

**IN THE REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**CLAIM NO CV2016-02398**

**BETWEEN**

**LASANA LIBURN**

Claimant

**AND**

**GORDON PIERRE**

Defendant

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**Before: Master Alexander**

**Date of delivery: May 07, 2019**

**Appearances:**

**For the Claimant: Ms Gabrielle Gellineau**

**The Defendant not appearing and unrepresented**

**DECISION**

**BACKGROUND**

1. The parties in this matter were journalists, with both being involved in sports journalism. They were also relatively well-known and respected public figures in that sphere. The dispute that led to them being before this court was defamation, with the claimant alleging injury to his reputation, character and business at the hands of the defendant. The civil wrong committed against the claimant played out in full public view, including on Facebook and other social media platforms. The claimant filed his claim stating that as a journalist, he has had over twenty years' experience working with several local and international publications, such as *inter alia* ESPN, World Soccer Magazine,

Sports Max, BBC Sports, Play the Game, UK Guardian, Trinidad Guardian and Trinidad Express, and has tremendous respect in his field. He was the Chief Editor of Wired868, an online news magazine, owned and operated by him. Wired868 was engaged in providing sports news and satire, and had a substantial following of people who utilized this medium for sports news and discussions. The defendant too, as a journalist, served as a press officer for the Trinidad and Tobago Football Association (“TTFA”), was a social media manager for the T&T Pro League, 2016/2017 season, and was a sports analyst for WI Sports and FLOW Sports, for international and local senior and youth teams’ matches. As a sport commentator, the defendant had a voice with a local, regional and international reach and his audience in the sports world was formidable. Thus, both parties have recognisable journalistic footprints and presence locally, regionally and with international bodies. The claimant brought this defamation action, setting out several occasions on which libellous attacks occurred. The libellous words unfairly criticised the claimant professionally, but also personally, and were done in a public online forum, without regard for injury caused. It led the claimant to seek judicial intervention, which brought him to this court to determine his compensation.

2. The defamation claim was filed on May 24, 2018 and he sought injunctive relief, aggravated and exemplary damages. The defendant initially entered an appearance to the claim but failed to defend the matter or to participate any further in the proceedings, so judgment was entered against him on June 29, 2018. When the matter was sent to this assessing court, the defendant refused service so the assessment of damages proceeded undefended. This meant that the claimant’s evidence went in uncontested.

## EVIDENCE

3. There were three witnesses called in support of the case presented - the claimant, his wife, Lou-Ann Sankar, who was also the operations officer of Wired868 and his mother, Yolanda Morean. The claimant gave evidence in chief that as part of his job, he would write or be asked to comment on football, including the local administration and facilitation of it by TTFA. His job entailed also the exposure of misbehavior and possible illegal or criminal conduct in the sporting world, which had to be done in a credible and fair manner. Over the years, he had built up a reputation of integrity, good character and high journalistic standards. These qualities and characteristics were integral for securing employment with international media houses, obtaining interviews and for his professional survival, as a public commentator on sporting issues. He was also a proud father and stepfather of three daughters, the only son of his mother and the brother of two sisters. He took his role as head of his family seriously and was very protective of all his female relatives. The defamation that was the subject of this action went, therefore, to the core of everything that he stood for or had laboured to represent in his professional and personal life.
  
4. The present matter was not about a case of a single defamatory comment or even one where an apology followed. The defamatory comments were also not voluminous, but were vicious, repeated, targeted and in full online public glare, utilizing the popular platform of Facebook for maximum effect. The genesis of the defamation followed an article published by the claimant on Wired868 webpage on March 16, 2017 titled *“Why the TTFA’s self-serving, classless behaviour remains the Warriors’ biggest hurdle”*. This article was posted also on Wired868’s Facebook page, and discussed the recent spate of activities carried out by officials of the TTFA. The discussion mentioned the

defendant's attendance and conduct, when he showed up "*female friend in tow*" at the National Soccer Team Pre-Tournament Camp in Tobago. It was stated also that the defendant could not travel with the squad to the CONCACAF games in Bahamas, as he did not have a valid passport. The claimant then posted the link to this article on the Wired868 Facebook Group, which the defendant used to respond to its contents. It was this response, by the defendant, that was the first of many to contain defamatory statements about the claimant. In brief, the defendant made threats, on this link, to harm the claimant before calling him "**a classless snake**" for trying to score political points off the tragedy of WPC Joseph's death, and then writing, "**Like is not only living women u beat!**". The defendant continued in that conversation thread to write, "**I will deal with u!! ... I know i am not an uncover (sic) buller man, pedophile or woman beater like u and u unnamed and unfaced (sic) mole who trying to destroy football!**"

5. After the initial defamatory comments, the defendant continued to publish libellous words but, this time, on his own personal Facebook page. The Facebook publications on the defendant's page included describing the claimant as: "**a woman beater**", an "**Asshole**", "**an undercover buller**", the "**house slave with the African name**", "**beating women so dead or alive don't matter**" and as sabotaging national football games by digging up negative news to disrupt the team. In one of these posts, the claimant was linked to the disappearance of people, "**That's y ppl disappearing and stuff bc ppl does feel they could do what they want and threaten court action and get away!**" These defamatory remarks were accompanied with veiled threats to expose the claimant, with evidence of station reports and photographs, or force him to defend himself through public physical confrontations and in the courtroom. The defendant thus wrote, "**Not me he will have to defend**

**himself in court, outer (sic) court on the side work (sic) in the stadium after d game!! He touched the wrong man ... but he accustom to beating women”**

6. Apart from posting these defamatory statements on his Facebook page, the defendant took the additional step of tagging the Facebook accounts of the claimant and prominent football stakeholders. By this action, the defendant sought to attract the attention of these important football backers, while giving windows to their Facebook followers to view the defamation. The claimant averred that by tagging his Facebook followers, it meant that certain high profile persons could see these comments. Some of these people included: the Honourable Mr Clarence Rambharat (Minister of Agriculture); Bruce Aanensen (Former Queen’s Park Cricket Club President) and Amery Browne (Ambassador to South America). Others tagged included: Afra Raymond (former head of JCC); Dr Sheila Rampersad (criminologist and media personality); Terry Fenwick (FLOW sports presenter and local football coach); Kelvin Jack and Jason Scotland (World Cup 2006 players) and Ato Boldon (NBC presenter). Also tagged were local football stakeholders, sport enthusiasts, television sport reporters and personalities, sports cameramen, TTFA officials, coaches and even players’ rights advocates, along with their thousands of followers.
  
7. On the said March 16, 2017, sometime later in that day after the above postings, the defendant continued to publish defamatory remarks, but this time on the claimant’s personal Facebook page. On the claimant’s page, he published and/or reiterated his statement that, unlike the defendant, the claimant battered women and specifically tagged his sister, Soyini Denise. The remarks were to wit, “**@Soyini Denise ... Love how as his sister u rush to his defense (sic) we will see who full of hot air!! But i don’t hit women i respect**

**and love them so u fighting the wrong man!! Trust me!!** After the issuance of the claim for defamation, the defendant, continued a sustained campaign of posting disparaging words about the claimant, attacking his professional competence, on the Wired868 official Facebook page. Indeed, the defamation called into question the “journalism” being practised by the claimant, calling it something that “passes for journalism”. It was the uncontested evidence of the claimant that often, the defamation was accompanied with threats.

## **LAW**

8. The civil tort of defamation would exist once there was an attack on the good reputation of a person without any lawful justification or excuse. So it would crystalize where words or materials published to a third party tended to lower a man in the estimation of others, or to expose him to hatred, contempt or ridicule, or to injure his reputation in his office, trade or profession or to injure his financial credit. Once defamatory material has been published, in a written or permanent form, it would be libel. In law, libel is actionable *per se* so that no evidence of damage is required to get compensation. That compensation would usually be in a nominal amount. Thus, there would be no need to prove reputational or actual damage or loss was suffered to get such nominal damages.<sup>1</sup> On the other hand, if a claimant wanted to receive substantial damages, he must provide evidence of his injury or loss<sup>2</sup>.
  
9. Damages in a defamation action would be compensatory and vindictory in nature. Thus, the award would aim to compensate the claimant for distress and hurt feelings; to compensate him for any actual injury to his reputation (proved or which might reasonably be inferred); and to serve as an outward

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<sup>1</sup> Halsbury's Laws of England 4th Edition Vol 28 at para.18.

<sup>2</sup> *Hayward v Hayward* [1897] 1 ChD 905

and visible sign of vindication<sup>3</sup>. In its bid to satisfy this threefold purpose, an assessing court would consider the specific factors of gravity, scale, believability by readers, impact on the claimant's feelings, reputation or career and any aggravating or mitigating factors.<sup>4</sup>

## DISCUSSION

10. Having obtained judgment against the defendant for defamation, all relevant factors were in play in this assessment exercise. Tasked with calculating the quantum of damages to which this claimant was entitled, this court turned to each factor to see how they applied to the facts and evidence before it.

### (i) Impact on the claimant's feelings, reputation and career

11. Principal among the principles to consider in arriving at a quantum would be how the defamation affected the claimant's feelings, reputation and career. Any award must compensate for injury to feelings, which should include how the defendant conducted the action or if he persisted in adopting an entrenched position on his libellous assertions. This principle was restated in *John v MGN Ltd*<sup>5</sup> as compensatory damages should, "*compensate for additional injury caused to the plaintiff's feelings by the defendant's conduct of the action, as when he persists in an unfounded assertion that the publication was true, or refuses to apologise, or cross-examines the plaintiff in a wounding or insulting way.*"

12. The claimant was a husband, father, son, brother, small business owner and journalist with ties both locally and internationally. In his evidence in chief,

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<sup>3</sup> *John v MGN* [1997] QB 586

<sup>4</sup> *Cleese v Clarke* [2004] E.M.L.R. 3 at para 38

<sup>5</sup> *John v MGN Ltd* [1997] QB 586 per Lord Bingham

the claimant stated that the defamation perpetuated against him caused much hurt and embarrassment to his family and him. To corroborate this evidence, he brought his common law wife, Ms Sankar, and his mother, both of whom indicated that as a family, the allegations had a deleterious impact on them. The oral evidence of Ms Sankar was particularly poignant and credible as she described how the allegations wounded and deflated her and led her to probe the claimant for any truth contained in the defamation. She described the pain she underwent both when she learnt of the defamation and threats to his safety. As a witness, she was truthful and it was easy to accept her description of the fear and worry, which entrapped her, at the thought of the danger to which the claimant was exposed. She decried the defamatory words as being antithesis to the man she knew the claimant to be, so they caused her untold, emotional pain. Then his mother's evidence spoke to the emotionally cutting impact of the allegations on their family.

13. In assessing these different pockets of corroborative evidence, this court noted the judge's words in ***Faiiq Mohammed***<sup>6</sup> that the hurt and distress felt by the family and claimant must be judged subjectively:

*Reputations are not bought and sold on the open market and there is no standard therefore to adjudge the extent of the damaged reputation. This gives way in a large measure to the individual's own perception of his damaged reputation and his sense of outrage as a reasonable reaction to the libel. As non pecuniary loss, this sense of hurt feelings, is intrinsically a personal view and it is largely a subjective exercise to quantify the natural injury to his feelings and the grief and distress that he may have felt as a result of the defamatory words.*

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<sup>6</sup> *Faiiq Mohammed v Jack Austin Warner* CV2013-04726 at page 24, para 46



14. This court also took judicial note of the need for it to be conscious of the social impact of words and of how reasonable men would react “*to such calumny in our society.*”<sup>7</sup> This court factored into its award the personal hurt, which was felt by the claimant and his family, evidence of which went in unopposed. It considered the evidence led by the claimant as to the importance of his career and the injurious effects of the defamation on his reputation. His ability to secure interviews, advertising and international contracts were alleged to be affected. Considered also was the evidence of Ms Sankar as to the importance of the claimant’s reputation to the family business, their sole source of income, and how the defamatory hit jeopardized and impacted it.
15. Considered in particular was the act of the defendant in tagging persons within the sporting fraternity to ensure reputational injury and so maximize the damage to the claimant’s business and career. This tagging was systematic, widespread, and targeted online friends and associates of the claimant so was particularly damning, as the claimant depended on the sporting fraternity for leads, information and referrals to keep his family run business buoyant. This was viewed as a calculated and major blow to the reputation of the claimant and his business. In this regard, it was considered that the defendant held a position of respect in the sports world, with a voice that was recognised and listened to by others, so that the allegations would have had some prominence and credibility in the sporting fraternity specifically, as well as in the journalistic circle. While the claimant did not produce documentary evidence of any financial impact on Wired868 from the bruising allegations, he averred to a fall in listenership shortly after the defamation. It was accepted that to

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<sup>7</sup> *Faiiq Mohammed supra* at page 24, para 46

some extent his finances too would have suffered, through loss of advertising revenue and his ability to continue to earn in the business of sports and media. This claimant was a recognisable public figure in sports journalism, so the hurt, humiliation and distress he felt were important to factor into the award. The claimant was neither a politician nor performer, but in small societies as ours, sports personalities are revered and their views respected, so the defamation would undoubtedly have caused a particular furore in the local world of sports and journalism. The thought of his reputation percolating into the negative consciousness of the sports world would have caused its own peculiar brand of pain to this claimant. When combined with the impact of the allegations on his family, this would have been a source of untold distress for the claimant. The fact that the claimant valued his professional reputation was undoubted; that his business played a critical role in sports commentary was unquestioned; and that the allegations seriously wounded him in both respects were accepted. It was concluded that for the damage to his reputation, the award must seek to fairly and reasonably compensate the claimant. In so doing all the circumstances would need to be factored in, including the personal sensitivity to the value of his reputation as well as the social impact of the defamation in small societies, where local personalities hold a particular position of respect in the minds of the people. Defamation causing reputational injury would often be replayed, salivated over and cemented into society's consciousness; lingering on long after the subject might have changed. A damaged reputation is often irreversible. In this regard, this court noted the call of Kokaram J that this exercise might require *"a special assessment of and sensitivity to the value of reputations and a good name in small societies such as ours."*<sup>8</sup>

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<sup>8</sup> *Geeta Ragoonath v Ancel Roget CV2015-01184*

(ii) **Gravity of the allegations**

16. In his statement of case, the claimant outlined the incendiary meanings of the defamatory words. Accordingly, he pleaded that the words were read to mean that: he was physically abusive to women one of whom was deceased; these women have made police reports alleging he visited abuse on them; there were station diary reports in existence that proved the abuse; and he was guilty of committing criminal offences. The words were meant also to read that: he was a paedophile and a closet homosexual; he wished to harm or destroy local football; and he was intent on disrupting the national football team before its games. Attorney for the claimant stated that while the allegation of homosexuality was not defamatory in and of itself, the court should view this allegation in the context of him being in a heterosexual relationship and to infer that he was being called unfaithful and deceptive, by hiding his sexual orientation from his family. The court was referred to the comment of Dean-Armorer J in *Ricardo Welch v PBCT Ltd*, where the words “Empress”, “Gladys” and “he-she” in reference to a claimant were held to acquire a further meaning and to have the effect of weakening his image, jeering and mocking him, raising eyebrows, invoking scorn and holding him up to public ridicule<sup>9</sup>. In that matter, the word “gay” was recognized also as not in itself being defamatory but that the label might import or connote infidelity, dishonesty or unfitness when applied in certain circumstances. In the view of this court, the allegations in the present matter were comparatively of similar import to that in *Ricardo Welch (supra)*. Thus, the references to the claimant as an “**undercover homosexual**” and “**buller**” were viewed as grave, jeering and holding him up to public contempt, particularly in the context of him as a

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<sup>9</sup> *Ricardo Welch v PBCT Ltd and Ors* CV2011-00751

heterosexual family man. Similarly, this court was of the view that calling the claimant a paedophile and criminal offender was as serious and as damning as the previous label. In the context of being a father, allegations imputing criminal conduct against children were grave. These allegations were as targeted darts on the claimant's personal integrity, fitness as a father, loyalty, decency and other core attributes of his personality. These allegations were even more egregious given that they were made publicly, and at a time and in a climate of an elevated societal oversight and scrutiny of parents, both privately and by State organs. They would have had a deleterious impact on his family life and caused untold emotional stress, as he stated in his evidence. Allegations involving abuse and violence towards children are significantly grave as against a man, a step-father and husband. In this context, this court would attach the appropriate weight to this factor, as the nature of these allegations went to the core of his fitness as a parent.

**(iii) The extent of the publication**

17. The defamatory words in this case were published online, on Wired868 news magazine and Facebook. The worldwide reach of the publication was unquestionable, disseminating throughout the virtual and real world populations. The damage caused by the publication via the internet would neither have ended when the defendant made his last defamatory post nor could it be wiped off from the virtual online memory base. The damage, even where the posts have been removed physically from the web, would be a permanent fixture in the infinite memory of online engines. Such was the damage done to the reputation of the claimant, at the hands of the defendant, who in tagging numerous persons ensured that they and their followers were privy to the posts but also that the multiplication of his defamation was infinite. As regards online defamation, particularly on Facebook, the extent of

the publication could never be pinned down or known; neither could it be pulled back nor its spread stemmed. A defendant who would venture onto these online platforms and social media sites to defame another must be taken as having done so with the full understanding that his defamation was unstoppable, incurable and permanently capable of destroying a person's reputation. The claimant in the present matter gave evidence of the likely billions of Facebook users worldwide who would have had access to the defamation and who, at a touch, could have republished and disseminated the libellous words. He pointed out that Wired868 Group has seven thousand five hundred and fifty four members, while the Wired868 Official Facebook page has twenty one thousand eight hundred and twenty two members. In addition, the Wired868 website has had five thousand visitors to its webpage since the publication of the defamatory words and, on average has forty five thousand visitors to its website every month. The claimant also averred that the defendant's Facebook page has thousands of followers and that the persons tagged in the defamatory posts also have thousands of Facebook followers, who would have been able to view and republish the posts.

18. This court accepted that the defamation would have spread throughout the sporting community, both local and international, but also among the general online virtual population. This court also acknowledged that while Facebook has a widespread reach, the tagging function would have its own peculiar carriage of the defamation. Where this tagging effect was done deliberately, targeting specific sports personalities and high rollers in the industry, this court must weigh this into its assessment. The tagging effect tooled and retooled Facebook users with the power to spread and so extend the publication of the defamation. That the defamation currently engaging this court has gone worldwide was accepted.

**(iv) Matters of aggravation or mitigation**

19. This court inferred that the defendant knew or reasonably ought to have known, and so intended, for the defamatory words to attract maximum attention and do major damage. He was a journalist, a well-known sports enthusiast, a blogger and social media commentator so was no stranger to the reach of online posts. This was his world, and he understood the impact of his actions. He deliberately tagged persons invested in sports locally and internationally. He deliberately set out to destroy the home, relationships, business, integrity and reputation of the claimant. It was presumed that he understood that with the position and power of influence he occupied in the sporting industry that credence and weight would be attached to his comments. He deliberately held himself out as also having the evidence (police station diaries and photographs no less) to support his remarks. He then deliberately, by employing the tagging tool, weaponized his defamation. His defamation was done maliciously and with the conscious intent to injure and destroy the claimant in his workplace and personal life. This court viewed the defendant's defamatory action as actuated by malice, and calculated to increase his own mileage in the sports journalism industry at the claimant's expense, with reckless disregard for the injuries caused. The evidence of Ms Sankar and the claimant addressed the fear and pain that they lived under because of the defamation. Further, the defendant never apologised but continued unhindered in his own career, while the claimant was left to deal with the professional and personal carnage caused by the defamation. The lack of an apology served only to fortify this court in its position that an award for aggravation was warranted.

20. The claimant pleaded exemplary damages, which was an award that courts employed for punitive purposes. This would be granted where a court aimed to punish the defendant for his willful commission of the tort. The purpose of such an award would be to secure deterrence and retribution. The claimant averred that several requests were made for an apology but none was ever forthcoming. Instead, the defendant acted deliberately and in a sustained manner to ridicule and jeer at the claimant. He used his voice as a bully pulpit, to preach and incite outrage against the claimant for daring to criticise the sport of football and its officials in this country or to expose their actions. Online postings of the defamatory labels of the claimant were not enough to calm or assuage the defendant's sporting rage, so he saw it fit to utilize the tagging tool to gain increased attention and visibility for his defamation. In all the circumstances, the defamation was reckless and there was no evidence as to the defendant's belief in the truth of it. The abuse of Facebook must be stopped. Indeed, persons who use online platforms for virtual mischief must be faced with the consequences of such ill-advised public airing of their malicious attacks. An award of exemplary damages appropriate in the context of this case would be granted against the defendant, as deterrence and punishment.

#### **CASES CONSIDERED**

21. Attorney for the claimant invited the court to make an award of \$750,000.00 on the basis of *Ricardo Welch (supra)*. She advanced that the comments in the present case were in line with *Ricardo Welch* and were disparaging and aimed at bringing the claimant into disrepute. She submitted that the defamatory statements were baseless and outlandish and continued on a sustained basis despite court intervention. In *Ricardo Welch*, the court awarded \$700,000.00 in damages to a well-known radio personality who was

called numerous names during three radio programmes including *inter alia*: “a closet whore”, “prostitute”, “duttty”, “nastiness”, “riding the back of Gemini”, “extortionist”, “holding the PNM to ransom”, and a “nasty stinking thief”. There was evidence in that case that the defamation led to the claimant having to replace his vehicle because of security problems; losing a lucrative five year contract with a local radio station; and having to purchase medication to treat with his chronic illnesses because of the repercussions of the defamation.

22. In ***Geeta Ragoonath v Ancel Roget***<sup>10</sup> a private individual who faced defamation, which aimed to disparage and bring her reputation into disrepute and which was widely disseminated, was awarded \$360,000.00 (consisting of \$200,000.00 in damages inclusive of aggravated and \$160,000.00 in exemplary). ***PMI v Sapphire Carter***<sup>11</sup> involved a prolonged campaign of defamatory comments on Facebook, in the face of court orders, which aimed at destroying the claimant, as a religious organization. There was no apology forthcoming but the court commented about the quality of the evidence led and awarded \$200,000.00 inclusive of aggravated plus exemplary damages of \$50,000.00. Another case tabled for consideration was ***Faiiq Mohammed supra*** where the defendant made defamatory remarks about the claimant in a bid to destroy his reputation. The court awarded \$220,000.00 in damages.

23. In the view of this court, the claimant at bar presented evidence that pointed to the major impact of the defamation on his personal reputation, his family and his business. His role as a step-father was impacted by the labels of paedophile and imputation of him committing criminal offences against children. It could have ended his common law marriage, but the fact that it

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<sup>10</sup> *Geeta Ragoonath v Ancel Roget* CV2015-01184

<sup>11</sup> *Prophetic Missions International v Sapphire Carter* CV2017-00371



failed to do so made little difference to the acrimony embodied in the allegations and the injury caused to his reputation. Both parties have public footprints in the world of sports journalism and the defamation would have caused a sure measure of reputational injury to the claimant. In arriving at the quantum, this court aimed for fair compensation that would do justice by the claimant for the wrong visited upon him. In the context of this case, where the defamation was mounted in the sports industry, via Facebook, and the defendant saw it fit to tag the sports' elites and enthusiasts, to destroy the reputation of the claimant, an award of \$450,000.00 for damages inclusive of aggravated was felt appropriate. To this would be added an award of exemplary damages of \$100,000.00, which should operate to punish and deter the defendant from his egregious abuse of online platforms.

#### **ORDER**

24. It is ordered that -

- a. The defendant do pay to the claimant damages for defamation in the sum of \$450,000.00 with interest at the rate of 2.5% per annum from May 25, 2018 to May 07, 2019 and exemplary damages of \$100,000.00;
- b. Costs of the assessment be paid in the sum of \$45,631.28; and
- c. A stay of execution of 48 days is placed on this order.

**Martha Alexander**

**Master**