

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV2008-03039

BETWEEN

ROBIN MONTANO

Claimant

AND

HARRY HARINARINE

First Defendant

HINDU CREDIT UNION COMMUNICATIONS LIMITED Second Defendant

Before: Master Alexander

Appearances:

For the claimant:

Ms Cindy Bhagwandeem

For the first and second defendants:

Mr Farid Scoon

REASONS

I. INTRODUCTION

1. This assessment relates to a claim for damages for libel perpetrated by the first defendant, Harry Harinarine, (hereinafter “Mr Harinarine”) and the second defendant, the Hindu Credit Union Communications Limited (hereinafter “the HCU”) on the claimant, Mr Robin Montano, (hereinafter “Mr Montano”). Mr Montano claims that on Friday 30th May, 2008 Mr Harinarine, President of the HCU, was a guest speaker on Radio Shakti (on 97.5 FM) when he made defamatory statements on live radio which were libellous of him.
2. On 8th August, 2008 Mr Montano commenced action against Mr Harinarine and the HCU seeking damages (including aggravated and/or exemplary damages) for libel. The alleged defamatory statements, as broadcasted on Radio Shakti, are reproduced below:

MR HARINARINE:

“ ... You know, I have to let Indians understand. Look – Montano – Robin Montano – I will publish a **racist nasty letter that Robin Montano write** me as President of this credit union. Robin Montano – if you see the kind of nasty letter he wrote the credit union.”

ANNOUNCER:

“We pardner Robin Montano?”

HARINARINE:

“**Yeah, and playing Indians’ friend ...**” [emphasis mine]

3. Mr Montano claims that in the context, the above words were defamatory and their natural and ordinary meanings defamed him and were made with the intent to scandalise and embarrass him. As a result, his character has been seriously injured; his professional reputation discredited; and he has suffered indignity, loss and damages. Liability in this matter was settled on 17th and 18th October, 2008 when judgments in default of defences were entered against Mr Harinarine and the HCU respectively. Pursuant to these judgments, the assessment was heard on 16th January, 2011.
4. There was no case put forward in defence of this claim as Mr Harinarine and the HCU failed to file any defence and the notice of application to set aside the judgments was struck out. Given this failure and subsequent refusal of their application, they were unable to adduce any evidence in defence of the claim against them. Their entitlement to be heard on the assessment was limited to costs and enforcement. See **Part 12.11 Civil Proceedings Rules, 1998**.

II. **MR MONTANO’S CASE**

5. Mr Montano sets out as his grounds for damages (including aggravated/exemplary) the following:
 - (i) Mr Montano was one of the attorneys at law who represented the depositors of the HCU, who were unlawfully denied access to their monies. Mr Harinarine (President of the HCU) intentionally defamed Mr Montano by ascribing ulterior, improper motives to the exercise of his professional obligation to represent the HCU’s depositors who were his clients.

- (ii) The defamatory statements were made allegedly as part of a tactical and strategic manoeuvre by Mr Harinarine and the HCU to create the impression that Mr Montano had a personal/religious/racial/political vendetta against the HCU/Indians/Hindus so that they could boost the sagging image and credibility of the HCU and Mr Harinarine in particular.
- (iii) The defamatory statements were made maliciously and with the intention to injure Mr Montano and his reputation.
- (iv) There was no basis for the inference and/or conclusion that Mr Montano's letter was racial.
- (v) The defamatory statements were maliciously and/or recklessly made in an attempt to increase the listening audience and profitability of Radio Shakti.
- (vi) The concerns raised by Mr Montano's letter were legitimate and well-founded and were vindicated by the subsequent events that led to the appointment of a provisional liquidator and injunctive relief being granted by the court.

IV. THE EVIDENCE

- 6. In support of Mr Montano's claim for damages, I had recourse to the following:
 - (i) Mr Montano's statement of case and claim form filed on 8th August, 2008;
 - (ii) Mr Montano's witness statement filed on 2nd February, 2010 with exhibits; and
 - (iii) The oral amplification of Mr Montano in the witness box.

IV. THE LAW ON DAMAGES FOR DEFAMATION

Mr Montano's submissions:

- 7. Counsel for Mr Montano submitted that in determining the measure of monetary compensation to award as damages for libel, there are certain key points about this case that must be borne in mind as a condition precedent, as follows:
 - (i) Mr Montano is a practicing attorney at law of 36 years, who has held various public positions over the years and is well known locally and regionally.
 - (ii) Over the course of his career, Mr Montano has developed a reputation of being a fighter and a fair and honest individual.
 - (iii) The subject matter of this litigation was triggered when Mr Montano, acting in his capacity as attorney to one Hyacinth Charles ("his client"), sent various letters seeking recovery of \$2,167,201.94 being monies deposited with the HCU together with interest. The request or

demand for payment made by Mr Montano on behalf of his client was done pursuant to a judgment in default of appearance obtained against the HCU.

- (iv) It was Mr Montano's performance of his duties that led to the defamatory statements made on Radio Shakti on 30th May, 2008.
- (v) Mr Montano's evidence as to what he understood the libel to mean and the impact on his life and reputation are detailed in his witness statement.

The Law:

8. The purpose of an award of damages in a defamation action is threefold in nature:
 - a. To compensate the claimant for the distress and hurt feelings;
 - b. To compensate the claimant for any actual injury to his reputation, which must be proved or may reasonably be inferred; and
 - c. To serve as an outward and visible sign of vindication. See ***TnT News Centre Ltd v John Rahael***.¹
9. The learned author in ***Gatley on Libel and Slander***² explains it thus, “[T]he purpose of general damages is to compensate the claimant for the effects of the defamatory statement, but compensation ... is a more complex idea than it is in the case of injury to person or property by negligence. It has been said that general damages serve three functions: to act as a consolation to the claimant for the distress he suffers from the publication of the statement; to repair the harm to his reputation (including, where relevant, his business reputation); and as a vindication of his reputation.”
10. There are several factors that are to be considered in any assessment of damages in a defamation action including:
 - a. The extent of the publication;
 - b. The gravity of the allegation; see ***John v MGN***.³
 - c. The impact upon the claimant's feelings, reputation or career as well as matters of aggravation or mitigation, see ***Cleese v Clark***.⁴

¹ *TnT News Centre Ltd v John Rahael* Civil Appeal No 166 of 2006 at page 10 per Kangaloo JA

² ***Gatley on Libel and Slander*** 9th edition at pages 201 - 2002

³ *John v MGN* [1997] QB 586

⁴ *Cleese v Clark* [2004] EMLR 3

Measure of Damages:

11. As a rule, a claimant is entitled in a defamatory action to recover compensatory damages for the wrong suffered. The law on the measure of general damages recoverable in a defamation action (namely libel) was set out in the judgment of Sir Thomas Bingham in **John v MGN** (supra) and adopted by the Court of Appeal in **TnT News Centre Ltd v John Rahael** (supra) to wit:

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 the 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 people⁵.

12. In assessing such damages, account must be taken of all the circumstances of the case:

*It is necessary always to take into account the full circumstances of the case. Such factors have to be borne in mind as the gravity of the allegation, the scale of publication, the extent to which any readers believed the words to be true, any impact upon the claimant's feelings, reputation or career. There may also be matters of aggravation or mitigation which also need to be put in the scales. It is, moreover, often the case that the claimant's own conduct will have a part to play in arriving at the appropriate figure. A fundamental point always to be remembered is that the purpose of such damages, and indeed compensation awarded under s. 3(5) [Defamation Act 1996 UK], is compensatory and not punitive. Per Eady J in **Cleese v Clark** (supra)*

The Evidence Required:

13. According to the learning in **Halsbury's Laws of England**⁶, once someone is libelled without any lawful justification or excuse, the law presumes that there will be injury to the person's reputation and his feelings for which he may recover damages. Often, the claimant need not testify or produce any evidence to prove such injury:

⁵ Supra note 1 at page 11 per Kangaloo JA

⁶ **Halsbury's Laws of England** 4th edition vol 28 at paragraph 18

*Damages on libel: If a person has been libelled without any lawful justification or excuse, the law presumes that some damage will flow in the ordinary course of events from the mere invasion of his right to his reputation, and such damage is known as “general damage.” Thus a plaintiff in a libel action is not required to prove his reputation, nor to prove that he has suffered any actual loss or damage. The plaintiff is not obliged to testify, although it is customary for him to do so, but having proved a statement defamatory of him and not excused by any available defence he is always entitled to at least nominal damages. See **Halsbury’s at paragraph 18***

14. It is clear from the learning above that -
- i. A claimant starts off with a presumption of damage and so need not testify.
 - ii. In the absence of evidence of damage, a claimant would attract a small award.
 - iii. If a claimant wishes to attract more than a small award for injured feelings and the distress associated with the libel then he is required to produce the necessary evidence.

This was confirmed by Kangaloo JA in *TnT News Centre Ltd v John Rahael* (supra page 13) who commented that, “*although the claimant starts off with a presumption of damage and is not required to testify, evidence of damage should still be presented since a claimant offering no evidence at all may find himself with a small award of damages. To attract more than this small award for injured feelings and the distress associated with the libel, evidence is required.*”

15. Thus, where a claimant fails to provide evidence in support of his claim for damages in a libel action, he would only recover a small award or nominal damages. The case on point is *Hayward v Hayward*⁷ where a circular was distributed by the defendant at a trade fair, which cast the plaintiff and his business in a disparaging light. It was held that only a nominal award of damages should be made because the plaintiff had given no evidence of damage save that in his affidavit he had deposed that the publication of the circular was calculated to injure and had injured his business which has fallen off since the issue of it. Despite the presumption of damage, North J concluded that the evidence dealing with the issue of general damages was far too vague and imprecise to justify a substantial award. A nominal award in the amount of £5 was considered sufficient compensation.

⁷ *Hayward v Hayward* (1887) 34 Ch D 198

16. Kangaloo JA in *TnT News Centre Ltd v John Rahael* (supra) stated that although the trial judge only dealt with the impact of the libel on the respondent's professional life⁸, the damage to the character or personal reputation of the respondent in the eyes of the ordinary members of the public can be presumed to be serious, given the pernicious nature of the libel. He went on to opine further that, where the injury to the claimant's reputation is negligible, the evidence in relation to the claimant's injured feelings assumes prominence in the assessment exercise. In support of this is the case of *Fielding v Variety Incorporated*⁹ where a claimant, a theatrical impresario, brought a libel action against the defendant newspaper which ran an article claiming that his latest London production was a disastrous flop. The musical was actually a resounding success and continued to play to sold out audiences even after the article was published. The court set aside the award of £5,000.00 on the basis that the article did not seriously affect the claimant's reputation and replaced it with an award of £1,500.00 to compensate him for the anxiety and annoyance which he naturally felt by having his play erroneously described in such inelegant terms.
17. Another case that demonstrates the importance of a claimant's injured feelings in assessing damages for libel is *Cleese v Clark* (supra). This matter arose out of an article published by the defendant alleging that the claimant (a legendary comedian) was "a perma-tanned Bob Hope wannabe" who must be humiliated by his latest TV flop which had seriously injured his reputation with American audiences. The court held that the evidence presented did not show any damage to the reputation of Mr Cleese, both in the UK and abroad, and in fact he was still held in high esteem by millions of people. In *Cleese's* case, the major element considered by the court in assessing compensation was the impact of the publication on the claimant's feelings. In making an award of £13,500.00 to compensate the claimant for his injured feelings, the court took into account his undue sensitivity; his evidence that he was badly upset; and that his hurt feelings were genuine. As the defendants had made the unpleasant attacks on someone of particular sensitivity and vulnerability; they must take their victim as they found him.
18. In the local case of *TnT News Centre v John Rahael* there was an allegation published in the TnT Mirror newspaper that the claimant was a "big fish" and affiliated with a billion dollar drug trade. There was no evidence led by the claimant and the Court of Appeal varied the High Court award of

⁸ The trial judge had stated that, "by the fact of his continuing in office and the confidence with which he has continued to carry on with his ministerial, social and political duties, it can fairly be said that the article has not had serious impact on his reputation as a high office holder." Para 29 of judgment

⁹ *Fielding v Variety Incorporated* [1967] 3 WLR 415

\$400,000.00 to \$250,000.00 to vindicate and compensate the claimant. The award also included an element for distress and injury to his feelings as a result of the widespread publication of the offending libel. The offending headlines were captioned on the front page as follows: “*War intensifies ... Hit on Rahael ... nephew’s murder connected to Monos drug bust, Bryden fire*” and on page 5, “*Raphael is a marked man*”.

Mr Montano’s Evidence

19. In his witness statement, Mr Montano gave evidence that he is well-known both locally and regionally since for most of his adult life he has been active in public life, holding various public positions including that of Senator from 1987 to 1990 and again from 2002 to 2006. His latter senatorial appointment was made by then Leader of the United National Congress (UNC), Mr Basdeo Panday, to represent the views and opinions of the UNC, a political party that draws the bulk of its support from the East Indian population in Trinidad. It is his evidence that both in his professional life and political life, he has developed a reputation as “a fighter” especially for the “little man”. In his professional life, he has represented numerous poor and indigent people against the rich and powerful; and in his political life, he has fought fearlessly for the people and his party. Consequently, he has developed a reputation of being fair and honest. It is his evidence that this reputation is important to him.

20. He was acting on behalf of one of his clients when the defamatory statements, which are the subject of the instant action, were made by the first defendant during a live broadcast on Radio Shakti on 30th May, 2008. In his witness statement, he described the offending statements as “*a vicious pre-meditated attack on my integrity*.” It is his evidence that the offending words clearly imply that he is a racist and have caused grave distress, humiliation and injury to him both professionally, politically, socially and personally. He described their impact on his personal life and reputation thus:

The words ... clearly imply that I am a racist. There can be no other interpretation. And my reputation, especially in the East Indian community is such that when the accusation was made you could have heard the surprise in the interviewer’s voice when he said “we pardner Robin Montano?” but Harnarine was determined to drive the knife in when he replied “Yeab, and playing Indian friend”. In other words, I was not only a racist, but a terrible hypocrite as well.

I could hardly think of a worse accusation to be made against a man like me. Indeed, for weeks afterwards many persons asked me what I was going to do about this terrible libel. The accusation was aimed at damaging me professionally, politically and personally. My (then) 86 year old mother was most upset by it. [emphasis mine]

21. It is also his evidence that the offending words did serious damage to his social and professional life and reputation. He described the impact of this thus:

A large portion of my law practice (maybe about 80 per cent) comes from the East Indian community. Immediately after the broadcast my practice suffered an approximately 50 per cent loss of clientele.

I also used to get invitations from all sorts of East Indian groups, e.g., the Maha Sabha, and from various pujas and other functions across the country. After the broadcast there was a marked decrease in these invitations which even up to today has not returned to what I might call "the pre-broadcast" levels.

The attack on me by the defendant Harry Harnarine was humiliating in the extreme. All my life I have fought against racism and now to be called one so publicly was humiliating in the extreme. And while there were a lot of people who have said nothing at all, I could see them looking at me and talking to me differently than before. The warmth of their former greeting was gone and I could see and sense a certain warmth in their attitude towards me. [emphasis mine]

22. At the assessment, Mr Montano amplified his evidence on the impact of the 50 per cent loss of clientele immediately following the broadcast. According to his amplified evidence, "in 2007 my income was \$825,000.00 per year approximately. My income for January to April 2008, following the broadcast in early January, 2008 (a Friday), was down by about \$220,000.00. My income started picking up by about May to June, 2008. The broadcast caused me to lose a little over \$200,000.00."

AUTHORITIES

23. Counsel for the claimant cited several cases on libel as useful guidance to this court in assessing the quantum of damages including:

- ***Kenneth Gordon v Basdeo Panday***¹⁰ where Hamel-Smith JA considered that because of the outpouring of media support, the claimant's reputation had not been irreparably damaged to any degree. On appeal, the Privy Council upheld the award of \$300,000.00 for being accused of *inter alia* being a "pseudo racist" who was not interested in national unity but was only looking after himself.
- ***Pan Trinbago and Owen Serrette v Maharaj***¹¹ where Bereaux J (as he then was) in a judgment delivered on 20th December, 2002 made awards of \$90,000.00 to the first plaintiff/Pan Trinbago for damages for vindication of reputation and without the element of compensation for hurt feelings and the sum of \$100,000.00 to the second plaintiff/Owen Serrette which included the additional element of damages for hurt feelings. In this case, an article was published which depicted both plaintiffs as being involved in a scheme for their own benefit at the expense of taxpayers of East Indian descent and the court found this to be racist. Further, the article portrayed the second plaintiff as President of the first plaintiff as conducting the affairs of the first plaintiff improperly and in his own interest and was given to infidelity.
- ***Moore-Miggins v TNT News Centre***¹² in a judgment delivered by Ventour J on 17th July, 2007, where allegations were made against an attorney at law including that she had abandoned her legal practice to the detriment of her clients. The judge awarded the plaintiff \$130,000.00 as compensatory damages.
- ***Stanley Ryan v TNT News Centre Limited***¹³ where Judith Jones J awarded \$70,000.00 which included an element of \$20,000.00 for aggravated damages in respect of a libel involving allegations of lack of rectitude in financial affairs.

¹⁰ *Kenneth Gordon v Basdeo Panday* Civil Appeal 175 of 2000

¹¹ *Pan Trinbago and Owen Serrette v Maharaj* HCA 1071 of 1995

¹² *Moore-Miggins v TNT News Centre* HCA No 38 of 2001

¹³ *Stanley Ryan v TNT News Centre Limited* HCA S-820 of 2001

- ***Glen Roach v T&T News Centre Limited***¹⁴ where Rajkumar J in respect of articles published in the Newsday newspaper on 3 days portraying the headlines: (a) “Senior officer’s WPC lover on sick leave for past two years” “Deputy on promotion list”; (b) “On sick leave for past two years” “WPC ‘deputy’ ducks promotion”; (c) “Son of senior officer creates rumble within Police Service” “Rogue Cop promoted – alleged links to underworld.” The trial judge held that at worst the publication portrayed Mr Roach as being unprincipled and corrupt. Further, one of the three articles referred to his son and was defamatory; as they alleged nepotism, favouritism and abuse of office by the claimant and certainly fell outside of the ambit of responsible journalism or available defences. The trial judge noted that the evidence of the impact of the publication of the defamatory statements on the claimant’s reputation was surprisingly vague and non specific, consisting more of conjecture, speculation and reconstruction. He found, however, that based on the nature of the allegations, damage to the claimant’s reputation can be presumed. Further, the judge accepted the claimant’s evidence, despite its generality, as to the distress and injury to his feelings and felt that the vindication required a substantial award. Despite this, he concluded that the impact of the libel in that case was not as serious as in the ***John Rahael’s*** case (supra) and awarded \$125,000.00 as general damages.
- ***Luanna Taylor v T&T News Centre Limited and David Millette***¹⁵ where Stollmeyer J (as he then was) awarded the sum of \$70,000.00 including an amount for aggravated damages following allegations that the claimant’s appointment at NP was politically motivated.
- ***Rajnie Ramlakhan v Trinidad and Tobago News Centre Limited and Ramjohn Ali***¹⁶ where Tam J in a judgment delivered in May, 2009 awarded \$700,000.00 as general damages, inclusive of aggravated damages, to compensate the plaintiff for the serious distress, hurt and humiliation; injury to reputation ; and vindication of her reputation. In this case, the plaintiff was libelled in 4 articles written over an 8 month period prior to the commencement of her claim and in 5 following the filing of same as –“racist cobo”; “poisonously racial Indian Apan Jhatist (i.e. an advocate of ‘Straight Hair’ supremacy); “Rajnie (Godzilla) Ramlakhan”; “Rani (Queen) of Racism”; “racist thought processes are as hideous as her physiognomy”; as “too

¹⁴ *Glen Roach v T&T News Centre Limited* CV2007-02823

¹⁵ *Luanna Taylor v T&T News Centre Limited and David Millette* CV2006-01002/previously HCA S-30 of 2003

¹⁶ *Rajnie Ramlakhan v Trinidad and Tobago News Centre Limited and Ramjohn Ali* HCA S-634 of 1999

ugly” and “stink”; as hating “the people she resembles”; as resembling “an Aborigine but hates Black people”; and as hating “nigger people” and “Christians and Blacks” but worshipping “Sai Baba, who is a Dougla”. This case contained serious aggravating factors and can be distinguished from the one at bar, as the evidence showed the plaintiff was shunned by many previous associates; ostracised by persons of Indian descent so became an outcast; subjected to racist slurs and other derogatory remarks from strangers; endured threats to her physical safety; and was not cushioned by any public outpouring of support (as in the **Ken Gordon’s** case). The libel may have led to the plaintiff seeking medical attention because of the emotional pain and distress. Further, the attack by the defendants continued throughout the trial, demonstrating that they were wholly unrepentant. According to the judge, “*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.*” He went on to say further, that even on the last date of the hearing of the evidence at the trial, the plaintiff was referred to in a headline as, “*being so ugly, no man would ever want her ... not even a rapist*”. He thus concluded that, “[I]n a community as small as Trinidad and Tobago, this might well have been too much for anyone to bear.”

- **Kayam Mohammed & ors v Trinidad Publishing Company Ltd & Ors**¹⁷ where awards were made to the first plaintiff in the sum of \$450,000.00 as compensatory damages; the second plaintiff in the sum of \$25,000.00; the third plaintiff in the sum of \$200,000.00; and to the other board members in the sum of \$50,000.00 each as compensatory damages. In this matter, allegations were raised that Plipdeco engaged in “creative accounting” thus misleading and manipulating its shareholders with the result that the value of its shares were over-priced. It was also alleged in the article that ghost companies were created to siphon monies for the benefit of directors.

24. Counsel for the claimant submitted that the impact of the libel on the claimant’s character, reputation and his business was devastating. It was submitted that Radio Shakti at the material time was a leading Indian Radio Station and enjoyed a wide listenership. The claimant lost some 50% of his clientele for about 4 months; suffered a large financial blow; and this situation only improved after the 5th month. It was further submitted that whilst his professional career rebounded after the libel,

¹⁷ *Kayam Mohammed & ors v Trinidad Publishing Company Ltd & Ors* HCA No 3552 of 2003

the same cannot be said of his social reputation. On the basis of this, counsel submitted that an award within the range of \$250,000.00 to \$300,000.00 would be appropriate together with aggravated damages.

25. This court accepts that Mr Montano is a senior member of the local bar; and is well-known and respected in the legal and political arenas. It also accepts that, as pleaded, the libel would have severely impacted his business life and reputation especially given that it was broadcasted on Radio Shakti whose listenership formed a large percentage of his professional clientele. The unchallenged evidence of Mr Montano (which is accepted by this court) is that the offending statements injured his feelings, humiliated him and caused distress to him in his personal, social and professional life. Mr Montano described the attack as “*humiliating in the extreme*” and that the hurt done to his reputation was deep as, “*I could hardly think of a worse accusation to be made against a man like me.*” It led to a decline in invitations from the Maha Sabha (a local major Hindu organisation) and to pujas and various other functions in the Indian community. This evidence is accepted. This invasion of Mr Montano’s right to his reputation and the impact of the defamatory statements on his feelings; his reputation and his business are accepted by this court. Reputation is an integral part of the dignity of any individual and once wounded never fully recovers and/or returns to its pristine pre-libel state. Nevertheless, this court takes judicial notice of the fact that the damage to Mr Montano’s professional reputation was transient, lasting approximately 4 to 5 months. It also takes notice of the fact that, like in the ***Glen Roach’s*** case (supra), the evidence of the specific impact of the publication of the defamatory statements on the claimant’s character and feelings consisted in part of some vague and non-specific references to unidentified persons, “*afterwards many persons asked me what I was going to do about this terrible libel.*”

26. In assessing damages in this matter, therefore, this court was guided by the principles enunciated above as well as the evidence before it. It was borne in mind that the assessment of damages in a libel action is a compensatory not punitive exercise. It was also borne in mind that, “*there must be a reasonable relation between the wrong done and the solatium applied*” as stated in ***Knuppfer v London Express Newspapers Limited***.¹⁸ Further, regard was also given to the principles enunciated by Sir Thomas Bingham MR in ***John v MGN*** (supra) as adopted by Kangaloo JA into our jurisdiction that:

¹⁸ *Knuppfer v London Express Newspapers Limited* [1943] KB per Goddard LJ at page 91

Any legal process should yield to a successful plaintiff appropriate compensation, that is, compensation which is neither too much nor too little. ... No other result can be accepted as just. But there is continuing evidence of libel awards in sums which appear so large as to bear no relation to the ordinary values of life. This is most obviously unjust to defendants. But it serves no public purpose to encourage plaintiffs to regard a successful libel action, risky though the process undoubtedly is, as a road to untaxed riches. Nor is it healthy if any legal process fails to command the respect of lawyer and layman alike, as is regrettably true of the assessment of damages by libel juries.¹⁹

27. Based on the evidence, this court formed the view that the publication was defamatory of Mr Montano and that he is entitled to general damages sought to compensate him for his injury to his feelings and reputation (both personal and professional) and the distress caused. Given the nature of the offending statements, this court formed the view that the allegations in the case at bar could attract an award in the range of the ***Kenneth Gordon v Basdeo Panday***, where the allegation was that of a “pseudo racist”, and that of ***TnT News Centre v John Rahael***, although the allegations of being in the drug trade and a “marked man” were more serious than in the instant case. In the circumstances, an award of \$250,000.00 is considered appropriate to compensate Mr Montano for the hurt and injury to his feelings; the humiliation, distress and damage to his professional reputation and for vindication of reputation, without an element of aggravation.

28. According to the learning in **Halsbury’s Laws of England**²⁰, “*exemplary damages will only be awarded for libel or slander where the plaintiff pleads and proves that, at the time of publication, the defendant knew that the publication would be tortuous, or was reckless as to whether or not it was, and nevertheless decided to publish the words complained of because the prospects of material advantage outweighed the prospects of material loss. The mere fact that the words were published in the ordinary course of a business run with a view to profit is not of itself sufficient to establish the required calculation of material advantage.*” In the present matter, the issue of exemplary damages (pleaded in the alternative in the statement of case) was not addressed by counsel for the claimant in her submissions. In any event, the claimant has not shown that the defendants got any material advantage from the libellous statements made. This case is, therefore, not an appropriate one for an award of exemplary damages for libel.

¹⁹ *John v MGN* at page 611

²⁰ **Halsbury’s Laws of England** 4th edition vol 28 at para 256

COSTS:

29. The court had previously reserved costs on the defendants' application to be heard at the assessment. Counsel for the claimant submitted that the sum of \$7,700.00 for advocate attorney of over 5 years would be appropriate, which is broken down as follows:

- i. Attendance at CMC when preliminary point taken & decision rendered = \$2,400.00
- ii. 4 hours research and preparation of submissions and authorities = \$4,800.00
- iii. Administrative costs to file, copy and serve submissions and authorities = \$ 500.00

30. With respect to this, it is the view of this court that the law on a defendant's right to be heard following a default judgment is well traversed and that an attorney of over 5 years standing would not have required 4 hours to prepare to answer same. In the circumstances, I am minded to allow 2 hours for research and preparation. The sum of \$5,700.00 is awarded as costs for this application which is deemed reasonable, proportionate and just in all the circumstances of this case.

CONCLUSION

31. It is hereby ordered that the defendants do pay to the claimant –

- (i) General damages in the sum of \$250,000.00 with interest at the rate of 8% per annum from 8th August, 2008 to 22nd March, 2012.
- (ii) Costs on the prescribed basis in the sum of \$46,500.00.
- (iii) Stay of execution of 28 days.

32. It is also ordered, on the defendants' application to be heard at the assessment which was refused on 17th November, 2011 with costs reserved, that the defendants do pay the claimant's costs in the sum of \$5,700.00.

Dated 22nd March, 2012

Martha Alexander
Master of the High Court (Ag)