

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No CV2015-01231

BETWEEN

DAVE SENNON

Claimant

AND

AVA QUACCOO

Defendant

Before: Master Alexander

Appearances:

For the claimant: Mr Taurean Dassyne instructed by Mr Madan Ryan Narine

For the defendant: Mr Delroy Burris instructed by Ms Janelle Benjamin

DECISION

1. The claimant in this assessment (“Dave”) seeks compensation for defamatory statements which he claims were published in several letters by the defendant (“Ava”). These letters dated 17th February, 2014, 25th February, 2014 and 13th April, 2014 (together referred to as “the offending letters”) accused Dave of bullying, harassment, sexual harassment and provocation. The contextual framework of these letters is critical so they must be viewed against the backdrop of the working relationship that existed between the parties and their respective positions. Dave is a fire officer holding the rank of acting fire sub-station officer in the Trinidad and Tobago Fire Service and currently the assistant secretary (south) of the Fire Service Association (Second Division) (hereinafter “the Association”). However, for the period 6th February, 2013 to 14th December, 2014 Dave was the acting general secretary of the Association, the highest executive position. During Dave’s tenure, Ava was the executive secretary of the Association until 30th November, 2014. The offending letters were published to several named

holders of high political and public offices in Trinidad and Tobago¹ including the Fire Chief as well as the members of the Management Committee of the Association and the Workers Union.

2. It is the pleaded case of Dave that the published words complained of meant and were understood to mean that he was -
 - (i) guilty of: provoking, sexually harassing and bullying Ava; prolonged psychological, verbal and sexual abuse of Ava; dishonourable conduct; and
 - (ii) unfit to: be employed to carry out the work as a fire officer and the general secretary of the Association; associate with other members of staff namely females; remain a member of the Fire Service and by extension the Association; and carry out his managerial duties.

It was pleaded also that the publication of the offending letters did serious damage to Dave's reputation, causing him to suffer hurt, distress and embarrassment. Further, Ava has failed to offer an apology or retraction which would adequately address the harm occasioned by the publication of the libel.

General damages

3. Dave is entitled to general damages for the libel and called in support of his case Ms Fern Mitchell and Mr Dexter Noel (two members of the Management Committee). I will proceed to examine the evidence presented then the law:

(i) Dave

4. In his evidence in chief, Dave testified that he has been a fire officer for the past 32 years, now holding the rank of acting fire substation officer, but that from his enlistment in September, 1984 he has been a member of the Association. It would appear also that he is engaged in active community service, holding various positions on Boards, Community Councils and Village Associations. His position of fire substation officer came with grave supervisory and management responsibilities, with approximately 35 officers being under his direct supervision. With respect to his portfolio as acting general secretary of the Association, he averred that this is the only full time position on the Executive and it pays a monthly stipend of \$4,700.00 together with telephone costs. His duties entailed liaising

¹ The President of the Republic of Trinidad and Tobago; The Prime Minister of Trinidad and Tobago; The Permanent Secretaries to: (a) the Prime Minister and Head of the Public Service (b) the Ministry of National Security (c) the Ministry of Labour and Small and Micro Enterprise Development (d) the Ministry of Labour (e) the Ministry of Public Administration; The Director of Personnel Administration; The Chief Personnel Officer; The Chief Fire Officer; The Chairman, Integrity Commission; The Chairman, Equal Opportunities Commission; Banking, Insurance and General Workers Union, The Management Committee of the Fire Service Association (Second Division)

and/or communicating with various stakeholders and heads of departments in relevant ministries; attending industrial court and salary negotiations with the Chief Personnel Officer and holders of other high public offices; representing fire officers at tribunals; organizing and conducting meetings of membership at different fire stations, including Tobago.

5. When the first and second offending letters were brought to the attention of the Management Committee, it was published to those present at the meeting including: Dexter Noel, Ashton Cunningham, Kwasi Lewis, Fern Mitchell, Nigel Lampkin, Roger Wallace, Dexter James, Jevon Perch and Leo Ramkissoon. These persons are all fire officers and work in different divisions throughout Trinidad and Tobago. The third offending letter sought to replace the previous two, but the only difference was that it was carbon copied to additional persons. Dave averred that the persons carbon copied on the offending letters were all office holders whom he worked with, sometimes on a daily basis, on behalf of the membership of the Association. He claims that as, at that time, many of the high public office holders were women, he was, following the publication of the libel, hesitant to negotiate with them or attend meetings, as he felt embarrassed and in an awkward position. He averred further that at one of the few meetings that he did attend, the then Director of Personnel Administration (Mrs Gloria Edwards-Joseph) said to him, "*so you is the hatchet man in the Association*". He associated this statement to the defamatory remarks and pointed to it as one example where he was made to feel embarrassed. It would appear that he interpreted the term "*hatchet man*" as offensive and connoting of behaviour that was tantamount to that of a sexual predator. Another instance which highlighted how he was impacted by the libel was that he began reducing his telephone calls to these office holders, choosing rather to communicate with them via letters. He averred that telephone calls with these office holders caused him to feel embarrassment, hurt and distress.

6. It is his evidence further that the libel was ruinous to his reputation, both professional and personal, and a clear attack on his character. An example of the harm caused by the attack on his professional reputation was when Ava chose to further publish the offending letter in a matter in the Industrial Court, where he practised representing the membership, by exhibiting same to her witness statement filed on 2nd May, 2016. This further act he pointed out came after judgment was already entered against her in this matter and while it was progressing before the assessment court. He testified that the specific allegations of bullying and sexual harassment went straight to his professional character as a competent general secretary of the Association as well as his reputation as a ranked fire officer, that he had built over 32 years, and operated to erode and severely damage same. He stated that when he visited stations

for meetings, he was ashamed and uneasy, as he felt that persons on the Management Committee, who were attached to different stations, may have shared the libel. He proceeded to testify of other experiences (with male and female colleagues) that showed the impact of the defamatory remarks on his character and reputation. He averred to feeling disquiet and embarrassment on being asked by male colleagues as to the veracity of the allegations and that there were changes in how female colleagues interacted with him, including refraining from warm greetings or bantering. He named one such colleague, Ms Fern Mitchell, who, following the publication of the libel, stopped visiting his office to discuss the business of the Association and began speaking to him only in the company of others. He stated that as a senior officer on shift, female colleagues (all unnamed) would usually approach him to discuss work related or personal matters but that this stopped after the offending letters.

7. Dave further sought to convince this court that the offending letters were the cause of him not seeking re-election as general secretary of the Association. He said that his decision was based on feedback about persons being “*uncomfortable*” with him being the general secretary because of the allegations. He testified further to feeling ashamed to campaign at the various stations, as he believed others thought less of him owing to the allegations. Of note is that he provided no evidence in chief of the names of these informers who gave the “*feedback*” or of those who felt disquiet with his re-election as general secretary of the Association. He also testified that the allegations, particularly that of sexual harassment, portrayed him as a sexual predator, a behaviour unbecoming of a public officer. Consequently, he feared being hauled before a tribunal or losing his job and so felt that his years of service were in jeopardy of going down the drain. The situation was compounded as the defamatory remarks were echoed by another female colleague, this time the office assistant/messenger, in letters, which bore similar dates.

(ii) Ms Mitchell

8. The evidence of Ms Mitchell, by large, confirmed that of Dave. She testified to being a member of the Association and as of March, 2014, its treasurer. The offending letters were read to members of the Association, while they simultaneously read copies in their possession. Based on the allegations in the offending letters, she believed Dave to be a sexual predator who preyed on women. It led to an erosion of her trust and confidence in him; she lost respect for him personally and professionally and she changed how she interacted with him professionally. She avoided calling his cell phone, instead using the office phone; sought advice from other officers instead of him; avoided going to sit in his office to discuss business or meeting with him in the absence of another colleague and hesitated to greet him

with the usual handshake. She averred to purposefully keeping her distance from him and of monitoring his actions silently. She also indicated that had he sought re-election, she would not have voted for him, as she felt that the allegations against him would have brought the Association into disrepute.

(iii) Mr Noel

9. Mr Noel was an executive member of the Association, holding the position of deputy general secretary, and was apparently a close friend of Dave, having been encouraged by him to run for the deputy's job. He confirmed that he was the one who gave Dave feedback that he would be unlikely to win re-election, as the libel had shot his chances at that. He averred that the defamatory remarks painted Dave as a sexual predator and were spread throughout the fire service. In proof of this, he pointed to the many colleagues who constantly questioned him about the allegations. He provided two examples of fire officers, from the southern and central divisions namely Randy Wellington and Jason Ali respectively, who had enquired of him if the allegations were true. He also averred that certain unnamed personnel in the southern division had remarked to him, "*Allyub is sexual predators in the Association boy*" and "*Allyub doing what allyub want except seeing about we business.*"

10. Mr Noel's evidence was not tested but based on enquires made of him by this court, it was clear that he was there to support his friend, Dave, in making his case against Ava. He seemed bent on impressing upon this court that Dave was of sterling character and that the allegations were contrary to his knowledge of him. Mr Noel presented more like an echo than a witness of truth and as more interested in parroting talking points, without adding much to the evidence of Dave. His testimony was not unbelievable but just seemed skewed to aiding his friend's case, even at the expense of some exaggeration. Of note is that he admitted that he did wonder, following the offending letters, whether there was some truth to the allegations, as Dave would be alone in his office with the female staff most times and the allegations were coming from staff members.

Discussion

11. The evidence pointed exclusively to professional embarrassment tied clearly to the libel that is, among officers he worked with in the Association and in the fire service in general. While the offending letters were carbon copied to holders of high public offices and the Workers Union, there was no evidence as to the impact of the defamatory remarks on his relationship with these officers and/or the union.

Further, the offending letters were published locally, and not regionally or internationally, so its spread was presumed to be limited to a localized audience. This included the new audience touched by the republication of the offending letters in the Industrial Court as well as persons carbon copied, whom this court felt it could reasonably be inferred had at least read them. From the evidence also, this court felt it reasonable to infer that as personnel on the Management Committee were attached to different stations throughout the island, the libel would have been shared. Thus, the extent of the publication is presumed to have been widespread mainly among members of the fire service, to persons at the Industrial Court and those carbon copied, not the entire population of this country. It was also borne in mind that Dave held a senior position as a fire officer and was an executive member of the Association so would have been known widely among that sphere of persons with whom he interacted professionally. On these bases, this court accepted that embarrassment, distress and hurt would have resulted from the publication of the libel. On the other hand, the evidence was thin as regards how it affected him socially, in the wider society, and non-existent as to the impact on his family life, if any. It was, therefore, presumed that the defamatory remarks did not have a domestic or social reach, such as to cause him embarrassment and distress on those levels. There was also no evidence of how this professional embarrassment impacted him physically or health wise.

12. In the mind of this court, Dave's evidence as to his embarrassment, distress and hurt was credible but it was noted that while he did not seek re-election as general secretary of the Association, he did continue working in the lower position of assistant secretary. Nevertheless, it does not mean that his embarrassment and distress were lessened by his continued participation in the business of the Association. This court, therefore, accepted not only that he faced embarrassment professionally but that it could reasonably be inferred that he suffered some form of injury to his professional reputation. In fact, his evidence that his professional reputation was smeared or discredited was corroborated by his two witnesses. It would appear from the evidence that being referred to as "*the hatchet man*" in the Association was a term of grave indignity and hurt which did some injury to his reputation. He would also have suffered financial loss, though the exact monetary sum was not given in evidence. He chose only to state what he earned as the acting general secretary, but not as the assistant secretary, nevertheless this court extrapolated from the fact that he now occupied a lower position that he would have sustained some monetary loss.
13. The law is clear that once a person is libelled, without any lawful justification or excuse, it will be presumed that he suffered injury to his reputation and his feelings, for which he may recover damages.

There is no explicit requirement for the person libelled to produce any evidence to prove such injury as he starts off with a presumption of damage². To attract a substantial award of damages, however, evidence must be provided. The purpose of an award of damages in a defamation action is threefold in nature: (a) to compensate for the distress and hurt feelings; (b) to compensate for any actual injury to reputation, which must be proved or may reasonably be inferred; and (c) to serve as an outward and visible sign of vindication³. In the present matter, any compensation would aim to recompense Dave for the embarrassment, distress and hurt that he suffered from the publication of the offending letters and to repair any harm done to his reputation, which in this case is professional/business⁴.

14. The factors to be considered on assessment in a defamation action are the extent of the publication; the gravity of the allegation⁵ and the impact on Dave's feelings, reputation or career. To be considered also are matters of aggravation or mitigation⁶. The measure of damages recoverable by Dave is compensatory and not punitive in nature, namely that he is entitled to a sum that would fairly compensate him for any damage to his reputation, vindicate his good name, and cover any distress, hurt and humiliation which the defamatory publication has caused. Central to this assessing exercise is the gravity of the libel. Where the libel touches a claimant's personal integrity, professional reputation, honour, courage, loyalty and the core attributes of his personality, the more serious it is likely to be. In the present case, the allegation that Dave is guilty of "bullying and sexual harassment" is a very serious libel that attacks his professional reputation and personal integrity. In similar vein, the extent of the publication is also very relevant - a libel distributed to millions has a better likelihood of causing damage than one that is more narrowly broadcasted⁷. In this case at bar, the offending libel was broadcasted to members of the Management Committee (from different stations), and by extension the entire fire service, as well as to various holders of high public office and persons dealing with Ava's matter in the Industrial Court. It was not disseminated regionally or internationally. Moreover, this court felt it only reasonable to presume that the persons copied in the offending letters would have read them, albeit there was no evidence of republication by them. The fact that at least one of those persons, Mrs Gloria Edwards-Joseph commented about the "*hatchet man*" served to confirm that this court was on target in

² *Halsbury's Laws of England* 4th edition Vol 28 at paragraph 18, "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" ... [he] is not required to prove his reputation, nor to prove that he has suffered any actual loss or damage ... having proved a statement defamatory of him and not excused by any available defence he is always entitled to at least nominal damages."

³ *TnT News Centre Ltd v John Rahael* Civil Appeal No 166 of 2006 at page 10 per Kangaloo JA

⁴ *Gatley on Libel and Slander* 9th edition at pages 201 - 202

⁵ *John v MGN* [1997] QB 586

⁶ *Cleese v Clark* [2004] EMLR 37

⁷ *Supra* note 1 at page 11 per Kangaloo JA

its presumption. An assessing court must have regard to all the circumstances of the case including the gravity of the allegation, its scale of publication, the extent to which the readership believed in the veracity of the libel, the impact on feelings and reputation and matters of aggravation and mitigation.

15. While Dave starts off with a presumption of damage, he must provide evidence of this to secure a substantial award⁸. In this case, damage to Dave's professional reputation and his character in the eyes of other fire workers was presented but not the public at large. It was clear that prior to the article being published he was respected by officers who worked with him and was sought out for advice and that the offending letters caused a dipping in how he was viewed by them. Based on the evidence, the injury to his professional reputation was accepted, but there was no evidence of seriously lasting damage presented. In fact, as of the date of the assessment, his witnesses testified to continuing their relationship with him and his friendship with Mr Noel was not destroyed. He had lost, however, the benefit of the income from the higher position of general secretary, which from the evidence was a position for which he was eminently qualified and most likely would have been re-elected to but for the libel. He is entitled to be compensated for his injured feelings and humiliation albeit there is no incontrovertible evidence of the damage being permanent. There was also no evidence that the offending letters had a regional or global reach and only threadbare proof that holders of high public offices in the country experienced a lowering of their view of him. Thus, in the main, his compensation was skewed towards the impact of the offending letters on his feelings and any injury caused in how he was perceived professionally in the fire service.

Cases

16. Two cases on libel were provided as a guide in assessing the quantum of damages including:
 - ***Viro Chem Janitorial Services Company Limited and another v Ackbar Khan***⁹ where in a libellous letter written to then Minister of Works, Jack Warner, and copied to the Attorney General, it was alleged that the claimants were involved in corrupt practices and the second claimant was abusing drugs. This letter was published once to these two persons and although there was no evidence of any republication, the judge felt it was reasonable to presume that there must have been some limited republication of the letter. The judge opined that it was reasonably foreseeable that the recipients, who were public figures, would have been under a

⁸ *Hayward v Hayward* [1897] 1Ch D 905 where as a result of vague and imprecise evidence of injury to the reputation of a business on the publication of a disparaging article, nominal damages were awarded

⁹ *Viro Chem Janitorial Services Company Limited and another v Ackbar Khan* CV2012-03304

duty to investigate the allegations, which would involve bringing the allegations to the senior management of CAL, law enforcement authorities and even Cabinet colleagues. The first claimant company was awarded \$180,000.00 and the second claimant \$200,000.00, of which \$80,000.00 from each award was exemplary damages.

- ***Ameena Ali v Watson Duke***¹⁰ where defamatory statements in a letter published to the Chairman of the Board of the Eastern Regional Health Authority and repeated when they were published to the members of the public at the Sangre Grande Hospital alleged that the claimant was involved in corruption, fraudulent practices and misuse of public funds. The claimant was awarded \$125,000.00 inclusive of aggravated damages.

Analysis of cases

17. The cases above involved serious libellous allegations of corruption, fraudulent practices, misuse of public funds and drug abuse, which were dissimilar to the allegations in the case at bar. These were incontrovertibly grievous and injurious allegations that attracted substantial awards in damages. The libellous publication in these two cases were viewed as more damaging than in the case at bar. Nevertheless, the defamatory remarks made of Dave were also serious, going to the core of his character and professional reputation. It is serious libel to publish amongst one's colleagues and to holders of high public offices that a person is a sexual predator, guilty of sexual harassment and bullying, as these go to character defects and one's professionalism. It would appear that the extent of the publication of the libel against Dave was of greater spread than in the case of ***Viro Chem*** but not necessarily in that of ***Ameena Ali***, as it was published to the wider public in that latter case. It was considered that all three cases treated with libellous remarks that would have resulted in clear slippage or erosion in one's professional reputation, creating distrust and lack of confidence. In the mind of this court, allegations of sexual misconduct would severely wound a person's professional reputation and standing. In the instant case, the situation was only compounded by the failure or refusal of Ava to offer an apology to Dave. In the circumstances, it was considered that Dave is entitled to an award that would compensate him for the injury to his feelings and the distress and embarrassment caused. This award must be evenly weighted and reasonable as between the wrong done and damages given¹¹. It must also take into consideration the extent of the publication, which based on the evidence was largely but not exclusively in the fire service. On the other hand, it was also borne in mind that the intention in making

¹⁰ *Ameena Ali v Watson Duke* CV2015-00974

¹¹ *Knupffer v London Express Newspapers Limited* [1943] KB per Goddard LJ at page 91

the award is not to be punitive but compensatory. Dave is also entitled to a sum for aggravation, which was pleaded, but which must cross the bar to attract such an award.

18. To get aggravated damages, there must be evidence of malice on the part of Ava, which would involve spite, ill-will or a desire to injure as the motivating factor for publishing the libellous letter. While there was evidence of a prior relationship between the parties there was none to show Ava purposefully or spitefully published the offending letters initially. This, however, is not the case when she chose to republish it by attaching it to her witness statement in a matter engaging the attention of the Industrial Court. This was also compounded by her stiff resistance and/or unreasonable failure to issue an apology. The learning is clear that an unreasonable lack of an apology can be evidence of malice which can lead to aggravation of damages¹². Further, it was considered that the awards in the two cases presented above included a sum for exemplary damages, unlike the present case where it was not sought. In the circumstances, it was considered reasonable to award general damages in the sum of \$85,000.00 inclusive of aggravation.

Order

19. It is hereby ordered that the defendant (Ava) do pay to the claimant (Dave) –
- (i) General damages in the sum of \$85,000.00 with interest at the rate of 2.5% per annum from 20th June, 2015 (date of service) to 16th March, 2017.
 - (ii) Costs on the prescribed basis in the sum of \$13,038.60.
 - (iii) Stay of execution of 35 days.

Dated 16th March, 2017

Martha Alexander
Master

¹² *McGregor on Damages* 17th Edition page 1439, para 39-044