prescribed scale.

**Dated this 19<sup>th</sup> day of July 2013**

**CAROL GOBIN  
JUDGE**