

**THE REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**Claim No CV2017-00371**

**BETWEEN**

**PROPHETIC MISSIONS INTERNATIONAL**

**Claimant**

**AND**

**SAPPHIRE CARTER**

**Defendant**

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**Before: Master Alexander**

**Appearances:**

**For the claimant: Mr Farai Hove Masaisai instructed by Mr Issa Jones**

**For the defendant: Ms Sally-Ann Holdip, amicus**

**Award**

1. This was an assessment of a defamation claim involving a church and one of its congregants for which this court awarded \$250,000.00, inclusive of aggravated and exemplary damages. The claimant, Prophetic Missions International (“the Church”), sought \$500,000.00 in compensation for injury to its reputation and financial prospects inclusive of aggravated and exemplary damages. At the centre of this defamatory claim was social media, used as the main channel for the publication of certain libellous statements about the Church. Further, during the liability stage of these proceedings, there was a demonstrable tendency by the defendant (“Sapphire”) to ignore court orders, including injunctive and costs orders, and to continue with acts of harassment against members of the Church, which led to contempt of court proceedings. Mr Masaisai, counsel for the Church, therefore, argued for Sapphire’s behaviour and wilful omissions to be factored into account by this court when making its award. While this court adhered to the clear and well-rehearsed principles that guide assessments in defamation cases, the emerging role of social media and how it impacted this defamation claim were critical considerations in settling the award to achieve justice in this matter. With this backdrop to the assessment, and on the bases of the evidence, case law, guiding and other relevant principles, this court’s award was settled.

## **Facts**

2. The Church began its operation in Trinidad and Tobago in 1998 as a religious organisation and, over the years, expanded into the wider Caribbean and world. Dr Leslie Rogers (“Dr Rogers”) was the founder and person who spearheaded the Church’s expansion locally, regionally and internationally. Sapphire was a member of the Church for 5 years when sometime in 2015, she left the organisation. She also performed household duties for Dr Rogers. Sometime in or about December, 2015 she had begun and continued thereafter to publish, on various social media sites and a television channel, defamatory statements about the Church, its practices and alleged flawed functioning as a religious organization and place of worship. The libellous statements were numerous, stinging and touched multiple aspects of the Church and its operations. The attacks also defamed Dr Rogers on a personal, familial and leadership level, as well as congregants of the Church as a whole.

## **Evidence**

3. Several witness statements were filed in this matter on 3<sup>rd</sup> November, 2017 including by Kindi-Ann Suraj, Wade Scott, Nicole Scott and Ricardo George. In the round, the Church’s evidence was that its local membership had grown, over the years, to a peak of 1000 persons cumulatively, and the actions of Sapphire caused a direct and drastic cut of its affiliation to 600 persons (i.e. by 40%). The Church had expanded regionally into Grenada, St Vincent, Dominica, Jamaica, Antigua, Venezuela, and globally into Kenya and Ghana, and its intention was to establish ministries in Togo, Russia and Canada in the near future. Further, the Church had a worldwide reach, administering the Word of God through Dr Rogers to Heads of Governments, dignitaries, judges, international business magnates and other international personalities. Other services provided by the Church included: the hosting of international conferences, which attracted global attendees; educational workshops (both secular and spiritual) and the supply of aid to African countries on a regular basis, in the form of clothing, toiletries and canned foods. It was also the evidence of the Church that pre-defamation, its reputation was of the highest order, both locally, regionally and internationally.
4. So when in December, 2015 Sapphire published libellous statements that labelled the Church *et al.*: “a Cult”; “a Killer Cult”; “a demonic Power”; as “Perverting the Truth in the Gospel” and as an organization involved in deception, manipulation and mind control - serious injury was suffered by it and its members. In support of its claim of injury to reputation and finances, the Church produced evidence to show that Sapphire had published libellous statements that suggested that its practices were questionable, unethical, dishonest, manipulative and illegal. One such example was Sapphire’s

publication on Facebook that the Church had offered a 2016 prophetic word to individual members assigned to different groups, should each group raise \$25,000.00. There was also evidence that Sapphire had published on Facebook, YouTube and other platforms that the Church and its congregants were involved in, "... witchcraft. Whereby they pray Charismatic witchcraft over the People, for them to die, when they leave the cult..." Sapphire also defamed the Church, when she published that it had verbally assaulted and administered beatings to children who were members; it was "A GRAVE YARD FOR BABIES" and was promoting and covering up its practice of child sacrifice. It was also in evidence that Sapphire had gone on a local television channel CTV on a programme called "The Reality Behind Success" where she made defamatory statements of the Church, posted it on Facebook, then encouraged the public to share the video recording.

5. The libellous allegations were also directed at Dr Rogers personally, his reputation and character. In the Church's evidence in chief, the Facebook postings were introduced which showed that Sapphire had labelled Dr Rogers as "Dr Evil Rogers", "False Prophet Rogers", "the Beast" and "Dr EVIL STRIKES AGAIN". In one particularly graphic post, Sapphire stated that, "Dr Evil is encouraging those young mini-stars to sex down the cult's young ladies." She also published that Dr Rogers was "worse than ISIS"; a "VIGILANTE PASTOR", a stalker, a spouse abuser, a paedophile and an arsonist. The postings actually accused Dr Roger's of stalking ex-members and of burning down the vehicle of Kendrick Preudhomme, who had left the church. Sapphire also accused Dr Rogers of extortion in that he had demanded that members leave their wealth for him or the Church.

*Impact of defamation*

6. The Church would have this court believe that the impact of the defamation was profound and widespread, and went to the core of its functioning as a religious and charitable organization. One of its witnesses, Kindi-Ann, averred that the defamation caused a decrease in membership and correspondingly a significant drop in income generated by the Church. The Church lost staff members (administrators, secretaries, financiers, worshippers, ushers, musicians, sound technicians and engineers, security officials, event managers, interior decorators and janitors), which led to a backlog of work and affected its smooth functioning. According to Kindi-Ann, even regional and international members took their exit following the online defamation. This mass exodus, upon the defamation, handicapped the Church's ability to pay its rent, and to continue its missions or social assistance grants. In fact, the libel also affected the Church's ability to grow its membership, as its public image and sterling reputation were now severely injured. The situation was made worse as the Church was blocked

in its bid to renew its radio programme, which affected its growth and income. Members experienced untold emotional pain, suffering and embarrassment.

7. The defamation took place over a period of several years and Kindi-Ann averred that the use of social and print media to tarnish the name of the Church and question its morality led to Dr Rogers and his family being ostracized. Kindi-Ann testified to being a first-hand witness to the trauma, tears and pain experienced by Dr Rogers and his family, from the relentless attacks on the reputation of the Church. It caused them to move from guesthouse to guesthouse, until they found a remote apartment to shield them from public glare and the impact of the libel. She testified to being affected personally and emotionally, as wherever she went, people questioned her continuing fellowship at the Church for example asking, “you going to church by dat man”. She also described the embarrassment felt by the demeaning and sullyng of the Church’s reputation on Facebook, and YouTube and how its spread among her online friends impacted her mentally.
8. The other witnesses in this matter supported this evidence of members being faced with a butt of derogatory remarks, threats and untold humiliation from the social media postings and print publications. Nicole Scott referred to encounters with a former schoolmate, who had previously visited the Church, and a co-worker who was a Facebook friend of the Church, both of whom questioned her about what was going on with the Church and “that woman posting those things on Facebook”. Witnesses referenced the newspaper article titled “A Church Leader with 40 WOMEN AND CHILDREN” and averred that this drew a number of derogatory statements from friends and family members, who felt there must be truth to the claim. Another witness, Wade Scott, testified to being a retired police officer who experienced threats consequent on the defamation. According to him, one Kendrick Phnommes (sic) confronted him, pointed a hand in Wade Scott’s face, and stated that cult people were not welcome in this area. Wade Scott averred further that the confrontation left him terrified and fearful for his life because, although he was a trained police officer, he was unable to lift his left hand properly or defend himself, as he had been in an accident previously.

### **The Law**

9. The law has made clear that a claimant who was libelled, without any lawful justification or excuse, would be presumed to have suffered injury to his reputation and his feelings, for which he might recover damages. The law has no explicit requirement for the person libelled to produce any evidence to prove

such injury, as he started with a presumption of damage<sup>1</sup>. To attract a substantial award of damages, however, evidence must be provided<sup>2</sup>. It would mean that inadequate, deficient or non-existent evidence would reduce the recoverable compensation that a claimant could attract. As the Church sought substantial damages, it was required to come armed with the necessary evidence.

#### *Measure of damages and purpose*

10. The measure of damages recoverable in defamation was compensatory in nature (not punitive). Thus, the purpose of such an award of damages was 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 might reasonably be inferred; and
  - (c) to serve as an outward and visible sign of vindication<sup>3</sup>.

In the instant matter, compensation should aim to alleviate the distress suffered by the Church from the publication of the libellous statements and to repair any harm done to its reputation<sup>4</sup>.

#### *Factors*

11. There are several factors that must be considered in an assessment of a defamation claim. These include: the extent of the publication; the gravity of the allegation<sup>5</sup>; the impact on the claimant's feelings, reputation or career and matters of aggravation or mitigation (such as apologies)<sup>6</sup>. An important factor also was whether the persons receiving the libellous statements believed in the veracity of them. All factors are critical, so the evidence in proof of them would play a major role where a high-end award was sought. In justification of the award of general damages made to the Church, this court examined the evidence led in the context of the factors required to be satisfied in assessing such damages. It was borne in mind that the crux of the Church's claim was that it had suffered injury to its reputation and

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<sup>1</sup> *Halsbury's Laws of England* 4<sup>th</sup> 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."

<sup>2</sup> *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. In another matter, *Keith Christopher Rowley v Michael Annisette* CV2010-04909 where sufficient evidence was brought to prove injury both to the private and public aspects of the life of a prominent political figure, including how the libel impacted his children whose concerns he was forced to address, an award of \$475,000.00 inclusive of aggravated damages was made.

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

<sup>4</sup> *Gatley on Libel and Slander* 9<sup>th</sup> edition at pages 201 - 2002

<sup>5</sup> *John v MGN* [1997] QB 586

<sup>6</sup> *Cleese v Clark* [2004] EMLR 37

finances, which flowed directly from the libellous statements published on social, print and televised media. It accepted that there was clear proof of the multiple libellous postings on social media and otherwise, and the evidence that this was defamation stood unchallenged.

## **Discussion**

### *Extent of publication*

12. The extent of the publication would be impacted by the libel being distributed to millions, as against a numerically smaller catchment of persons. In the view of this assessing court, the wider the audience, the greater would be the possibility of the libel causing damage than one that was more narrowly broadcasted<sup>7</sup>. So a libel published to a global audience would be more serious than one published locally. The fact that Sapphire largely used the conduit of Facebook to publish her libellous allegations influenced how this court assessed the extent of the publication.

#### (a) Facebook effect

13. The Facebook and YouTube postings by Sapphire were ruled defamatory by the judge at the liability stage. These libellous posts were massive in number; widespread in their coverage of the Church's practices; profoundly wounding to an organization in the nature of a church; contained serious allegations against the Church and its leader; and aimed to injure its reputation and to inflict maximum damage. Attempts to contain or stop the postings were ignored with impunity, and the relentlessness of the attacks were only halted by contempt of court proceedings. There was no evidence of any apology being advanced by Sapphire or interest shown in mitigation. In fact, the evidence was that all attempts to get Sapphire to cease the publication were stiffly resisted, and continued unabated even when the matter had judicial oversight. A perusal of the Facebook and YouTube postings pointed to the libellous words reflecting express malice. They clearly aimed to disparage the Church's practices as manipulative, unscrupulous, devilish and as being outside the best interest of its membership. Some of the postings clearly alleged that the Church was engaged in illegal, occultist and murderous practices, including baby sacrifices.
14. It was undeniable that the bulk of the defamatory statements made by Sapphire were done via Facebook. This fact alone meant that the defamation, in this case, was seriously capable of doing severe and widespread damage to the Church's reputation. In fact, even when Sapphire went on television

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<sup>7</sup> Supra note 1 at page 11 per Kangaloo JA

and defamed the Church, she subsequently posted the video recording of this feature on her Facebook page for public sharing. Facebook has a global presence, with its reach being unhindered by borders so the scale of such defamatory publications would be limitless. In the view of this court, Sapphire's use of Facebook, as her preferred conduit for her defamation of the Church, with its facilities for reposting and commenting, must have created a feeding frenzy for those with a palate for such postings. Those who abuse social media, or use it for petty revengeful vendettas, must recognize that the scale of their publications on Facebook would be for global public consumption. Facebook users could ill-afford to be mindless and reckless in their use of it or feign ignorance of the injury they caused or absolve themselves of the impact of such social media libel.

(b) Print and televised media

15. As for the defamation via print media, the article in the Sunshine Newspaper dated Friday 15<sup>th</sup> January, 2016 would similarly have attracted an international readership audience, thereby expanding the reach of the likely injury. Of similar impact was the televised feature on CTV. In the view of this court, these publications had a local, regional and global spread, with the potential to do unfathomable harm to the reputation of the Church. Accepted also was that these postings remained available to a worldwide audience, during the life of this matter in the court, despite court orders and so, would have exacerbated the injury caused to the Church. The reach of the libellous statements was borne out in the evidence, as the witnesses recounted the reactions of family members, friends, former schoolmates, co-workers and community members.

*Gravity of the allegations*

16. Another significant factor in this assessing exercise would be the gravity of the libellous statements. In the instant case, the postings introduced into evidence were of a high level of gravity, and even more so in the context of a religious organization accused of illegal, murderous and demonic practices. The law has long been settled that where libellous allegations touched a claimant's personal integrity, professional reputation, honour, courage, loyalty and the core attributes of his personality, the more serious it was likely to be. These libellous allegations against the Church, in the mind of the reasonable man, were indisputably serious, as they went to the core of its reputation and standing. The Church brought evidence in chief that the allegations were grievous and severely impacted its membership, growth, regional and international standing, provision of international aid, and its ability to continue to function as it did pre-defamation. This ex-congregant, Sapphire, saw it fit to call out the Church as indulging in demonic and other illegal practices and to label the pastor as "Evil Rogers" and "the Beast".

The libellous statements covered religious, legal, personal, and financial abuses by the Church and were voluminous in nature. The Church was alleged to be dishonest, manipulative, deceptive and to have committed serious crimes such as infanticide, arson and extortion. Given the nature of the libellous allegations, this court formed the view that they were grave.

*Injury to reputation, finances and services provided (business)*

17. The evidence as to the injury done to the reputation of the Church, its finances and the impact on its leader and congregants was outlined above but it was not explored in terms of adequacy. Thus, in the face of the nature of the libellous statements, their toxicity, the sheer volume of them, the global reach of the publications and the lengthy period during which the defamation continued, unfiltered and unabated, it meant that the Church would have sustained injury to its reputation and finances. Also accepted was that for these hurts, Sapphire was required to pay compensation. However, there was no direct evidence called in support of the claim that the Church's reputation and finances had suffered severe losses. Having brought this claim of defamation, it fell to the Church to mount a case that was sealed off from evidentiary insufficiencies. Rather, the evidence was thin, permeable and/or non-existent in support of the witnesses' claims as to the Church's huge membership; that its philanthropic services were provided locally, regionally and internationally; that it ministered to Heads of Governments and business magnates and of its financial intake and consequential losses upon the defamation. Further, there was no proof to substantiate the averments that the Church was globally recognized, was of reputable standing, commanded widespread respect and had embarked on a regional and international expansion drive, which was continuing. There was no direct or credible evidence provided to support the claim that the Church had established ministries or affiliates in the named countries in this region or worldwide. There was also no documentary or credible evidence that the Church had provided international aid. Not even its claim that it was prevented from renewing its radio programme was supported by documentary evidence of this alleged blockage. The court was provided with evidence in chief only through the lens of the members, and one independent witness whose evidence, when tested by the court, proved untruthful. To obtain the substantial award sought, the Church at a bare minimum would have had to supply documentary or other credible evidence to corroborate its members' claims.
  
18. As regards its claim of a large membership and the decline following the defamation, the Church could have supported this with some form of records. This court had no doubt that some fallout in membership might have taken place, and even resulted in worldwide casualties. It was felt only that



the Church could have brought some proof of this and that this failure was unfortunate. There was no evidence that the Church really consisted of 1000 members pre-defamation and/or the extent of the decline in membership following the libel, if any. Further, no explanation was given for the lack of written records being produced to this court. The Church simply failed to supply this court with evidence of its membership, bank accounts and its subsidiary churches in the various countries cited. These claims were easily capable of proof and it would have assisted in convincing this court that the Church had a regional or an international reach, and so made the defamation more impactful and injurious. In fact, there was no evidence even that the Church was widely known and recognizable within Trinidad and Tobago. It might have been that the Church was recognizable in its home community or even other local communities, but there was no evidence that it was well-known in this jurisdiction, so as to convince this court, without more, that its reach was now international or even regional. By failing to provide the relevant information about its external affiliates or evidence of the conferences it allegedly hosted in and outside of Trinidad, this court struggled to accept its claim to international stature. There was also no sufficient or credible evidence of the Church's alleged failing ability to attract new members or as to how long this hiatus in growth lasted.

19. In this case, damage to the Church's reputation in the eyes of the ordinary members of the public was presented in a threadbare manner. The court was provided with a singular threatening comment of a person from the area and with queries from unnamed sources as to congregants' continued association with the Church. This demonstrated that persons were harbouring a belief as to the truth of the defamation. It was suggested that the Church's public image might have suffered, but no adequate evidence was advanced of any such tarnishing or drop in reverence or that it was permanent or extensive in the eyes of the public, and persons in the local and international communities. Based on the evidence before it, this court found that any injury to the Church's reputation was not sufficiently corroborated and was unable to conclude that extensive or seriously lasting injury was proved to its satisfaction. In fact, the lone independent witness ("Ricardo George") was found not to be truthful or independent. When his evidence was tested, Ricardo George, who had testified to having seen the Facebook postings on his social media account; and of their widespread sharing by persons in his contact list and of getting notifications every time the libellous statements were reposted or commented upon, proved not to even have a Facebook presence. His evidence as to the reach of the Facebook thread, and its alleged impact on him, as a member of the public, as well as on his alleged Facebook friends proved bogus, contrived, and unreliable and so was disregarded by this court. Unfortunately, Ricardo George's blatantly manufactured evidence left this court questioning why the Church would call such misleading evidence,

if the impact of the defamation was really as injurious as claimed. Why call a witness to bring “fake” evidence if the impact of the defamation was as extensive and damaging as claimed? Why pinion a claim such as this on the testimony of an indulger in hyperboles and an outright fibber?

20. As regards its claim of huge financial losses from the defamation, there was also no evidence to support its revenue intake pre-defamation or the drastic fall in revenue post-defamation. It was felt that while the Church might have suffered some pecuniary losses consequent on the defamation and/or even a drop in its membership, it failed to prove this to the satisfaction of this court. It could have proved its claims of financial losses by producing documentary evidence, instead of bringing a claim that was unsubstantiated, without any approximation or hard evidence provided of such losses. The Church could have corroborated this claim by the provision of some form of accounting or bookkeeping records, as it claimed it had administrative and other staff. As an employer, there would be records of statutory payments, which would have shown its complement of staff and, certainly, there would have been bank records. Failure to provide records of its membership and decline; its finances both pre and post defamation; its external affiliations and the reduction in numbers affected how this court viewed these claims of alleged losses. Also absent was the evidence of the alleged supply of aid to African and other countries. These were easily provable activities, associations and services but the Church failed and/or refused to call the requisite evidence to substantiate its claims. The words of the members alone were simply inadequate to establish the veracity of these claims as mounted.

*Impact on feelings*

21. On a balance of probabilities, this court drew the inference that given the nature of the libel, its volume and persistency, these church members would no doubt have undergone intense and untold embarrassment in their private and public life, as given in evidence. It was felt that the pieces of evidence that spoke to the embarrassment and trauma suffered by members through the demeaning of the Church globally, the concrete examples of threats provided, and the members’ fears were convincing. Sapphire’s publications aimed to demean and ridicule the Church and reduce its membership. Given the global reach of social media and other publications, this court could only conclude that these libellous statements were a source of embarrassment for the Church and its members. It considered that the libellous statements were voluminous, inflicted over a sustained period, and exhibited an unrestrained viciousness in its attacks so that the Church would have suffered injury.

22. On the other hand, many evidentiary imponderables surfaced in assessing the damages to award the Church. First, the full extent of the injury was unclear and unproved on the evidence. Secondly, Sapphire's irresponsible and highly offensive use of Facebook must be considered in the context of the borderless reach of that platform. Facebook has the potential to cause unfathomable damage hence users must be responsible for the carnage created by their defamatory postings. They must use Facebook and other social media sites responsibly or pay for their ill-use of them. Sapphire went on Facebook to discredit and destroy the reputation of the Church by her ruinous postings, and when this proved insufficient, she went on television to spread her poison. While this court acknowledged the lack of tangible evidence of widespread damage to the Church's reputation, it accepted that the libellous statements aimed to discredit the Church and, given the nature of this organization, would have done some form of damage to its reputation. This court was unwilling to speculate or engage in guesswork as to the extent of this damage, and could find no good reason for the Church's failure to bring the necessary evidence to bolster its claims.

### Cases

23. Mr Masaisai cited a few cases on libel to guide the award of this court including:

- ***TNT News Centre Ltd v John Rahaef***<sup>8</sup> where it was alleged that Mr Rahaef, then Minister of Health and a Member of Parliament, was involved in the drug trade and a "marked man". The Court of Appeal reduced the award from \$400,000.00 to \$250,000.00 on the ground that there was no direct evidence as to the full extent of the injury to his feelings and reputation.
- ***Kayam Mohammed v Trinidad Publishing Company Ltd***<sup>9</sup> 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.

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<sup>8</sup> *TNT News Centre Ltd v John Rahaef* Civil Appeal No 166 of 2006 delivered on 9<sup>th</sup> July, 2009

<sup>9</sup> *Kayam Mohammed & Ors v Trinidad Publishing Company Ltd & Ors* HCA No 3552 of 2003

- ***Trinidad Express Newspapers Limited v Conrad Aleong***<sup>10</sup> where allegations published over a five week period were held to convey to the reasonable reader that the claimant, the then Chief Executive Officer of BWIA, was dishonest and devious and manipulated the airline's accounts among other things for private gain. He was awarded general damages of \$450,000.00 and exemplary of \$200,000.00 and there was no mention of aggravating factors. The appeal was dismissed and the cross appeal allowed on the issue of general damages. The award of damages was increased to \$650,000.00 and exemplary damages remained at \$200,000.00 as the trial judge's award was found to be inordinately low.
- ***Viro Chem Janitorial Services Company Limited and another v Ackbar Khan***<sup>11</sup> 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 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.
- ***Geeta Ragoonath v Ancel Roget***<sup>12</sup> where the claimant was awarded general damages of \$200,000.00 and \$160,000.00 for exemplary damages. The claimant was unknown to the public and held no public office but provided evidence of the impact on her children and family life.
- ***Nizam Mohammed v Trinidad Express Limited***<sup>13</sup> where a defamatory publication alleged that the claimant (a senior attorney and well known public/political figure) was referred to the Disciplinary Committee of the Law Association and an order was made against him. He was awarded \$325,000.00 inclusive of aggravated damages for the publication, which imputed incompetence, dishonesty, lack of fitness and lack of professional ethics on his part.

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<sup>10</sup> *Trinidad Express Newspapers Limited v Conrad Aleong* Civ App No 122 of 2009

<sup>11</sup> *Viro Chem Janitorial Services Company Limited and another v Ackbar Khan* CV2012-03304

<sup>12</sup> *Geeta Ragoonath v Ancel Roget* CV2015-01184

<sup>13</sup> *Nizam Mohammed v Trinidad Express Limited* CV2011-00264 delivered on 19<sup>th</sup> July, 2013

### **Analysis of cases**

24. Mr Masaisai provided cases that attracted high-end awards, without advancing why or referencing the evidentiary standards reached in those matters. It behoved this court, however, to do a proper comparative analysis in justification of any award arrived at to compensate for what it considered to be a deeply egregious and whittling attack on the reputation of the Church. First, the cases of *John Rahael* as well as *Conrad Aleong* involved well-known or widely recognizable public personalities, holding public offices. Not only were their names recognized locally, regionally and internationally but evidence of same was undisputed. In *Conrad Aleong*, there was evidence of a lingering negative impact on the respondent who resigned and was unable to immediately obtain a job. There was also certain aggravating factors such as ignoring requests to stop the libel, continuing circulation and republication that led the Court of Appeal to increase the award. In *John Rahael*, the defamation was of a current minister of government whose status was established unlike in the present case where the Church's standing and reputation remained unproven. Further, the allegations in those cases, like the one at bar, were grievous but while the evidence in *Conrad Aleong* sufficed to attract a high-end award, there was an absence of direct evidence in *John Rahael* of injuries to the respondent's feelings or reputation, and on that basis the Court of Appeal significantly reduced the trial judge's award. Thus, an absence of direct evidence as to how a party's reputation was injured would affect the award. In the matters where the claimants lacked a public presence, the awards were below \$200,000.00.
25. In the instant case, this court considered that the libellous statements would have had a ruinous impact on such an organization, whose continuance in its field of operation would have depended on its reputation. Injury to reputation would often be irreversible, whether it was done to the reputation of a person or organization such as the Church. In terms of a charitable organisation such as a Church, where its reputation might affect its membership and continuance of its existence, the defamation would be all the more ruinous. It was unfortunate that the Church failed to call concrete and precise evidence of the fallout and injury to its reputation and finances upon this defamation. Despite the evidentiary thinness on how the defamation impacted the Church financially and its extent, this court placed great stock on the gravity and reach of the libellous statements. The fact that the disparaging postings were channelled through Facebook mainly, but not exclusively, and that this medium for the transference of such libel had the power to ignite quickly, spread globally and do untold damage must be factored into this decision. Facebook's fangs possessed an infinite reach; its capacity for multiple reposting, sharing and commenting by users and the likely irreparable damage would possibly never be discoverable or understandable. The compensation awarded might not be able to bleach away the

stains caused by this defamation, or even wipe out the memory of what was done here, but it would in some way serve as a balm for the injury.

26. In settling upon a fair award, this court considered that the evidence of membership fallout was not proved with any degree of specificity. Moreover, at the time of the assessment, the Church was clearly still in operation and its pews had not been completely emptied. So while its reputation must have dimmed, its mission was not halted. Also considered was that the remit of this court was to compensate the Church for the injury to its reputation and finances and for the embarrassment, humiliation and trauma experienced from the defamation. It meant that any award must be reasonable as between the wrong done and damages given<sup>14</sup>. It must also be an award that was neither too much nor too little. Justice demanded that an award for these libellous statements at the high-end range must be supported by direct evidence, so evidentiary inadequacies influenced the overall award. Thus, it was fair, given the limited direct evidence of impact on reputation and finances, to award \$200,000.00 as damages.

#### **Aggravated damages**

27. To attract an award for aggravated damages, there must be evidence of malice on the part of Sapphire, which would involve spite, ill-will or a desire to injure as the motivating factor for publishing the libellous article. There was clear evidence of a prior relationship between Sapphire and the Church and a souring of same to justify the claim that the allegations were published purposefully and/or maliciously. In fact, the publication started in 2015 while Sapphire was still a friend on the Church's Facebook page and it continued for several years and even in the face of a court order. It took contempt of court proceedings to stop the postings. This court found as a fact that given the medium of Facebook being used as its main form of transmittal that it was done recklessly, maliciously and uncaring of the injury unleashed by such postings. The fact that Sapphire continued to issue postings, of increasing ferocity, in the face of court orders, served only to aggravate the situation so she must face the consequences of her errant behaviour. It simply was not the best and most prudent choice of her use of time in her fallout with the Church. There was also no evidence of any apology, and the mere fact that it continued unabated for the extensive period during which it did rendered this case a ripe one for an award of aggravated damages. The learning provided that an unreasonable lack of an apology could be evidence of malice, which could lead to aggravated damages<sup>15</sup>.

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<sup>14</sup> *Knuppfer v London Express Newspapers Limited* [1943] KB per Goddard LJ at page 91

<sup>15</sup> *McGregor on Damages* 17<sup>th</sup> Edition page 1439, para 39-044

### **Exemplary damages**

28. In this matter, a claim for exemplary damages was pleaded specifically. It was also to be proved. It would usually be awarded for punitive purposes: see *Geeta Ragoonath (supra)*. Its aim would be to punish the defendant for the wilful commission of the tort and to teach him that “tort does not pay”<sup>16</sup>. The award also aimed at securing deterrence and retribution. To attract such an award, the Church was required to show that the publication was tortious or reckless as to whether or not it was true and that, despite this, Sapphire proceeded to publish the libellous statements, because the prospects of material advantage outweighed that of material loss. There was clear evidence that by continuing her allegations despite injunctive orders, she clearly aimed at sullyng the name of the Church and was reckless as to the injuries caused. Her gain in making the allegations was the satisfaction of exposing and destroying an organization with which she was affiliated formerly. Her words aimed to secure a decline in membership and ruin the reputation of the Church. There was no evidence provided to show that the publications were done for revenue earning purposes, at the Church’s expense. Nevertheless, it was indisputable that the libellous statements were “reckless” and injurious and to be condemned. Users of social media platforms must recognize that they must be responsible and respectful of the reputations of others in society or their actions would be condemned in the strongest possible terms. I considered that in the context of this case, exemplary damages of \$50,000.00 was justifiable.

### **Order**

29. It is hereby ordered that the defendant do pay to the claimant –
- (i) General damages in the sum of \$200,000.00 inclusive of aggravated damages with interest at the rate of 2% per annum from 1<sup>st</sup> February, 2017 (date of service) to 3<sup>rd</sup> October, 2018;
  - (ii) Exemplary damages of \$50,000.00;
  - (iii) Costs on the prescribed basis in the sum of \$28,303.20;
  - (iv) Stay of execution of 48 days.

Dated 3<sup>rd</sup> October, 2018

**Martha Alexander**  
**Master**

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<sup>16</sup> Gatley on Libel and Slander 12<sup>th</sup> Edition para 9.25 and *Rookes v Barnard* [1964] AC 1129