REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV 2008-00225

BETWEEN

1. **JUDE NEIL READY**
2. **JULIO ARMANDO READY**

Claimants

AND

1. **PC HERBERT GABRIEL #12142**
2. **CARIBBEAN COMMUNICATIONS NETWORK LIMITED**
   ("CCN-TV6")
3. **CARLA FODERINGHAM**
   ("CCN-TV-6 News Presenter")
4. **PAOLO KERNAHAN**
   ("CCN-TV-6 Morning Edition Host")
5. **TRINIDAD EXPRESS NEWSPAPERS LIMITED**
   ("EXPRESS")
6. **AFIYA BUTLER**
   ("Express Reporter")
7. **KRISHNA MAHARAJ**
   ("Express Photographer")
8. **TRINIDAD PUBLISHING COMPANY LIMITED**
   ("GUARDIAN")
9. **RADHICA SOOKRAJ**
   ("Guardian Reporter")
10. **TONY HOWELL**
    ("Guardian Photographer")
11. **DAILY NEWS LIMITED**
    ("NEWSDAY")
12. **RICHARD CHARAN**
    ("Newsday Reporter")
13. **MICHAEL BRUCE**
    ("Newsday Photographer")

Defendants

Before The Honourable Madam Justice Margaret Y Mohammed

Dated the 2nd May, 2017

APPEARANCES:

Mr. Michael S Persadsingh and Mr Chanka R L Persadsingh instructed by Messrs Dipnarine Rampersad & Co Attorneys at Law for the Claimants.

Mr. Faarees Hosein instructed by Mrs Carolyn Ramjohn Hosein Attorney at Laws for the Second to Seventh Defendants.

Ms Vanessa Gopaul instructed by Mr Andre Rudder of Messrs JD Sellier & Co Attorneys at law for the Eighth to Tenth Defendants.

Mr Ian Benjamin instructed by Ms Jewel Ann Jasmine Troja of Messrs Ashmead Ali & Co, Attorneys at law for the Eleventh to Thirteenth Defendants.

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JUDGMENT

1. In November 2000, the First Claimant was a fisherman and the owner of a bar called *"Ready's Restaurant & Bar"* situated at Corner Coora Road and Mary Street, Siparia. He lived there with his son, the Second Claimant who was 4 years old. On the 13th November, 2000, while the Second Claimant was in the care of his caretaker, Mr. Ainsworth Modeste, at Ready's Restaurant & Bar, the police discovered the First Claimant's practice of putting the Second Claimant into an enclosed homemade circular wooden play pen with a cover fitted with a hasp and staple in the bar.

2. All the media Defendants reported on the discovery by the police. The Second Defendant on the television station known as TV 6 ("TV 6") made the following broadcasts:
   (a) News item on 13th November, 2000 at 7:00pm
   (b) Repeat of news item on 13th November, 2000 at 10:00pm
   (c) Morning Edition news repeat of news item on the 14th November 2000 at 6:00 am
   (d) News item on 15th November, 2000 at 7:00pm
   (e) Repeat of news item on 15th November, 2000 at 10:00pm
   (f) Morning Edition program on the 18th April 2000 at 6:00am titled *"The Boy-in-a-cage-story"*.

   All the broadcasts on the TV6 station are collectively referred to as "*the TV 6 Broadcasts*".

3. The Fifth Defendant published in the Daily Express and Sunday Express newspapers the following:
   (a) An article dated 14th November, 2000 headlined *"Cops rescue boy from cage"* with accompanying photograph captioned *"JULIO ARMANDO READY is locked inside a cage in the kitchen of a Siparia bar where police found him yesterday"*("the First Express Article");
   (b) Republication of above article on the 14th November, 2000 on *"http://www.trinidadexpress.com"*;

(c) An article dated 15th November, 2000 headlined *"I WANT MY SON"*("the Second Express Article");

(d) An article dated 16th November, 2000 headlined *"Julio Armando Ready…..was rescued from a cage on Monday…."* ("the Third Express Article");

(e) An article dated 24th November, 2000 headlined *"…Father of caged boy appears in court…"* ("the Fourth Express Article");

(f) An article dated 27th November, 2000 headlined *"ABANDONED!"* ("the Fifth Express Article");

(g) An article dated 5th December, 2000 headlined *"Caged boy's father goes on trial…"* ("the Sixth Express Article").

4. The First Express Article to the Third Express Articles were researched and written by the Sixth Defendant. The Fourth Express Article and the Sixth Express Article were written by a journalist named Alwyn De Choteau who was not made a Defendant by the Claimants and is since deceased. The Fifth Express Article was written by Laura Ann Phillips who was also not made a Defendant in this claim.

5. The Eighth Defendant caused to be published the following:

(a) An article entitled "*Cops rescue boy in cage: 4 year old found filthy in Siparia club*" in the Trinidad Guardian on 14th November 2000 ("the First Guardian Article");

(b) The republication of the First Guardian Article on the website of the 8th Defendant www.trinidadguardian.com on 14th November 2000 ("the Online Guardian Republication") and,

(c) The publication of an article entitled "*Julio Almado Ready…… healthy and happy at hospital*" in the Trinidad Guardian on 15th November 2000 ("the Second Guardian Article").

6. The First Guardian Article and the Second Guardian Article were written by the Ninth Defendant and the photograph of the Second Claimant on the was taken by the Tenth Defendant.

7. The First Guardian Article, the Online Guardian Republication and the Second Guardian Article are collectively referred to as "the Second Guardian Articles".

8. On Tuesday 14th November 2000 ("the Newsday Article") the Eleventh Defendant published an article entitled "*Infant locked in cage"* with accompanying photographs captioned *"CAGE: The cage strewn with dirty diapers in which little Julio Al Mando Ready was found by the cops"* ("the Newsday Article"). The Newsday Article was written by the Twelfth Defendant and the photograph was taken by the Thirteenth Defendant.

THE CLAIM

9. The Claimants commenced this action by Specially Indorsed Writ of Summons filed on 9th November 2004 seeking damages, including aggravated and exemplary damages, against the Second to Seventh Defendants for libel and slander for the TV 6 Broadcasts and the First Express Article to the Sixth Express Article; against the Eighth to Tenth Defendants for libel for the publication of the Guardian Articles and against the Eleventh to Thirteenth Defendants for libel for the publication of the Newsday Article. At the time of filing, the Second Claimant was a minor and sued by his next friend, the First Claimant. The Claimants also seek an injunction restraining the Defendants, by themselves their agents or servants or otherwise, from further publishing the said or similar slanders and/or the said or similar libels, interest, costs and further or other reliefs. On 2nd March 2005 the Claimants filed an amended Statement of Case which added claims against the Eighth Defendant in respect of the Online Guardian Republication and the Second Guardian Article.

10. The Claimants asserted that the TV 6 Broadcasts, the Express Articles, the Guardian Articles and the Newsday Articles are defamatory.

11. Default judgment was taken up against the First Defendant on the 9th day of March, 2006 for failing to enter an appearance. He therefore did not take part in the trial.

THE SECOND TO SEVENTH DEFENDANTS DEFENCE

12. The Defences pleaded by the Second, Third and Fourth Defendants in relation to the TV 6 Broadcasts were they did not constitute a libel, but a slander, and the action is not maintainable by the Claimants on the averments in the Statement of Claim. The said words and/or images do not bear or were not understood to bear or are incapable of bearing the meanings alleged by the Claimants and/or any meaning defamatory of the Claimants; and/or they were published on an occasion of qualified privilege.

13. The Fifth, Sixth and Seventh Defendants' Defences in relation to the Express Articles were: the respective photographs either taken on their own or in conjunction with the words pleaded in the Statement of Claim and contained in the Express Articles did not bear or were not understood to bear or were incapable of bearing any of the meanings alleged by the Claimants and/or any meaning defamatory of the Claimants; the Express Articles were published on an occasion of qualified privilege; and/or the Sixth Express Article was published on an occasion of absolute privilege.

THE DEFENCE OF THE GUARDIAN DEFENDANTS

14. The Guardian Defendants had the following defences. They raised a defence of limitation against the First Claimant with respect to the Online Guardian Republication and the Second Guardian Article. In relation to the First Guardian Article and the Second Guardian Article the Guardian Defendants position was that the First Guardian Article did not refer to the First Claimant as the *"father"* of the Second Claimant nor was it capable of referring to the First Claimant. The words *"completely covered in filth," "surrounded by faeces," "stench from the entire place was overwhelming," "kept in a cage for the past year," "Julio did not talk much. Most of what he said was unintelligible. He made a howling noise when he opened his mouth," "Julio is the second person to be found in caged quarters in recent weeks," "abandoned by his father"* and *"in the kitchen of a Siparia bar*" were not included in the First Guardian Article as alleged in paragraphs 12, 32, 45, and 47 of the Statement of Claim. The First Guardian Article was not done falsely and maliciously and/or of and concerning the First

Claimant. The First Guardian Article and the Second Guardian Article did not bear or were not understood to bear or were incapable of bearing any of the meanings alleged by the Claimants and/or any meaning defamatory of the Claimants. The First Guardian Article and the Second Guardian Article were true in substance and in fact and thereby justified. The First Guardian Article and the Second Guardian Article were published on an occasion of qualified privilege. The Second Guardian Article contained the gist of the First Claimant's side of the story.

THE NEWSDAY DEFENDANTS DEFENCE

15. The Newsday Defendants pleaded the following Defences. The words and photographs published in the Newsday Article did not bear or were not understood to bear or were incapable of bearing any of the meanings alleged in paragraphs 11, 12, 13 and/or 49 of the Statement of Claim or any meaning defamatory of the Claimants. The Newsday Article was published on an occasion of qualified privilege. The Second Claimant because of his age can found no action for libel having no reputation which can be the subject of a libel action.

THE ISSUES

16. I have separated the issues as they arose from the pleadings between the Claimants and each group of Defendants as follows.

17. The issues between the Claimants and the Second to Seventh Defendants are:
    (a) Whether the TV6 Broadcasts constitute a libel or slander at common law?
    (b) If the TV6 Broadcasts constitute a slander, whether the claim is maintainable by the Second Claimant who at the time of the broadcasts was a minor?
    (c) If the TV6 Broadcasts constitute a slander whether the claim is maintainable by the First Claimant without proof of special damage?
    (d) Whether the publication of the photographs of the Second Claimant on their own constitute an actionable libel?

(e) If the answer to (d) is in the negative, whether the photographs accompanying the First Express Article and the Fifth Express Article were defamatory of the Claimants?

(f) Did the First Express Article to the Fourth Express Article refer to the First Claimant?

(g) Whether the TV6 Broadcasts and the Express Articles bear any meaning defamatory of the Claimants or either of them?

(h) If the answer to (g) is in the positive, whether the Second to Seventh Defendants have made out the defence of Reynolds Privilege and additionally in respect of the Sixth Express Article, the defence of absolute privilege?

(i) In the event that liability is established what damages are payable to the Claimants?

18. The following issues arise on the pleadings between the Claimants and the Guardian Defendants. Between the First Claimant and the Eighth Defendant, whether the First Claimant's cause of action in respect of the Online Guardian Republication and the Second Guardian Article are statute-barred (collectively referred to as second Guardian Articles.

19. As between the First Claimant and the Eighth to Tenth Defendants, whether the First Guardian Article referred to the First Claimant?

20. Between the Claimants and the Guardian Defendants:

(a) Whether the First Guardian Article bear any meaning defamatory of the Claimants?

(b) Whether the First Guardian Article is true in substance and in fact?

(c) If the answer to (a) is in the positive, whether the First Guardian Article was published on an occasion of qualified / Reynolds Privilege?

(d) In the event that liability is established, what damages are payable to the Claimants?

21. Between the Second Claimant and the Eight Defendant the following issues arise on the pleadings:

(a) Whether the ("the Second Guardian Articles") bear any meaning defamatory of the Second Claimant?

(b) Whether the Second Guardian Articles are true in substance and in fact?

(c) If the answer to (a) is in the positive whether the Second Guardian Articles were published on an occasion of qualified privilege?

(d) In the event that liability is established, what damages are payable to the Second Claimant?

22. Between the Claimants and the Newsday Defendants the issues are:

(a) Whether the Newsday Article bear any meaning defamatory of the Claimants?

(b) Whether the Newsday Article is true in substance and in fact?

(c) If the answer to (a) is in the positive, whether the Newsday Article was published on an occasion of qualified privilege?

(d) In the event that liability is established, what damages are payable to the Claimants?

THE WITNESSES

23. At the trial the Claimants gave evidence on their behalf. They also called Mr Polymus Kenny Alfonso, Mr Hayden Davidson, Mr Wayne Morris and they relied on a hearsay notice for the evidence of Mr Ainsworth Modeste. The Second to Seventh Defendants called the Sixth Defendant, Ms Afiya Butler, Ms Omatie Lyder who was the Editor in Chief employed by the Fifth Defendant and Ms Sunity Maharaj who was the Head of News at TV6 at the time of the TV6 Broadcasts. The Guardian Defendants called the Ninth and Tenth Defendants, namely Ms Radica Sookraj and Mr Anthony Howell respectively and the Newsday Defendants relied on the evidence of the Twelfth and Thirteen Defendants namely Mr Richard Charan and Mr Michael Bruce and the Witness Statement of Ms Therese Mills who was the Editor of the Newsday newspaper at the time of publication of the Newsday Article and which was admitted into evidence via a hearsay notice on the basis that she was deceased at the time of the trial.

THE ISSUES BETWEEN THE CLAIMANTS AND THE SECOND TO SEVENTH DEFENDANTS

Whether the TV 6 Broadcasts constitute a libel or slander at common law?

24. The following are the TV 6 Broadcasts.

25. On the 13th November, 2000 the Third Defendant broadcasted and published, and the Second Defendant caused to be broadcasted and published, the following words on TV6 News at 7:00pm and again at 10:00pm that said night:

> *"...a four year old boy, named Julio Almando Ready was found today, abandoned in a wooden cage in a kitchen in a bar in Siparia, naked, completely covered in filth, surround by faeces... the child was rescued by PC Gabriel and other police officers attached to the Siparia Community Police…"* [1]

26. On the 14th November, 2000 the Fourth Defendant broadcasted and published, and the Second Defendant caused to be broadcasted and published, the following words on CCN TV-6 Morning Edition at 6:00am:

> *"...Julio Armando Ready was found covered in filth... his father did not have the financial means to care for his son..."*[2]

27. On the 15th November, 2000 the Third Defendant broadcasted and published, and the Second Defendant caused to be broadcasted and published, the following words on CCN TV-6 News at 7:00pm and again at 10:00pm that said night:

> *"...that neighbours had reported to the police that Julio Armando Ready was 'beaten mercilessly' by his father…"* [3]

[1] Paragraph 20-21, Amended Statement of Claim, Page 21 of the Trial Bundle.
[2] Paragraph 26, Amended Statement of Claim, Page 23 of the Trial Bundle.
[3] Paragraph 23, Amended Statement of Claim, Page 21 of the Trial Bundle.

28. On the 18th April, 2001 the Fourth Defendant, in a broadcast themed *"The Boy-in-a-cage-story"* published, and the Second Defendant caused to be broadcasted and published, the following words on TV-6 Morning Edition at 6:00am while referring to the Second Claimant by name throughout the broadcast:

"4th Defendant:	*'... Isn't this incident the worst case of child abuse that you have ever seen?...'*
Guest:	*'Yes'; (guest nods his head as if to say yes)*
4th Defendant:	*'...This is the worst case of child abuse that I have ever seen...'"* [4]

29. It was submitted on behalf of the Claimants that they have grounded their claim against the Second to Fourth Defendants in libel and not slander since the television news programmes scheduled at 7:00pm and repeated at 10:00 pm are records which are usually kept within the media house in a permanent form.

30. Counsel for the Second to Seventh Defendants argued otherwise. He submitted that the applicable law in Trinidad and Tobago is the common law where the broadcasts could only be actionable as a slander.

31. The common law has drawn a distinction between a defamatory matter which is libelous and a defamatory matter which is slanderous. **Halsbury's Laws of England**[5] at para 461 defines an actionable slander as *"a false defamatory statement, expressed or conveyed by spoken words, sounds, signs, gestures, actions or in some form which is not permanent published of and concerning the plaintiff, without lawful justification or excuse."* Lopes LJ in **Monson v Tussauds Ltd**[6] described a libel as *"Libels are generally in writing or printing, but this is not necessary; the defamatory matter may be conveyed in some other permanent form. For instance, a statue, a caricature, an effigy, chalk marks on a wall, signs or pictures may constitute a libel."*

[4] Paragraph 28, Amended Statement of Claim, Page 25 of the Trial Bundle.
[5] 2nd ed Vol 20
[6] [1894] 1 QB 671 at page 692

32. The common law position changed in the UK in 1952. In the UK, **section 1 of the English Defamation Act of 1952**, defines any broadcast of words by wireless telegraphy to be treated as a publication in permanent form. However, there is no equivalent statutory provision in Trinidad and Tobago therefore the common law distinction still applies.

33. While there appears to be some debate in the criteria for distinguishing between libel and slander as technology has advanced, the common position has remained that aside from statutory intervention, where the defamatory matter has been published by spoken words it is only actionable as slander because the form of publication is transient but where the publication is in writing or the equivalent of writing and is capable of being retained in a permanent form it is actionable as libel.

34. The Claimants have placed reliance on the text **Commonwealth Caribbean Tort Law**[7] and the authorities of **Youssoupoff v Metro-Goldwyn-Mayer Pictures Ltd**[8] ; **Eden Shand v Caribbean Communications Network Ltd and ors**[9] and **Junior Sammy and ors v More FM Ltd and ors**[10] to support their position.

35. In the **Commonwealth Caribbean Tort Law** the author, Mr Gilbert Kodilinye, referred to the statutory interventions in Guyana and Jamaica where radio and television broadcasts were to be treated in as a permanent form that is as a libel. He made no reference to any similar statutory intervention in this jurisdiction which changes the distinction set out in the common law.

36. The case of **Youssoupoff v Metro-Goldwyn-Mayer Pictures Ltd** concerned Princess Irina Alexandrovna of Russia who alleged that she was defamed by a movie film purporting to depict the life of Rasputin. Slessar, LJ decided the case on the basis that the photographic part of the film is a permanent matter to be seen by the eye and the spoken words accompanying the film were ancillary to and, therefore, part of the defamatory matter. The

[7] 3rd Edition, Gilbert Kodilinye at page 227
[8] (1934) 50 TLR 581
[9] HCA 1782 of 1994
[10] CV 2016-04456

nature of the defamatory matter was the seduction of the Princess by Rasputin. Apparently the audience observed and heard the defamatory matter.

37. This case can be distinguished from the instant case because here it is not suggested that the viewers of the TV 6 Broadcasts saw defamatory material.

38. In **Eden Shand v Caribbean Communications Network Ltd and ors** one of the issues to be determined by Moosai J was whether the television broadcast of a programme and the publication of the words spoken by the interviewees, if defamatory, constituted a libel or slander at common law. The Defendants contended that the television broadcast of the interview, if actionable, is actionable as a slander and not as a libel. The Plaintiff contended that the television broadcast was a libel and not a slander, since libel is committed when defamatory matter is published in a permanent form or in a form which is deemed to be permanent. They submitted that as regards matter recorded on a record, tape or some other recording instrument, the publication of the recorded matter would be publication in a permanent form and would therefore amount to a libel. Moosai J (as he then was) stated the following at pages 42-43:

> *"It would therefore seem that in distinguishing libel and slander one of the tests to be applied is to consider the mode of publication. Publication of defamatory matter in a permanent form would be libel. Having regard to the facts and circumstances of this case, I am of the view that the application of that test would be sufficient for me to hold that, if defamatory, the television broadcast would amount to a libel.*
>
> *In the instant case it is clear that this was not a spontaneous live television broadcast. Rather it was a television documentary on the life of Dr. Bal Ramdial, put together by the Second Defendant after interviews with the speakers depicted therein. Further, on the pleadings, in response to the allegation by the Plaintiff that the said programme was disseminated as a video programme by the First Defendant to members of the public including the family of the late Dr. Ramdial, the First Defendant admitted that copies of the recorded programme were given to members of the family of Dr. Bal Ramdial. No doubt copies of these videotapes*

would occupy a significant place in the family archives and would be available for viewing by descendants of Bal Ramdial for at least generations to come. In that regard it is similar to the sale of a book where there is a presumption of publication to a third person. See ***Gatley ibid para 3.8 and footnote 79; Duncan and Neil ibid. para. 8.02****.*

It is this degree of permanency which leads me to the conclusion that the television broadcast and the publication of the words spoken by the interviewees would, if defamatory, amount to a libel. I should think, having regard to the remarkable strides in modern technology allowing for the subject matter to be embodied in a permanent form, that actions for television broadcasts which are alleged to be defamatory ought to be framed in libel."

39. In **Eden Shand,** the alleged defamatory words were a television documentary on the life of Bal Ramdial. The Court had a transcript of the part of the programme which contained the alleged defamatory words and the programme was in a permanent form since copies of the subject tape were given to the family of the person who was the subject of the programme and were available for view by them. The Defendants also admitted that copies of the recorded programme were given to the family of Bal Ramdial. It is noted that Moosai J (as he then was) did not refer to any statutory provision in this jurisdiction as the basis for his deviation from the common law position. In my opinion the **Eden Shand** case can be distinguished from the instant case on the basis that there was no evidence that there were permanent recordings of the TV6 Broadcasts. Therefore there is *"no permanent form"* of the TV6 Broadcasts which Moosai J (as he then was) appeared to ground his finding that defamatory words in the television programme was a libel and not a slander. It is for these reasons, I am of the opinion that I am not bound by the decision in the **Eden Shand**.

40. In **Junior Sammy and ors v More FM Ltd and ors**[11] one of the issues which the Court had to determine at the hearing of an application filed by the Claimant was whether the

[11] CV 2016-04456

Claimant had improperly framed their pleaded case in libel rather than slander. The First Defendant argued that the proper cause of action in that case should have been founded on the law of slander and not libel since the oral statements uttered during the radio broadcasts were not reduced by any of the Defendants into a written or any other permanent form. Seepersad J found that the Claimant's case was properly premised on libel since he noted at paragraph 7 of the judgment that:

> *"The format into which statements can be reduced so as to be considered as being in a permanent form has evolved and extended way beyond the sphere of written or typed text. Audio, visual and electronic formats inter alia are capable of having a degree of permanency that transcends geographical boarders. In this context, the law in relation to libel and slander can no longer be viewed through the myopic lens of written word versus spoken word as technological advances have created circumstances by virtue of which the spoken word can easily encrypted into a permanent irreversible format which can be accessed from a global platform."*

41. In my opinion, the authority of **Junior Sammy** is not applicable to the instant case since the facts in the **Junior Sammy** case can be distinguished from the instant case. In the Junior Sammy case the First Defendant did not deny the Claimants allegation that the words were published in a permanent form to the general public and to an international audience. In the instant case the Second to Seventh Defendants had very early in their defence denied that the words were a libel.

42. Counsel for the Second to Seventh Defendants relied on **Gatley on Libel and Slander** [12]and the Australian authorities of **Meldrum v. Australian Broadcasting Corporation**[13] and **Wainer v Rippon**[14] and **James Philbert** v **Anil Roberts and anor**[15]**.** In **Meldrum** the Court considered under the common law whether a television broadcast of words read from a prepared script was a slander or libel. Mc Arthur J of the Victoria Court of Appeal stated:

[12] 12th Edition Paragraph 4.1
[13] (1932) V.L.R.425
[14] (1980) VR 129
[15] CV 2012-05201

> *"In my opinion the fundamental distinction between libel and slander is correctly stated in the passage quoted from Bullen and Leake's Precedents of Pleadings (3rd ed.), p.301, which is supported by the opinions, though obiter, of Scrutton L.J and Slesser L.J. in Osborn v. Thomas Boulter & Son (y) and by Sir John Salmond in his book on torts- those opinions being directly in point to the present case. The distinction lies solely, in my opinion, in the mode of publication. Written defamatory words may, of course, be communicated to third persons by word of mouth; but, when so communicated to third persons by word of mouth; it is slander and not libel no matter whether the speaker openly reads out the written words, or whether he learns them off by heart and recites them or sings them; so long as the communication is by word of mouth it is, in my opinion, slander and not libel. (Emphasis mine).*

43. In **Wainer** the Court was bound to follow the decision in **Meldrum** since there was no legislation which made a broadcast actionable as a libel.

44. In **James Philbert** Seepersad J in dealing with evidential objections struck out a *"CD recording of the Broadcast"* and the document described as *"a transcript of the said broadcast"* on the basis that there was no evidence to support the authenticity of the documents. There was no evidence of as to whom had recorded it, when it was recorded or how it was recorded. There was also no pleading as to how the Claimant came into possession of the CD. While Counsel for the Second to Seventh Defendants have relied on this authority to demonstrate that the local courts have accepted that a broadcast as a slander, having perused the judgment in **James Philbert,** I was not persuaded that this was a reason Seepersad J had struck out the CD.

45. There is no statute in this jurisdiction which makes a broadcast actionable as a libel and not a slander. Therefore the common law position as articulated in **Meldrum** is applicable and it means that in Trinidad and Tobago any broadcast even if read from a prepared text is communication by word of mouth, which is a slander and not a libel.

46. In the instant case, the broadcasts on the 13th November 2000, the 14th November 2000 and the 15th November 2000 were news items where the words were spoken by the news presenters from a prepared script. The subject matter of the claim is the words spoken by the presenters *and not* the prepared text. Therefore the Claimants' claims with respect to these broadcasts are not properly grounded in libel. Similarly, with respect to the Morning Edition broadcasts, where the programme was scripted the subject matter of the claim is the words spoken and any recording of it does not permit an aggrieved party to ground a claim in libel.

47. Therefore, the TV6 Broadcasts were not actionable as libel under the common law which is the applicable law in this jurisdiction.

48. I now turn to the Claimants' proof of the TV6 Broadcasts. The Claimants pleaded in respect of each of the TV 6 Broadcasts that the Third and Fourth Defendants respectively caused to be broadcasted and published in the television broadcast of and concerning them the aforesaid libelous words.

49. The Defendants did not admit that they or either of them broadcasted or caused to be broadcasted and published the words and/or visual images as alleged by the Claimants[16].

50. In a case grounded in slander the onus is on the Claimant to prove by admissible evidence that the words complained of were spoken by providing the broadcasts[17]. **Phelps v. Kemsley[18]** stated the position as:

> "*Formerly the utmost strictness of proof was required in actions of slander; the least variation between declaration and proof was fatal, and the lawyer of to-day finds it difficult to appreciate the subtlety of the reasoning to be found in many of the old cases whereby plaintiffs were defeated. This was due, I think not only to the strict regard that was had seventeenth and early eighteenth centuries to discourage these actions, as is elaborately explained by Sir William Holdsworth in the eighth*

[16] Pages 76-79 of the Trial Bundle.
[17] Gatley on Libel and Slander 12th ed at para 32.12
[18] (1942) L.T.18 at Page 20 per Goddard L.J.

volume of his History of English Law. Nowadays there has been a considerable relaxation of the former rule and it is enough if the plaintiff proves words equivalent in substance to the defamation alleged, though he may have to obtain leave to amend. He is still not allowed to plead that the defendant uttered the word or words to the like effect thought he may interrogate on this matter, so that if he obtained an admission that words very similar to those alleged were used, he may amend. Nor is it enough for a witness to prove "an impression" as to what the words used by the defendant conveyed. That is really putting a meaning on the words, and their meaning is for the jury and not for the witness…"

51. The Claimants did not provide the recordings of the TV6 Broadcasts to prove that the words pleaded were spoken. The only evidence with respect to the words in any of the TV 6 Broadcasts can be found at paragraph 21 of the First Claimant's witness statement where he stated:

"…Minutes after I heard the intro music for the 7:00pm TV6 news. I saw PC Gabriel walk over to the television in the CID office. I too went over to the television. I saw Carla Foderingham, Defendant (3) who I recognized having seen her on TV 6 news many times before. She was reading the top story of the news. I heard her say that " police rescued a four year old boy named Julio Armando Ready found abandoned living in a cage, completely covered in and completely surrounded in filth and that the stench was overwhelming."

52. Based on the First Claimant's evidence he heard those words on the TV6 broadcast at the 7:00pm news on the 13th November 2000. There was no evidence of the words in the other TV6 Broadcasts. In the absence of evidence the Court has no basis to make any finding as to whether the TV 6 Broadcasts, save and except the broadcast of the 7:00pm news on the 13th November 2000, as alleged by the Claimants took place or that the words allegedly spoken were in fact spoken.

53. Therefore, even if the Claimants' pleading against the Second to Fourth Defendants can be construed as a claim in slander there only evidence adduced by the Claimants of the alleged

slanderous words for the Court to determine if the said words were actually spoken and if they were slanderous as alleged by the Claimants were the words for the TV6 Broadcast of the news at 7:00pm on the 13th November 2000.

If the TV 6 Broadcasts constitute a slander, whether the claim is maintainable by the Second Claimant who at the time of the TV6 Broadcasts was a minor?

54. Even if the Claimants had crossed the hurdle of satisfying the Court that the TV6 Broadcasts constituted a slander, which I have found that they have not, in my opinion the Second Claimant who was a minor at the time, would not have succeeded in his claim for damages for the following reasons.

55. According to **Gatley on Libel and Slander** [19] there are only four (4) classes of case in which a slander claim is actionable *per se*, namely:

(a) Where the words impute a crime for which the claimant can be made to suffer physically by way of punishment;

(b) Where the words impute to the claimant a contagious or infectious disease;

(c) Where the words are calculated to disparage the claimant in any office profession or calling, trade or business held or carried on by him at the time of publication;

(d) Under the English Slander or Women Act 1891 imputing adultery or unchastely.

56. Of the foregoing exceptions, only the first three are applicable to Trinidad and Tobago and of the three none are applicable to the Second Claimant who was only four (4) years old at the time of the alleged slander. Further, the Second Claimant cannot be subsumed under the claim of his father as he was a separate claimant before the Court. There is no allegation of any special damage suffered by him nor was there any evidence before the Court to support any such claim.

[19] 12th ed at para 4.1 to 4.15

If the TV 6 Broadcasts constitute a slander whether the claim is maintainable by the First Claimant without proof of special damage?

57. According to the pleaded meaning in Paragraph 13 of the Amended Statement of Claim, the alleged slander meant that *"the first Plaintiff had willfully, recklessly or negligently allowed his son, the second Plaintiff to be in such a deplorable condition and/or did not have the financial means to care for him and/or had abandoned him and/or that the first Plaintiff had committed a criminal offence punishable by imprisonment or had been guilty of immoral behaviour towards his son, by allowing him to be kept in that condition or by physical abusing him."* Based on this pleading, it appeared that the Claimant was asserting that his claim came within the first stated exception. However, at the time of the publication, the First Claimant was in police custody and it was not known what the First Claimant would have been charged for. Therefore, the TV 6 Broadcasts could not impute that any criminal offence had been committed by anyone, including the First Claimant[20].

58. Even if the First Claimant's claim was in slander actionable per se which I found it is not, he is still required to prove special damage. At paragraph 50 of the Amended Statement of Case there was a pleading for special damages. However, there was no evidence at the trial to prove the claim for special damages, which is settled law must be proven.

59. I have concluded that, even if the TV6 Broadcast constituted a slander, the First Claimant's claim against the Second and Fourth Defendants for damages is not maintainable since he has failed to prove that the words impute a crime for which he was made to suffer physically by way of punishment and he did not prove any loss he suffered.

[20] The Claimants' Reply at Page 171 Trial Bundle.

Whether the publication of the photographs of the Second Claimant on their own constitute an actionable libel?

60. The Second Claimant's photograph accompanied the First Express Article, the Second Express Article and the Fifth Express Article. The Claimants alleged in the Amended Statement of Claim that the natural and ordinary meaning of the photograph together with the accompanying headline was that the Second Claimant was the *'foster child'* or the extreme worst example of child abandonment cases and the First Claimant who had abandoned him was an uncaring, heartless and cruel father of the worse kind.

61. It was submitted on behalf of the Second to Seventh Defendants that the Claimants' claim for libel cannot be founded in isolation from the related text and it must be considered in relation to the response of the ordinary, reasonable reader to the entire publication and not to the photograph in isolation. In support of this submission, Counsel for the Second to Seventh Defendants referred the Court to the House of Lords decision in **Charleston v News Group Newspapers Ltd**[21]. It was also argued on behalf of the Second to Seventh Defendants that the Claimants reliance on an alleged innuendo meaning of the photograph must also fail since a true innuendo has not been pleaded as required by CPR 73.2 (b) and there was no evidence which was led to establish that any reader or any reader within the group of readers of the Daily Express who may have looked at the photograph and headline but who may not have read the accompanying text published in the respective articles was aware of extrinsic facts which the Claimants have not pleaded.

62. In **Charleston,** the Plaintiffs were actors in a television serial. The Defendant newspaper published an article with headlines, photographs and captions. The photographs showed the Plaintiffs' faces superimposed on the near-naked bodies of models in pornographic poses. The article made it clear that the photographs had been produced without the knowledge or consent of the Plaintiffs. The Plaintiffs sued in libel claiming that the photographs on their own (or coupled with the headlines and captions) were capable of

[21] [1995] 2 A.C. 65.

bearing a defamatory meaning, especially in the minds of those readers who only read headlines and looked at photographs.

63. The preliminary issue which the Court determined in Chareston was whether a claim in libel founded on a headline in isolation to the related text were capable of being defamatory either in their natural and ordinary meaning or by innuendo. The Judge held that they were not. The Court of Appeal dismissed the Plaintiffs' appeal and the House of Lords also dismissed their further appeal. In dismissing the further appeal the House of Lords stated that:

> *"a claim for libel could not be founded on a headline or photograph in isolation from the related text and the question whether an article was defamatory had to be answered by reference to the response of the ordinary, reasonable reader to the entire publication".*

64. Therefore, in considering whether the photographs are libellous of the Second Claimant the Court must consider whether the respective photographs in the context of the entire accompanying text to the ordinary, reasonable reader was defamatory. The Court can only consider the respective photographs in isolation if the Claimants had demonstrated that there were a group of readers of the Daily Express who read the would have seen the photographs only but who would ***not*** have read the accompanying and related text. There was no such evidence presented therefore in considering whether the respective photographs were defamatory the Court must consider them in the context of the entire accompanying text.

Whether the TV 6 Broadcasts and the Express Articles bear any meaning defamatory of the Claimants or either of them?

65. Sir Thomas Bingham MR in **Skuse v. Granada Television Limited**[22] laid down the approach to be adopted by a Judge in the determination of the defamatory meaning of the words complained of where the Judge is sitting without a jury. He stated that:

[22] (1996) EMLR 278 at 285-287

"(1) The court should give to the material complained of the natural and ordinary meaning which it would have conveyed to the ordinary reasonable viewer watching the programme once in 1985.

(2) 'The hypothetical reasonable reader [or viewer] is not naive but he is not unduly suspicious. He can read between the lines. He can read in an implication more readily than a lawyer, and may indulge in a certain amount of loose thinking. But he must be treated as being a man who is not avid for scandal and someone who does not, and should not, select one bad meaning where other non-defamatory meanings are available.'(per Neill L.J., Hartt v. Newspaper Publishing PLC. unreported, 26th October, 1989 (Court of Appeal (Civil Division) Transcript No. 1015): our addition in square brackets).

(3) While limiting its attention to what the defendant has actually said or written, the court should be cautious of an over-elaborate analysis of the material in issue. In the present case we must remind ourselves that this was a factual programme, likely to appeal primarily to a seriously minded section of television viewers, but it was a programme which, even if watched continuously, would have been seen only once by viewers many of whom may have switched on for entertainment. Its audience would not have given it the analytical attention of a lawyer to the meaning of a document, an auditor to the interpretation of accounts, or an academic to the content of a learned article. In deciding what impression the material complained of would have been likely to have on the hypothetical reasonable viewer we are entitled (if not bound) to have regard to the impression it made on us.

(4) The court should not be too literal in its approach. We were reminded of Lord Devlin's speech in Lewis v. Daily Telegraph Ltd. [1964] A.C. 234 at 277: 'My Lords, the natural and ordinary meaning of words ought in theory to be the same for the lawyer as for the layman, because the lawyer's first rule of construction is that words are to be given their natural and ordinary meaning as popularly understood. The proposition that ordinary words are the same for the lawyer as for the layman is as a matter of pure construction undoubtedly true. But it is very

difficult to draw the line between pure construction and implication, and the layman's capacity for implication is much greater than the lawyer's. The lawyer's rule is that the implication must be necessary as well as reasonable. The layman reads in an implication much more freely; and unfortunately, as the law of defamation has to take into account, is especially prone to do so when it is derogatory.'

(5) A statement should be taken to be defamatory if it would tend to lower the plaintiff in the estimation of right-thinking members of society generally (Sim v. Stretch [1936] 2 All E.R. 1237 at 1240) or would be likely to affect a person adversely in the estimation of reasonable people generally (Duncan & Neill on Defamation, 2nd edition, Paragraph 7.07 at p. 32).

(6) In determining the meaning of the material complained of the court is "not limited by the meanings which either the plaintiff or the defendant seeks to place upon the words" (Lucas-Box v. News Group Newspapers Ltd [1986] 1 W.L.R. 147 at 152H).

(7) The defamatory meaning pleaded by a plaintiff is to be treated as the most injurious meaning the words are capable of bearing and the questions a judge sitting alone has to ask himself are, first, is the natural and ordinary meaning of the words that which is alleged in the statement of claim and, secondly, if not, what (if any) less injurious defamatory meaning do they bear? (Slim v. Daily Telegraph Ltd. above, at p. 176.)"

66. The aforesaid principles were approved and adopted by the Privy Council in **Bonnick v Morris**[23]. Further, in **Bonnick,** Lord Nicholls (in dealing with the single meaning rule) stated the law at paragraph 21 as:

"The 'single meaning' rule adopted in the law of defamation is in one sense highly artificial, given the range of meanings the impugned words sometimes bear: see the familiar exposition of Diplock L.J. in Slim v. Daily Telegraph (1968)2 QB 157,

[23] (2002)UKPC 31

171-172. The law attributes to the words only one meaning, although different readers are likely to read the words in different senses. In that respect the rule is artificial. Nevertheless, given the ambiguity of language, the rule does represent a fair and workable method for deciding whether the words under consideration should be treated as defamatory. To determine liability by reference to the meaning an ordinary reasonable reader would give the words is unexceptionable"…

67. In this jurisdiction the Court of Appeal **in Kayam Mohammed and ors v Trinidad Publishing Company Limited and ors**[24] laid down and approved of the following principles after citing **Bonnick v Morris:**

> *"11. The Court should therefore give the article the natural and ordinary meaning the words complained of would have conveyed to the notional ordinary reasonable reader, possessing the traits as mentioned by Lord Nicholls, and reading the article once. The natural and ordinary meaning refers not only to the literal meaning of the words but also to any implication or inference that the ordinary reasonable reader would draw from the words. Thus in Lewis –v- Daily Telegraph Ltd, [1964] AC 234, 258 Lord Reid stated*
>
> > *'What the ordinary man would infer without special knowledge is generally called the natural and ordinary meaning of the words. But that expression is rather misleading in that it conceals the fact that there are two elements in it. Sometimes it is not necessary to go beyond the words themselves, as where the plaintiff has been called a thief or a murderer. But more often the sting is not so much in the words themselves as in what the ordinary man will infer from them and that is also regarded as part of the natural and ordinary meaning.'*

[24] Civ Appeal No 118 of 2008

12. And Lord Morris in Jones v Skelton [1963] 1 W.L.R. 1363, 1370-1371 stated:

> *'The ordinary and natural meaning of words may be either the literal meaning or it may be implied or inferred or an indirect meaning: any meaning that does not require the support of extrinsic facts passing beyond general knowledge but is a meaning which is capable of being detected in the language used can be a part of the ordinary and natural meaning of words....The ordinary and natural meaning may therefore include any implication or inference which a reasonable reader guided not by any special but only by general knowledge and not filtered by any strict legal rules of construction would draw from the words.'*

13. It is also relevant to note that the words have only one correct natural and ordinary meaning. So that for example in Charleston v News Group Newspapers Ltd [1995] 2 AC 65 Lord Bridge, after referring to the fact that the natural and ordinary meaning of the words may include any implication or inference stated (at pg 71:

> *'The second principle, which is perhaps a corollary of the first, is that although a combination of words may in fact convey different meanings to the minds of different readers, the jury in a libel action, applying the criterion which the first principle dictates, is required to determine the single meaning which the publication conveyed to the notional reasonable reader and to base its verdict and any award of damages on the assumption that this was the one sense in which all readers would have understood it.'*

14. Where, as in this jurisdiction, the Judge sits without a jury, it is his function to find the one correct meaning of the words. Although when considering the defence of Reynolds privilege the Court must have regard to the range of meanings the words are capable of bearing as I will mention below, it is still the function of the Judge as regards the meaning of the words complained of to find the single meaning that they do convey. That does not mean that where an article levels a number of allegations as is the case here, that it has only one meaning. What it does mean is that where there are possible contradictory meanings, the Court cannot recognise, what may be the reality, that some reasonable readers will construe the words one way and others another way. The Court must determine the one correct meaning out of all the possible conflicting or contradictory interpretations.

15. What meaning the words convey to the ordinary reasonable reader is a question of fact to be found by the Judge....."

68. The evidence of the First Claimant of the words spoken at the 7:00 pm broadcast of the TV6 news on the 13th November 2000 were:

"police rescued a four year old boy named Julio Armando Ready found abandoned living in a cage, completely covered in and completely surrounded in filth and that the stench was overwhelming."

69. The words which the Claimants pleaded which the Third Defendant broadcasted and published and which the Second Defendant caused to be broadcasted and published at the 7:00 pm news on the 13th November 2000 were:

"... a four year old boy, named Julio Almando Ready was found today, abandoned in a wooden cage in a kitchen in a bar in Siparia, naked, completely covered in filth, surrounded by faeces…the child was rescued by PC Gabriel and other police officers attached to the Siparia Community Police".

70. To ascertain if the words complained of were defamatory of any of the Claimants, the Court is obliged to examine the natural and ordinary meaning of the entire TV6 broadcast on the 13th November 2000 at 7:00pm. There was no evidence before the Court of the entire broadcast and in those circumstances, the Court is unable to assess the context of the words complained of to determine if they were defamatory. In the circumstances, the Court cannot find that the words complained of were defamatory.

71. Counsel for the Second to Seventh Defendants submitted that the claim by either Claimant against them is bound to fail on the basis that the matters reported in all the Express Articles are factually accurate and that in any event the First Claimant has not been able to assert a claim in libel in respect of the articles in which he was not named such as the First Express Article to the Fourth Express Article.

72. According to **Duncan and Neill on Defamation,** [25]a necessary ingredient for an action in libel is that the article must be published about the claimant. The question in all cases where the identity of the claimant is in issue is whether reasonable people reasonably understand the words to refer to the claimant. The test is therefore an objective one.

73. The words complained of by the Claimants in the First Express Article are:

(a) The front page headline was: **"CAGED!"**

(b) An oversized photograph of the Second Claimant standing in his locked playpen, captioned:

"JULIO ARMANDO READY is locked inside a cage in the kitchen of a Siparia bar where police found him yesterday";

(c) The article written by the Sixth Defendant**,** on page 3 of the said publication contained the following words: The headline was: "Cops rescue boy from cage" and the article followed: "Julio Armando Ready ….has spent much of his life in a cage…When the Siparia Community Police visited his home yesterday morning they found him… naked , sitting in his own faeces in a wooden cage…Police are investigating reports from relatives that he had been kept in the cage for the past

[25] 3rd ed para 6.1

year. They said he was kept there because he was 'miserable'…Julio did not talk much. Most of what he said was unintelligible. He made a howling noise when he opened his mouth… Julio is the second person to be found in caged quarters in recent weeks. Richard Kolahal, a 28 year old handicapped man, was rescued by Princess Town Community Police, last month when he was found in a room at a house in Cedar Hill, Princess Town. Kohalal who is at the Hindustan Islamic Centre, had been kept locked in a room for two years".

74. The entire First Express Article states:

*"**COPS RESCUE BOY FROM CAGE***

JULIO ARMANDO READY, four can count and he can say the alphabet but, he rarely speaks and he blushes often. And he has spent much of his life in a cage.

When the Siparia Community Police visited his home yesterday morning, they found him naked, sitting in his own faeces in a wooden cage kept in a kitchen.

His only toy was an old broken car which was lying next to a dirty diaper.

Julio is a pupil of the Early Childhood Centre, a pre-school in Siparia.
Officials at the centre could not be reached yesterday evening.

Julio has been living with his father ever since he was three months old. Police are investigating reports from relatives that he had been kept in the cage for the past year. They said he was kept there because "he was miserable".

"He was only kept there in the morning before he went to school and on the weekends," bartender Ainsworth Modeste said.

Part of Julio's uniform, a white shirt, was found hanging near the door of the cage yesterday.

When PCs Hollister Pajotte and Herbert Gabriel and Syed Mohammed and WPC Karen Ashby of the Siparia Community Police acted on an anonymous tip and visited Neil Ready's bar, at the corner of Mary Street and Coora Road, a large crowd of curious spectators gathered in front of a diner across the road.

Many of them jeered when Modeste came outside.

"It was a wrong thing to do," Modeste said, shrugging when asked why he did not contact the police. "I can't say why I did not call the police".

When police first tried to reach Julio's father yesterday he was said to be at sea fishing.

Julio was taken from the cage and to the Siparia Police Station about 100 metres away.

There dressed in a red and white T-shirt and shorts. But even then faeces stained his clothes, seeping through to leave ugly, brown marks on the blue sheet of cardboard he was told to sit on.
Julio did not talk much. Most of what he said was unintelligible. He made a howling noise when he opened his mouth.

"That may be because of a lack of communication," Modeste said. "He has brothers and sisters, but they are not here. They are all with his mother. I don't know where she is."

Modeste said he had one child. "My child is a girl and she big and living in the States. Nobody can't put she in no cage," he told the Daily Express.

Julio was taken to the San Fernando General Hospital where he was being kept for the night. Doctors said he was in "good physical condition".

From the hospital he would be taken to an orphanage, police said.

Up to late yesterday, police were questioning two men about Julio's condition.

PC Gabriel is continuing investigations.

Julio is the second person to be found in caged quarters in recent weeks.

Richard Kolahal, a 28 year old handicapped man, was rescued by Princess Town Community Police, last month when he was found in a room at a house in Cedar Hill, Princess Town. Kohalal who is at the Hindustan Islamic Centre, had been kept locked in a room for two years."

75. The Claimants complained of paragraphs 2, 6, 18, 22 and 23 out of a total of 23 paragraphs. They averred that the natural and ordinary meaning of the words were:

(a) That the police rescued a young boy, the Second Claimant, who they found abandoned in an unused dark room in a bar/club in Siparia, where he was discovered locked in a filthy wooden cage/prison, naked completely covered and surrounded by his own faeces/excrement and other filth, and who was emaciated, malnourished and in poor health; and who was kept in a zoo like cage and subjected to physical abuse and ill-treatment of the worst kind imaginable.

(b) The word *"rescued'"* in the above context was understood to mean that the Second Claimant's physical welfare or life was in danger.

(c) The words *"a wooden cage"* in the above context was understood to mean that he was kept like an animal in a zoo.

(d) Similarly the word *"prison"* was understood to mean that he was kept like a prisoner or slave against his will.

(e) The words that he was *"completely covered in filth"* and *"surrounded by faeces"*, was understood to mean that he was kept in the *'cage'*in that condition for a very long period of time.

(f) The words that *"the stench from the entire place was overwhelming"* were understood to mean that the kitchen where he was found was as stink as a sewer or cesspit.

(g) The words that he was *"kept in the cage for the past year"* was understood to mean that he lived in *a 'cage'* and was an abnormal child, who did not go outdoors, did not go to school, did not go to church, did not visit and play with friends or family and was generally not cared for or loved by anyone.

(h) The First Claimant physically abused his son, the Second Claimant, in the most abhorrent manner, that he was guilty of a criminal offense punishable by imprisonment and was otherwise an immoral, cruel and despicable person. This was compounded by the words that the Second Claimant was found *"in the kitchen of a Siparia bar"* which in the above context, was understood to have immoral and scandalous connotations.

(i) The words "*Julio did not talk much. Most of what he said was unintelligible. He made a howling noise when he opened his mouth….*" were understood to mean the Second Claimant was an abnormal or retarded child much like an animal who could not talk properly or at all but only howl noises like a dog.

(j) The words that "*Julio is the second person to be found in caged quarters in recent weeks. Richard Kolahal, a 28 year old handicapped man, was rescued by the Princes Town Community Police, last month when he was found locked in a room at a house in Cedar Hill, Princes Town. Kolahal who is at the Hindustan Islamic Centre, had been kept locked in a room for two years*" were understood to mean by comparison that the Second Claimant was handicapped or disabled or retarded in some way which rendered him unwanted, unloved and abandoned.

76. In ascertaining the natural and ordinary meaning of the First Express Article the entire article must be examined to determine the context of the words complained of[26]. According to the First Express Article: the Second Claimant had been living with his father since he was three months old; the Second Claimant was a four year old child when he was found by the Siparia Community Police at his home in the care of Mr Modeste on the 13th

[26] Gatley on Libel and Slander 12 ed at paragraph 3.31

November 2000; at that time the First Claimant was at sea fishing ; at the time the Second Claimant was found he was naked, sitting in his faeces in a wooden cage which was in a kitchen; there was a dirty diaper and a toy when the Police found the Second Claimant; the Second Claimant was locked in a wooden cage in the kitchen in the morning before he went to school and on the weekends; Mr Modeste acknowledged that it was wrong to place the Second Claimant in the cage but did not say why he did not inform the police; the Second Claimant did not speak much but made unintelligible sounds; he had started kindergarten; at the Siparia Police Station the Second Claimant was dressed in a T-shirt and shorts; the Second Claimant was taken to the San Fernando General Hospital where he was in a good physical condition and the police were continuing investigations and were questioning two men about the Second Claimant's condition.

77. The words complained of in the First Express Article when read in the context of the entire article bear the meanings that:(a) the Second Claimant was found in an unclean state by the police but he was in good physical condition; (b) there were two persons of interest being questioned by the police about the conditions the Second Claimant was kept in (c) there were grounds to investigate whether the Second Claimant was being ill-treated by being kept in a playpen fitted with a lockable lid styled a cage :and (d) there were grounds to investigate the First Claimant's involvement, if any, in the decision to have the Second Claimant kept in a lockable playpen so as to prevent him from getting out.

78. In my opinion, the First Express Article was not capable in law of bearing any meaning defamatory of the First Claimant as he was neither named nor identified as a person of interest. The defamatory imputation is alleged to the Second Claimant, who was aged 4 at the time of publication. On the application of the guiding principle that the words complained of must be read in their context, and that the article must be therefore read as a whole and not dissected into its various parts which can then be read in isolation, the First Express Article is not defamatory of the Second Claimant, who at age 4 based on the learning referred to aforesaid could not have been affected by the publication as required by law.

79. The words complained of by the Claimants in the Second Express Article were:

(a) *A photograph of the Second Claimant sitting next to WPC Karen Ashby at the Siparia Police Station.*

(b) *The words "I WANT MY SON: Mom of caged boy cries:… Julio Armando Ready was found on Monday by Siparia Community Police naked and caged in a kitchen at the back of a bar in Siparia… 'I want my child' she said, her voice gaining strength. 'I didn't abandon him. He was taken from me…She said that Julio was taken from her one day when she took him to visit his father…Julio was nine months old when he was taken to his father's home at Coora Road, Siparia, and a friend of the family took him to play in the back. 'He said, 'Come and see your father' and that was it', Alexander said. 'When he came back out he was alone and when I asked for Julio, I was told to leave.' She said she was chased away when she tried to visit the boy…I never knew about the cage…He was taken from me and I want him back. I cannot handle to thought of him having to go through any more of this…"*

80. The Second Express Article in its entirety states:

"Dressed in a pale pink dress, her hands folded neatly in her lap, Helen Alexander could do nothing to stem the tears which flowed down her cheeks.

Alexander, 35, is the mother of four-year old Julio Armando Ready, who was found on Monday by the Siparia Community Police naked and caged in a kitchen at het back of a bar in Siparia.

Julio was still being treated at the San Fernando General Hospital yesterday. He will undergo audio, visual and other tests over the next few days doctors said.

Alexander visited Julio early yesterday morning at the hospital. She carried apples and grapes "his favourite fruits" for him.

"When he saw me, he smiled", Alexander said.

"He does talk you know, but he very shy".

She is worried that he will be taken to a foster home.

"I want my child," she said her voice gaining strength. "I didn't abandon him. He was taken from me. I done miss out four years of his life and I want to make it up to him. He needs a lot of love right now."

Alexander, face drawn, continued, "I learned about what happened when I saw him on the TV. The whole thing leave me stressed out. My mind don't really know where I am. He (the father) fight me down so much for the child and now this. How do you expect me as a mother to feel?"

Alexander is the mother of six. She has custody of five of her children.

She said that Julio was taken from her one day when she took him to visit her father. He was just a baby at the time.

Her other children are Belmi, 17, Travin, 14, Candace, 10, Kevin, 7 and Keanu, 5.

Belmi, Travin and Candace live with relatives but Kevin and Keanu live at South Trace, Rancho Quemado with their mother and they attend the Rancho Quemado Government Primary School which is across the road from their home.

Julio, she said was born on July 8, 1996. His older brothers and sisters were born to a different father.

"After living with Julio's father for about three months we started to have problems and I could not take it so I walked out," Alexander said.

She was sitting on a bench in front of her home. When she spoke, her lips trembled and her eyes filled with tears. She wrung her hands constantly.

She said she visited the community police once and made an appointment to "discuss the welfare of the child" and maybe work out visitation rights but the father did not keep the appointment.

Julio was nine months old when he was taken to his father's home at Coora Road, Siparia, and a friend of the family took him to play in the back.

"He said, 'Come and see your father' and that was it," Alexander said. "When he came back out he was alone and when I asked for Julio, I was told to leave."

She said she was chased away when she tried to visit the boy.

"I went to the police once," she said, bowing her head. "But I had on a low-necked blouse and I was told that I was not dressed properly and to leave the station."

That was about three years ago she said.

"I used to go visit Julio when his father was not there." Alexander said. "I used to drop things for him. Not clothes or anything because then they would know that I had been there-but food and fruits."

She saw him last on Friday night. "I never knew about the cage," Alexander said. "People have it that I abandon my child. I never did. He was taken from me and I want him back. I cannot handle the thought of him having to go through any more of this."

As Alexander talked with the Express, a smiling Kevin spoke about how he missed Julio. He then left to put on his slippers and with two dollars in his hand, he ran to the shop next door.

Julio attends the Early Childhood Centre in Siparia, a pre-school. The school has been closed since Monday because of a problem with fleas.

Police are continuing their investigations into the caging of Julio. No charges had been laid up to late yesterday."

81. Although the Second Express Article has 28 paragraphs the Claimants' complaint is against paragraphs 2, 8, 19, 20 and 25.

82. The Claimants pleaded that the words complained of had the same meaning set out aforesaid for the First Express Article. They also pleaded that the words in their natural and ordinary meaning meant and/or was understood to mean and/or by way of innuendo

meant that the First Claimant had taken away his son, the Second Claimant from his mother, Helen Alexander, against her will, and who was in emotional distress and otherwise so concerned about her son's welfare that' she wanted him back. The words taken in the context of the entire publication was understood to mean that the First Claimant had a history of cruelty or indifference towards his son's mother and that he was uncaring, , callous and heartless with regard to his son's welfare.

83. In ascertaining the natural and ordinary meaning of the Second Express Article the entire article must be examined to determine the context of the words complained of[27]. According to the Second Express Article: the Second Claimant's mother was speaking to a reporter whilst she was visiting him at the hospital; she was explaining how she felt when she heard about the events concerning the Second Claimant on the 13th November 2000; she described the circumstances how the Second Claimant came to live with his father and not her and it ended with the police investigations were still continuing.

84. In my opinion the ordinary reasonable reader, having read the Second Express Article as a whole would have concluded that it described a mother's anguish and the guilt that she may have felt as a result of the circumstances in which the Second Claimant had found himself. The ordinary reasonable reader could not have concluded from the Second Express Article that the First Claimant was in any way responsible for the Second Claimant being in the playpen with the lid fitted with a hasp and staple, and the Second Express Article ended by saying that police investigations are continuing and no charges laid as yet.

85. In the circumstances, the Second Express Article was not capable in law of being defamatory of the meaning which the Claimants have asserted.

86. The Third Express Article has 14 paragraphs of which the Claimants complain about the 1st and 3rd paragraphs. The words complained of by the Claimants in the Third Express Article were:

[27] Gatley on Libel and Slander 12 ed at paragraph 3.31

"… Julio Armando Ready…was rescued from a cage on Monday… he was found on Monday by the Siparia Community Police naked in a kitchen at the back of his father's bar in Siparia…"

87. The entire Third Express Article stated:

"The audio and visual tests taken by Julio Armando ready, who was rescued from a cage on Monday, are expected to be completed today.

His mother, Helen Alexander, plans to meet doctors at the san Fernando General Hospital this morning to discuss the results of the tests.

Four-year old Julio has been a patient at the hospital since he was found on Monday by the Siparia Community Police naked and caged in a kitchen at the back of his father's bar in Siparia.

His mother has been visiting ever since.

Yesterday when she arrived at the hospital shortly after 10 a.m. she was greeted by Julio with a hug.

"I was shocked," she said her eyes bright as she smiled.

Julio walked with her to the canteen and when he saw ice he asked for some.

"He likes ice," Alexander said. "I was so glad, I tickled him. He likes tickles."

Alexander carried milk, orange juices, apples and clothes to the hospital. She stayed during his lunch hour and left after 1 p.m.

She said, "He was happy."

But she did not want to hope for too much.

"I am hoping," she said. "But I can't say exactly how I feel until I meet the doctors tomorrow morning. He has been a bit slow in speech. I am hoping that everything is all right with him."

He appears to be healthy, but there is this speech problem. The doctors are saying that it could be because he could not hear properly."

She added: "The last time I took Julio to the hospital was when he had to be taken for a paternity test."

Alexander plans to take two of Julio's older brothers, Kevin and Keanu, to the hospital to see him over the weekend."

88. The Claimants' complaint about the parts of the Third Express Article is the same as with respect to the First Express Article. They also complained that the publication in its natural and ordinary meaning meant and/or was understood to mean by way of innuendo that the First Claimant physically abused his son, the Second Claimant in the most abhorrent manner, he was guilty of a criminal offence punishable by imprisonment and was otherwise an immoral, cruel and despicable person. This was accompanied by the words that the Second Claimant was found " in the kitchen in a Siparia bar" which was understood to have immoral and scandalous connotations.

89. According to the entire Third Express Article, the Second Claimant had been a patient at the hospital after he was removed by the Siparia Community Police who found him naked and caged in a kitchen in a bar at his father's house; he had been at the Hospital where certain test on the Second Claimant were to be concluded soon; the Second Claimant's mother who had been visiting him at the hospital, planned to meet with the doctors at the hospital to discuss the results of the test; the Second Claimant's mother and his mother had happy interactions; the Second Claimant's mother had taken fruits and other foodstuff for him on that visit with the Second Claimant at the Hospital; the Second Claimant's mother noted her observations that the Second Claimant's speech was slow but she intended to speak with the doctors at the hospital, the last time she had taken the Second Claimant to the hospital was for a paternity test and she planned to take two of the Second Claimant's brothers to visit him at the hospital over the weekend.

90. In my opinion, the two paragraphs complained about in the Third Express Article record what was reported in the First Express Article and the Second Express Article , namely:

(a) The Second Claimant was found in a lockable playpen located in a dark room at the back of a Siparia bar;

(b) That the Second Claimant was taken to hospital for examination and tests;

(c) That the Second Claimant was with his mother;

(d) The Second Claimant's mother had 6 other children.

91. The ordinary reasonable reader would have read the Third Express Article as a whole and concluded that the Second Claimant was being treated at hospital where his mother was providing support and comfort. Far from asserting that the First Claimant was in any way responsible for the Second Claimant being in the lockable playpen, the Third Express Article concentrated on the rehabilitation of the Second Claimant. In short the human interest in the story was being recounted for the readership and the ordinary reasonable reader would not have ascribed the meanings which the Claimants averred.

92. The words in the Fourth Express Article which the Claimants complained about were:

> *" ... Father of caged boy… father of the four year old boy who was found in a cage… the four year old was found naked in a cage in a kitchen at the back of a bar at the corner of Mary Street and Coora Road…"*

93. The entire Fourth Express Article stated:

> *"The father of the four-year old boy who was discovered last week in a cage appeared yesterday before a Siparia magistrate charged with child neglect.*
>
> *Businessman Jude Ready, 47, of Coora Road, Siparia appeared before Senior Magistrate Omar Jokhan in the Siparia First Court.*
>
> *He was charged following investigations by PC Herbert Gabriel of the Community Police. Ready was served with a summons to attend court. He was represented by attorney Leon Gokool.*
>
> *During the hearing little Julio Armando Ready sat on the lap of Magistrate Jokhan, who asked him to point out his father. However the child did not point out his father, because he was busy playing with the magistrate's pen in his jacket pocket.*
>
> *Prosecutor Sgt Gilbert Ramsey informed the court that the prosecution was not ready to proceed with the case.*
>
> *The case was then adjourned to December 1.*

Magistrate Jokhan then allowed Ready to hug and kiss his son before he was taken to the police car and to the Sab Fernando General Hospital to continue undergoing further tests. He will be taken back to court on the next hearing.

When the child was led out of the courtroom, his mother, Helen Alexander, followed. A weeping Alexander leaned on the police car and bade her son goodbye.

The four-year old was found naked in a cage in a kitchen at the back of a bar at the corner of Mary Street and Coora Road, Siparia by Siparia Community Police."

94. The Claimants averred that the words complained of in the Fourth Express Article had the same meaning they ascribed to the words complained of in the First Express Article.

95. According to the entire Fourth Express Article the First Claimant's father appeared before a Siparia Magistrate since he was charged with child neglect of the Second Claimant who was found naked in a cage in the kitchen of a bar at the Corner of Mary Street and Coora Road Siparia by the Siparia Community police; he was represented by an attorney at law; during the hearing the Second Claimant was present and he was sitting on the magistrate's lap playing with his pen; the case was adjourned since the prosecution was not ready to proceed; the magistrate permitted the First Claimant to hug and kiss the Second Claimant before the latter was returned to the San Fernando General Hospital for further tests; the Second Claimant's mother was also present in Court and when he was taken out of the Court his mother was weeping.

96. The Fourth Express Article had 14 paragraphs of which the Claimants complain about the 1st and 3rd paragraphs. These two paragraphs recorded what was reported in the earlier two articles, namely: the Second Claimant was found in a lockable playpen located in a dark room at the back of a Siparia bar; the Second Claimant was taken to hospital for examination and tests; the Second Claimant was with his mother; and the Second Claimant's mother had 6 other children.

97. The ordinary reasonable reader would have read the Fourth Express Article as a whole and understood that the First Claimant was charged by the police with child neglect. The First Claimant's appearance in Court for the charges of child neglect of the Second Claimant was brief. He was able to reunite with the Second Claimant who had a happy disposition and that after the hearing the Second Claimant was returned to the hospital to continue his treatment. The Second Claimant's mother was present and the matter was adjourned.

98. The words complained of do not mention the Second Claimant being naked; covered in filth and surrounded by his own faeces; covered in excrement and in other filth and emaciated, malnourished and in poor health and who was kept in a cage. It was a statement of fact that the First Claimant was charged for child neglect and there is no assertion in the Fourth Express Article that the First Claimant was guilty of child neglect,

99. In my opinion the reasonable reader would not have arrived at the meanings ascribed by the Claimants.

100. The Fifth Express Article stated:

> *"Children are abandoned at Mt Hope Hospital with alarming regularity, said communications manager of the Mount Hope Hospital Deborah Jean-Baptiste.*
>
> *"We have them all the time. Some of them never make the news headlines," she told the Daily Express in a telephone interview recently.*
>
> *"It is a disturbing reality that we try out best to deal with. At any point, you can come into the ward and find at least one abandoned child," she said.*
>
> *Jean-Baptiste still remembers Jonathan Hope, a two-day old baby boy who was brought to them by the Chaguanas police in November 1999.*
>
> *"Who could forget Jonathan? A little pink baby, his feet kicking in the air, with worms crawling out of every opening."*
>
> *Jonathan was dehydrated, for he had never been fed, never got water and had never been held.*
>
> *Still, he had spirit.*
>
> *"He was small, but he would always be wiggling up, feet kicking, hands flailing," said Jean-Baptiste.*

"The nurses battled with him, fed him, we had services for him. He seemed to want to live."

But Jonathan didn't, and the nurses and staff had a memorial service after his death.

The police came and took his little body away.

"A small, pink little body," said Jean-Baptiste. "We felt no child really deserves that kind of treatment-to be in the bushes rain and shine.

"That was a really evil act."

She also remembers a 12-day old baby brought to them three years ago, who nurses dubbed Baby Moses, because he was "drawn from" a rubbish heap.

"A dog pulled him out of the rubbish heap," she said. "There he was in the road wiggling up. The dog didn't bite the child, just dragged him out and left him in the middle of the road. Cars were passing, people driving wondered what kind of kitten this was. They stopped and realised what it was and brought him here."

Moses spent a year at the hospital until foster care was appointed.

"People got accustomed to his being here, with his bright eyes, clutching his toys on the ward," said Jean-Baptiste.

"But I think he is happy with his family."

There are currently three abandoned children in the paediatric ward, she said.

And they'll probably be there indefinitely, until suitable foster care is located.

"You can't have children released into dubious hands," pointed out Jean-Baptiste, "so some of them stay here longer than you think."

Baby Neal Massy was also brought to them when he was found last September in his pram in the bushes outside the Neal and Massy Complex in Morvant.

A passer-by had heard crying coming from the shrubbery and made the startling discovery.

Daily Express reports say that police suspected the baby boy had been abandoned for more than 24 hours. Medical personnel said he was severely dehydrated and estimated that he was between seven to nine days old.

"The child came here with red ant bites all over him" said Jean-Baptiste. "When they find the mother, she came in weeping but could not get him. He had to stay here until Social Services could sort it all out."

The San Fernando Hospital also sees cases of abandoned children, but not with great regularity, said South Western Regional Health Authority communications manager Neil Parsanlal.

"We get children being abandoned," said Parsanlal. "If we find that their medical care needs are more than we see is available at the foster home we keep them at the hospital."

There are two abandoned children at the San Fernando General Hospital, he said, both physically and mentally challenged.

It's also a common practise around the Christmas and Carnival seasons to have children and elderly patients left in the hospital without visits or word from relatives.

"You see the family when the festivities are over," said Parsanlal.

Parents have been known to make their children "temporarily ill", said Jean-Baptiste, so they could leave them at the hospital for some time.

"People have been known to get their children sick, thinking the hospital will perform baby-sitting duties while they go to fetes and things like that."

When that happens, the police are invariably called in, but Jean-Baptiste is more concerned about the effects of the parents' actions on the child.

"The police will always be contacted and they will deal with it, but the child has already been made to endure whatever was meted out to him or her. That is the tragedy we have," she said.

"They can't come out and voice all this hurt."

***"Where are they now**?*

WHAT happens to the children who do make it to the front pages and the top stories of broadcasts?

Here's an update of some of the children you read about in the Daily Express over the past few months.

Neal Massy

Baby boy found in his pram in the bushes outside the Neal and Massy complex at Morvant. Authorities guessed that he was between seven and nine days old.

Identified as Baby George. A man and woman walked into the Morvant Police Station and said they were George's father and grandmother.

***Update**: "Neal Massy" remains at the Mt Hope Hospital until suitable foster care is found.*

Baby Michael

November 1999: Baby boy, blind in one eye.

Found lying on some pieces of "rags and old clothes" in a two-room concrete structure in a semi-forested area in the Chaguanas area.

Officers found "garbage and rotting food with maggots" in the house.

Mother admitted that she could not afford to properly feed the child, often giving him porridge made of boiled flour.

***Update**: Investigating officer WPC Kenetha Beckles of the Longdenville Police Post said Baby Michael is now at the St Dominic's Home in Belmont.*

The court matter has just ended, Beckles said.

Both parents were charged with abandonment. The mother was given a fine. If she refused to pay she was supposed to get six months [imprisonment]."

She was not incarcerated.

Some Good Samaritans had offered employment to his parents after reading about their situation, Beckles added, but at this time neither of them has kept those jobs.

Longdenville police have also referred requests to adopt Michael, now tow years old, to the St. Dominic's Home, but to date, he has not yet been adopted.

Jonathan Hope

Believed to be two days old when he was found November 1999 starving in a clump of hushed at Mungal Trace, Orange Field, Central Trinidad.

Maggots had already infested his tiny body, and he was taken to the Mt Hope Hospital, and got his name from nurses at their neo-natal department.

Jonathan Hope died of heart failure a few days later.

***Update**: Mother was charged with abandonment and granted bail pending a psychiatric evaluation.*

Baby Ali

Real name: Delicia Precious Ali.

Newborn baby girl found on the bank of the Gasparillo River last August by a man who had gone to graze his goats.

Her mother Agatha Ali, and grandmother, Hazra, appeared in court to face charges of abandonment. Attorney Subhas Panday represented both women. Agatha was granted bail of $10,000. and Hazra, $12,000.

***Update:** Both women will appear at the San Fernando Magistrates First Court today before Magistrate Kwasi Bekoe.*

Kizzy Greene

Four-year old girl of Moruga cuffed andkicked in the abdomen by a male relative last September for defecating in the house. She died later the same day. A relative was arrested.

***Update:** Officers of the Community Police said that the matter is still in court, and will be held at the Princes Town Magistrates Court.*

Julio Almando Ready

Four-year old boy found on November 14 locked in a wooden cage at the back of a Siparia bar. He was naked and covered in faecal matter.

He was taken to the San Fernando General Hospital for examination.

***Update:** Jude Ready, Julio's father was charged with wilful neglect and appeared before a Siparia magistrate on Thursday. The prosecution was not ready, and the matter was adjourned to December 1."*

101. The Claimants complained of the following paragraphs:

(a) *The title with the words "ABANDONED! It is a disturbing reality that we try our best to deal with. At any point you can come into the ward and find at least one abandoned child"*

(b) *A photograph of the Second Claimant captioned: "Julio Almando Ready…four year old boy found in cage".*

(c) *The following words: "The San Fernando General Hospital also sees cases of abandoned children, but with great regularity', said South Western Regional Health Authority communications manager Neil Parsanlal. 'We get children being abandoned', said Parsanlal. 'If we find that their medical care needs more than we see is available at the foster home we keep them at the hospital.' 'There are two children at San Fernando General Hospital,' he said, both physically and mentally challenge.' …Where are they now? What happens to the children who make it to the front pages and the top stories of our broadcasts?... Julio Almando Ready: Four-year old boy found on November 14 locked in a wooden cage at the back of a Siparia bar. He was naked and covered in faecal matter. He was taken to the San Fernando Hospital for examination. Update: Jude Ready, Julio's father was charged with willful neglect and appeared before a Siparia magistrate on Thursday…"*

102. The Claimants averred that the aforesaid words in their natural and ordinary meaning had the same meaning as the words in the First Express Article.

103. In my opinion the entire Fifth Express Article is about a discussion of children who were abandoned which list the names including the Second Claimant. It also gives an update on the Second Claimant and the status of the child neglect charges against the First Claimant.

104. The Sixth Express Article is 6 paragraphs in length. It states:

"The case involving the father of a four-year old boy who was found locked in a cage began yesterday before a Siparia magistrate.

Bar owner Jude Ready, 47, of Coora Road, Siparia, who is charged with child neglect, appeared before Senior Magistrate Omar Jokhan in the Siparia First Court.

His son, Julio Armando Ready, a pupil of the Early Childhood Centre, pre-school, in Siparia, was found on November 13 by officers of the Siparia Community Police

naked in a cage in a kitchen at the back of a bar at the corner of Mary Street and Coora Road, Siparia.

Julio's mother, Helen Alexander, was among three people called to testify by prosecutor Gilbert Ramsey.

The other two were WPCs Claire David (police photographer) and Karen Ashby (Community Police, Siparia).

All three were cross-examined by Ready's attorney, Leon Gookool.

Further hearing was adjourned to Thursday".

105. The Claimants complained about three (3) of the paragraphs which report matters reported in the First Express Article to the Fifth Express Article. The words complained of were:

"Caged boy's father…the father of a boy who was found locked in a cage…Julio Armando Ready…was found…naked in a cage in a kitchen at the back of a bar…"

106. The Claimants also ascribed the same meaning to the words in the First Express Article.

107. In my opinion a reasonable reader would have read the entire Sixth Express Article and understood that it recorded that the First Claimant had been charged and that the prosecution evidence in the trial had started before the Magistrate. It was not in dispute that: the First Claimant was arrested charged and appeared before the Siparia Magistrates Court; the charge was child neglect; the trial had started and the Second Claimant's mother and two other witnesses had already given evidence including the investigating police officers; the First Claimant's attorney at law had cross examined the Prosecution witnesses; and the trial was adjourned to continue. Therefore the substance of the Sixth Article was true and therefore not defamatory of the Claimants.

108. In light of the foregoing, I have concluded that the Claimants have failed to demonstrate that the First Express Article to the Sixth Express Article were defamatory as they asserted.

109. It was also argued on behalf of the Second to Seventh Defendants that the First Claimant failed to prove that the words published in the First Express Article to the Fourth Express Article where he was not named referred to him.

110. It was argued on behalf of the First Claimant that the First Express Article to Fourth Express Article referred to him on the basis of the words used in the said articles; subsequent articles of various newspaper defendants; and the evidence of persons who said that they knew that the said articles referred to the First Claimant.

111. According to **Duncan and Neill on Defamation,** [28]a necessary ingredient for an action in libel is that the article must be published about the claimant. The question in all cases where the identity of the claimant is in issue is whether reasonable people reasonably understand the words to refer to the claimant. The test is therefore an objective one.

112. In the First Express Article the First Claimant was not named. The only reference to the First Claimant in the First Express Article was *"Julio had been living with his father ever since he was three months old"*. The First Express Article was clear that the First Claimant was not at home when the discovery was made. The First Claimant was not named in the Second Express Article. The references made to him was as the father of the Second Claimant. Again, in my opinion, in the absence of any extrinsic evidence the reasonable reader would not have associated the condition the Second Claimant was kept in at the time the Siparia Community found him. In the Third Express Article the First Claimant was not named neither was he referred to.

113. The First Claimant was referred to by name in the Fourth Express Article so the issue does not arise with respect to that Article.

[28] 3rd ed para 6.1

114. According to **Gatley on Libel and Slander**[29] where the libel does not refer to the claimant extrinsic evidence must be given to connect the libel:

> *"However where the libel does not ex facie refer to the claimant, e.g. where he is described by his initial letters, or by a nickname or by a fictitious name or by the name of another, extrinsic evidence must be given 'to connect the libel with 'the claimant', evidence from which it would be reasonable to deduce that the defamatory words 'implicated' the claimant. For this purpose witnesses can be called to testify that they understood, from reading the libel in the light of the facts and circumstances narrated and described, and their acquaintance and knowledge of the claimant, that he was the person referred to."*

115. However the extrinsic facts which a claimant relies on to prove that the libel is referring to him must be pleaded. According to **Duncan and Neill on Defamation**[30]

> *"7.03. Where the words complained of do not themselves clearly identify the claimant, the matter can sometimes be decided by reference to their context. More often, however, the claimant will be seeking to show that the words would have been understood to refer to him because of some facts or circumstances which are extrinsic to the words themselves. In these cases the claimant is required to plead and prove the extrinsic facts on which he relies to establish identification and if these facts are proved, the question becomes would reasonable people knowing these facts or some of them reasonably believe the words referred to the claimant?"*

116. The First Claimant did not plead the extrinsic facts which he relied on for the identification of the First Claimant in the First Express Article to the Third Express Article. Therefore there is no basis for the Court finding that the reasonable reader would have inferred that the First Claimant was being referred to in those articles.

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[29] 12th ed @ para 32.19
[30] 3rd Ed @ para 7.03

117. The First Claimant relied on the authority of **Hayward v Thompson**[31] to support his submission that the words used in the subsequent articles proved his identification. In **Hayward** the plaintiff pleaded that the words from the subsequent article identified the plaintiff as the "*wealthy benefactor*" referred to in the earlier article. It was against the background of that plea that the Court examined the question whether the plaintiff could rely on the subsequent article as identifying himself as the "*wealthy benefactor*" in the earlier article and, the Court held that he could do so.

118. In my opinion **Hayward** can be distinguished from the instant case since the First Claimant did not plead the subsequent articles which he relied on in relation to the issue of identification. The subsequent articles which the First Claimant submitted he was relying on to prove his identification ought also to have been pleaded as extrinsic facts which connected him to the First Express Article to the Third Express Article. Therefore there was no extrinsic evidence to connect the First Claimant to the First Express Article to the Third Express Article.

119. The First Claimant also contended that multiple witnesses gave evidence that they knew that the First Express Article to Third Express Article referred to him. The First Claimant's witnesses Hayden Davidson said he read the Guardian Articles. Paulimus Kenny Alfonso evidence was he saw the TV6 news and read the newspaper which had the same story[32]; Cecil Tavernier saw the TV6 news[33]; Wayne Morris also saw the TV6 news and read the Express and the Newsday[34] which he confirmed during cross-examination[35] and Cecelia Lorna Peters read the Express newspaper[36] .

120. Therefore in the absence of pleading any extrinsic facts which the First Claimant relied on to prove that he was referred to in the First Express Article to the Third Express Article and in light of the limited evidence, in my opinion the First Claimant has failed to establish

[31] [1982] QB 47
[32] Paragraphs 5 and 7 of his witness statement, pg 477 of the Trial Bundle;
[33] Paragraph 2 of his witness statement, pg 481 of the Trial Bundle;
[34] Paragraph 7 of his witness statement, pg 483 of the Trial Bundle
[35] Transcript for 12th October 2016 @ pg 30 lines 28-39 and @ pg 31 lines 1 - 8.
[36] Paragraph 5 of her witness statement, pg 2 of the Trial Bundle

that the reasonable reader would understood that the First Express Article to the Third Express Article referred to him. A reasonable reader who read the First Express Article to the Third Express Article in the absence of any extrinsic evidence would have understood that the Second Claimant was kept by his relatives in Ready's Restaurant and Bar while a male relative, who had custody of the Second Claimant for three years, spent days away from home because of his occupation as a fisherman.

Whether the Second to Seventh Defendants have made out the defence of Reynolds Privilege and additionally in respect of the Sixth Express Article, the defence of absolute privilege?

121. In the Defence filed by the Second to Seventh Defendants they pleaded that even if the Express Articles are defamatory they rely on the Defence that the publications concerned matters of public interest, the inclusion of the alleged defamatory material was justifiable and the publications met the standards of responsible journalism. With respect to the Sixth Express Article they also pleaded the additional defence that it was a fair and accurate report of the proceedings in the public.

122. Although I have already concluded that the natural and ordinary meaning of the Express Articles to the reasonable reader were not defamatory of the Claimants, for completeness I will address the aforesaid issue since it arose from the pleadings between the Claimants and the Second to Seventh Defendants.

123. The defence of Reynolds privilege arose from the House of Lords decisions in **Reynolds v Times Newspapers Limited**[37] where the defence of qualified privilege was extended to cover the situations where a media organization sought to communicate information regarding matters of public concern. In **Reynolds**, the House of Lords established a new variant of qualified privilege in which less emphasis was placed on the traditional, reciprocal duty and interest test, and more on the question of whether the publication was

[37] [2002] 2 AC 127

on a matter of public interest and whether it was the product of responsible journalism (with the issue of malice subsumed within this latter element).

124. To determine whether the **Reynolds** privilege applies there are three questions to be posed:
   (a) whether the subject matter of the publication was of sufficient public interest;
   (b) whether it was reasonable to include the particular material complained of and,
   (c) whether the publisher met the standards of responsible journalism.

125. It is only if the Defendant satisfies all three questions can it successfully rely on the **Reynolds** privilege defence. The aforesaid test was approved by the Privy Council in **Bonnick Morris** [38] and the Supreme Court in **Flood v Times Newspapers**[39] and endorsed by the Court of Appeal in **Kayam Mohammed**[40]**.**

126. In considering the **Reynolds** privilege defence, the first question for the Court to determine is whether the subject matter of the publication concerned a matter of public interest. What is in the public interest is a matter of law to be determined by the Court (**Gatley on Libel and Slander**[41]). Lord Hoffman in the House of Lords decision of **Jameel (Mohammed) v Wall Street Journal Europe SPRL**[42] stated that the approach to be adopted by the Court in determining the first question is:

> *"The first question is whether the subject matter of the article was a matter of public interest. In answering this question I think that one should consider the article as a whole and not isolate the defamatory statement…"*

127. In determining what matters are of public interest and those which are not, the Courts have recognise that not all matters that the public may be interested in are matters of public interest. As Lord Hoffman put it (at paragraph 49) in **Jameel**.

[38] [2003] 1 AC 300
[39] [2012] UKSC 11
[40] Civ Appeal 118 of 2008
[41] 12th Ed at para 15.6
[42] [2006]UKHL 44

"The question of whether the material concerned a matter of public interest is decided by the judge. As has often been said, the public tends to be interested in many things which are not of the slightest public interest and the newspapers are not often the best judges of where the line should be drawn. It is for the judge to apply the test of public interest."

128. Baronness Hale of Richmond (at paragraph 146) in **Jameel** confirmed that:

"there must be a real public interest in communicating and receiving the information. This is, as we all know, very different from saying that it is information which interests the public - the most vapid tittle-tattle about the activities of footballers' wives and girlfriends interests large sections of the public but no-one could claim any real public interest in our being told all about it."

129. Lord Bingham of Cornhill in the Court of Appeal decision in **Reynolds TD v. Times Newspapers Limited**[43] described matters that are of public interest as:

"By that we mean matters relating to the public life of the community and those who take part in, including within the expression 'public life' activities such as the conduct of government and political life, elections … and public administration, but we use the expression more broadly than that, to embrace matters such as (for instance) the governance of public bodies, institutions and companies which give rise to a public interest in disclosure, but excluding matters which are personal and private, such that there is no interest in their disclosure."

130. It was submitted on behalf of the Second to Seventh Defendants that the public interest element has been satisfied since the Express Articles and the TV6 Broadcasts focused on the treatment and welfare of children and at the time of the said publications and broadcasts there were other instances of children being treated badly by care givers elsewhere in Trinidad and Tobago. It was also submitted that the matter of the police investigating the treatment of a child including the defamatory statements complained of were part of the

[43] [1998]EWCA Civ 1172 at Part XIX Lines 2-5

story and were in the public interest. The public interest in all the publications is exemplified by the Fifth Express Article which treated with the issue of child abandonment and set out the names of those children who had in the course of the year 2000 been reported on in the Daily Express and providing an update.

131. The Claimants argued otherwise. They submitted that the Express Articles failed the first limb of the litmus test in **Reynolds** which the publications as a whole must concern the public interest and that condition has not been met. They submitted that the public tends to be interested in many things which are not of the slightest public interest and the subject matter of the instant claim is one of them. The public has no interest in receiving information concerning the particular circumstances of ensuring the safety of the Second Claimant and the Express Defendants had no business publishing this private information. The Claimants also submitted that the Express Articles were not matters of public interest, and that there has been a clear imbalance in the Express Defendants exercising their right to freedom of expression and freedom of the press with the need to have the Claimants reputation protection. Both Claimants have had their names dragged through the mud by Express Defendant by way of unfounded, untrue and falsely assumed recreation of what truly transpired on the day.

132. It was further submitted by the Claimants that they are not public figures nor does the subject matters relate to the public life of the community such as the conduct of government, political life, elections, public administration or any such function to otherwise engage a public interest. The Claimants submitted that the facts which are the subject of this claim are personal and private to the Claimants and there is no public interest in their disclosure.

133. It was also argued that with particular respect to the First Claimant, in keeping with the recent leading Privy Council decision in **Pinard-Byrne v Linton**[44] which found that it was demonstrably not in the public interest to have criminal allegations, even if bona fide and responsibly made ventilated through the news media.

[44] [2015] UKPC 41

134. In my opinion the treatment of children in this jurisdiction is a matter of public interest or concern. The First Claimant admitted to this during cross-examination.

> *"Q: Now Mr. Ready, have you ever heard of the saying that 'it takes a village to raise a child'?*
>
> *A: Yes. I have heard that saying.*
>
> *Q: Yes, and is that a saying that you agree with?*
>
> *A: Wholeheartedly.*
>
> *Q: So you would agree with me that society, as a whole, has an interest in how the children of our nation are treated, correct?*
>
> *A: That is correct."*[45]

135. Later he stated that:

> *"Q: ....Now, in---you accept I think, in answer to Ms. Gopaul, that the public of Trinidad and Tobago, in fact, the village of Siparia is entitled to have an interest in how we raise our children? Isn't that so?*
>
> *A: That is correct.*
>
> *……..*
>
> *Q: So you would accept that this issue, the issue of how our children are raised, specifically how your son was being raised, rightly or wrongly, at the time and thereafter was a genuine matter of public interest. Would you accept that?*
>
> *A: I would accept it was a general matter of public interest but not his name being published."*[46]

[45] See Transcript 10th October 2016 @ pg 53 lines 17-20:

[46] Transcript 10th October 2016 pg 73 lines 16 – 20 and 39 -40 and at pg 74 lines 1 -4:

Inclusion of the alleged defamatory material in the publication must be justifiable.

136. The next question is whether it was reasonable to include the words complained of. In **Jameel** Lord Hoffman explained the approach to be taken by the Court when examining this question as:

> *"51. If the article as a whole concerned a matter of public interest, the next question is whether the inclusion of the defamatory statement was justifiable. The fact that the material was of public interest does not allow the newspaper to drag in damaging allegations which serve no public purpose. They must be part of the story. And the more serious the allegation, the more important it is that it should make a real contribution to the public interest element in the article... But whereas the question of whether the story as a whole was a matter of public interest must be decided by the judge without regard to what the editor's view may have been, the question of whether the defamatory statement should have been included is often a matter of how the story should have been presented. And on that question, allowance must be made for editorial judgment. If the article as a whole is in the public interest, opinions may reasonably differ over which details are needed to convey the general message. The fact that the judge, with the advantage of leisure and hindsight, might have made a different editorial decision should not destroy the defence. That would make the publication of articles which are, ex hypothesis, in the public interest, too risky and would discourage investigative reporting."*

137. The Second to Seventh Defendants submitted that the First Claimant was not mentioned in those publications therefore any allegation of defamation would be only in respect of the Second Claimant. It was also submitted on behalf of the Second to Seventh Defendants that the First Express Article to the Fourth Express Article met the requirements that the alleged defamatory material was integral to the story being told. The allegations of the circumstances in which the Second Claimant was found was the story to be told by the Fifth and Sixth Defendants as this went to the heart of the public interest issue of the treatment of children. While the First Claimant may have felt that by putting the Second Claimant in a locked playpen when he was miserable was an advisable thing to do, it was

incumbent on the Fifth Defendant as a national newspaper and the Sixth Defendant to report to the national public that in the year 2000 children were being subjected to harsh and unfair treatment at the hands of adults and caregivers.

138. As to the Fifth Express Article, the Second to Seventh Defendants submitted that they have met and satisfied the requirement that the alleged defamatory material was integral to the story of the abandoned children's roll call as it spoke directly to the fact that in the Sixth Express Article, the First Claimant was then before the court for the treatment of the Second Claimant. In short, the action by the proper authorities had been taken and the Second Claimant was no longer exposed to danger.

139. The Claimants submitted that there was no justification by the Express Defendants to publish the First Express Article since it was unnecessary, uncorroborated and a complete fabrication and that there was no public, moral, civic or legal duty to publish the fabrications in the First Express Article and that the damaging allegations contained therein served no public purpose. The Claimants made a similar submission with respect to the Third Express Article to the Sixth Express Article.

140. With respect to the Second Express Article the Claimants argued that it was possible to produce the story from the mother's perspective without the repetition of defamatory words and therefore there was no justification in the public interest to include the alleged defamatory words.

141. Even if the allegations were defamatory, which I have not so found, in my opinion the inclusion of the said statements in the First Express Article to the Fourth Express Article were justifiable since there was a public interest in the details of the allegations of the Second Claimant's treatment which were connected to the core of the story. Further, contents of the Fifth Express Article was also justified since it was in the interest of the public to be aware of how other children were being treated at the hands of adults or caregivers in 2000. The Sixth Express Article was justified since it recorded that the action

by the proper authorities had been taken and the Second Claimant was no longer exposed to danger.

Responsible Journalism

142. In determining whether the Second to Seventh Defendants met the standards of responsible journalism, the Court must consider the non-exhaustive list of considerations in **Reynolds** which were listed at paragraph 62 in **Kayam Mohammed** (supra) namely:

(a) The seriousness of the allegation. The more serious the charge, the more the public is misinformed and the individual harmed, if the allegation is not true.

(b) The nature of the information, and the extent to which the subject-matter is a matter of public concern.

(c) The source of the information. Some informants have no direct knowledge of the events. Some have their own axes to grind, or are being paid for the stories.

(d) The steps taken to verify the information.

(e) The status of the information.

(f) The allegations may have already been the subject of an investigation which commands respect.

(g) The urgency of the matter. News is often a perishable commodity.

(h) Whether comment was sought from the plaintiff. He may have information others do not possess or have not disclosed. An approach to the plaintiff will not always be necessary.

(i) Whether the article contained the gist of the plaintiffs' side of the story.

(j) The tone of the article. A newspaper can raise queries or call for an investigation.

(k) It need not adopt allegations as statements of fact.

(l) The circumstances of the publication, including the timing.

143. The Court of Appeal in **Kayam Mohammed** also provided the following guidance in relation to the application of the **Reynolds** considerations:

> *"63. These are not intended to be tests that the journalists must past (sic) or huddles (sic) that he must overcome before he can successfully rely on*

the defence. There (sic) are intended to be broad based pointers that may be of relevance and should in suitable cases be taken into account in assessing whether the journalist has met the standard of responsible journalism. This standard of conduct must be applied in a practical and flexible manner. It must have regard to practical realities (see Bonnick, supra, para 24 and Jameel at para 56).

64. This approach to the standard of responsible journalism has manifested itself in the following which are relevant to this appeal. First, in assessing the responsibility of the article weight must be given to the professional judgment of the journalist or editor. In Jameel, Lord Bingham said (at para 33):

> *'Lords Nicholls recognised (in Reynolds at pp 202-203 inevitably as I think that it has to be a body other than the publisher, namely the court which decided whether a publication was protected by qualified privilege. But this does not mean that the editorial decisions and judgments made at the time, without the knowledge of falsity which is the benefit of hindsight, are irrelevant. Weight should ordinarily be given to the professional judgment of an editor or journalist in the absence of some indication that it was made in a casual, cavalier, slipshod or careless manner.'*

65. Second, the newspaper in making the decision whether to publish will need to have regard to the full range of meanings that a reasonable reader might attribute to the article……. It should however be noted that in Bonnick v Morris, supra, it was held that in assessing whether the defence of Reynold privilege is available, the Court should not penalise the journalist for 'making a wrong decision on a question of meaning on which different people might reasonably take different views' (see paras 24-27). In Flood v Times Newspapers Ltd [2012] UKSC 11 Lord Mance stated (at para 129) that the principle endorsed by the Privy Council in Bonnick:

'appears to be, therefore, that a responsible journalist would have had in mind the less damaging of the possible meanings that reasonable persons might attach to the article and would have been entitled to focus in that direction when checking and reporting the relevant subject matter.'

66. Thirdly, even though the journalist's conduct may be open to legitimate criticism it does not necessarily follow that he has acted irresponsibly……..."

Source of information; verification; status of information; comment from First Claimant; gist of the First Claimant's side of story

144. According to the unchallenged evidence of Ms Butler, the Sixth Defendant on the 13th November 2000 she was sent on an assignment in Siparia. She was told that the Siparia Community Police had received information concerning a little boy who had been kept in a cage in premises in Siparia. She went to the Siparia Police Station where she met a photographer from the Fifth Defendant and then she proceeded to a building at the Corner of Mary Street and Cora Road which housed a bar owned and operated by the First Claimant. On entering the bar, there were no customers but she observed a wooden structure on the floor of the building and there was a man, Mr Modeste who was present and who worked in the bar. He gave a brief interview to her and he looked scared. She recalled that the area in the bar where she interviewed Mr Modeste was dirty and the structures he saw was also not clean. She was close enough to the structure that's he could smell it. She was also able to look inside it. She observed faeces around the structure but she did not recall seeing dirty diapers. She did not see the child in the wooden structure.

145. She then went to the Siparia Police Station where she saw a child sitting with a female police officer at the front of the station. She was informed by the police officer that this was the child who was in the wooden structure. The child was sitting right in front of her and she observed that he looked dirty and smelt of faeces. She attempted to speak to the

child but he made a noise which sounded like howling. Apart from Mr Modeste she also interviewed police officers at the police station. Based on her observation and her interviews she wrote an article which was submitted to her editor. The First Express Article which was credited to her reflected her observations at the time of her visit. She was not able to contact the First Claimant on the said day.

146. Ms Butler also stated that on the 14th November 2000 she was assigned to continue covering the story of the Second Claimant from the previous day. On that day she and a photographer visited Rancho Quemado where she interviewed Helena Alexander, the Second Claimant's mother about the Second Claimant. She recorded Ms Alexander's responses to her questions and the edited article appeared as the Second Express Article. She said that she attempted to telephone the First Claimant after he was released by the police but she was unable to get a response.

147. Ms Butler further stated that on the 15th August 2000 she again spoke with Helena Alexander who informed her that she had visited the Second Claimant at the San Fernando General Hospital and she had spoken with the doctors who were attending to him. Ms Alexander had informed her on the 14th November 2000 that she had planned to visit the Second Claimant on the 15th November 2000. The responses from Ms Alexander were recorded and the edited article appeared as the Third Express Article.

148. The Claimants also asserted that no effort was made to reach the First Claimant for comment. According to Ms Butler she interviewed Mr Ainsworth Modeste and reported what he had to say in the First Express Article and Ms Butler also said that after the First Express Article was published she attempted to reach the First Claimant on a landline number but she was unsuccessful[47]. The unchallenged evidence of Ms Sunity Maharaj was that:

> *THE WITNESS: Yes, I'm saying that the requirement to contact the other parties does not always apply, or is required in the case of assumed crime or alleged criminal actions. You go to scene where something has happened, the person may*

[47] Notes of Evidence 14th October 2016 pg 29 Lines 1 to 24.

be in hiding, the person may not just be there, the person may have already been taken into custody, and you report the facts as they are presented at that point[48]

149. Therefore it was not possible to reach the First Claimant for a comment on the 13th November, 2000 as he was taken into police custody and in this jurisdiction persons in police custody are not permitted to speak to the press and the interview with Mr Ainsley Modeste was the reporting of the First Claimant's "side of the story".

150. Based on the evidence of Ms Butler, the First Express Article was based on her own observations and the information she obtained from interviews with Mr Modeste and the police and the Second Express Article and the Third Express Article were based on information she obtained from interviews with Helena Alexander.

Urgency; Tone; circumstances of the publication

151. The approach the Court is to adopt in assessing the tone the Express Articles were presented Lord Mance in **Flood v Times Newspapers** (at paragraph 136) which approved the dictum of Lord Rodger in **Re Guardian News and Media Ltd**[49]**.** It stated that:

> *"Lord Hoffman observed in Campbell v MGN Ltd, para 59, 'judges are not newspaper editors.' See also Lord Hope of Craighead in In re British Broadcasting Corpn [2010] 1 AC 145, para 25. This is not just a matter of deference to editorial independence. The judges are recognising that editors know best how to present material in a way that will interest the readers of their particular publication and so help them to absorb the information. A requirement to report it in some austere, abstract form, devoid of much of its human interest, could well mean that the report would not be read and the information would not be passed on. Ultimately, such an approach could threaten the viability of newspapers and magazines, which can only inform the public if they attract enough readers and make enough money to survive."*

[48] Notes of Evidence 13th October 2016 pg 36 lines 10-17
[49] [2010] UKSC; [2010] 2 AC 697

152. Lord Mance (at paragraphs 137) concluded:

> *"The courts therefore give weight to the judgment of journalists and editors not merely as to the nature and degree of the steps to be taken before publishing material, but also as to the content of the material to be published in the public interest. The courts must have the last word in setting boundaries of what can properly be regarded as acceptable journalism, but within those boundaries the judgment of responsible journalists and editors merits respect. This is, in my view, of importance in the present case."*

153. The issues reported upon in the Express Articles were serious in nature and of great public concern and interest. Therefore I accept that the Express Articles had to be given a degree of prominence commensurate with this. It could not have been reasonably expected that the Express Articles should have been presented *"in some austere, abstract form, devoid of much of its human interest"* since this could have meant that the Express Articles would not be viewed or read and the information would not be passed on. In any event, the writing and reporting was done in a serious and balanced manner. Based on Ms Butler's evidence she made attempts to reach the First Claimant and she could not speak with him when he was in custody but she spoke with Mr Modeste who was the second Claimant's caregiver.

154. Further, at the time the Express Articles were published the First Claimant was being questioned by police and was not charged until sometime later. The Second Defendant was treated at hospital. Therefore there was every good reason for the Express Articles to be published without any delay.

155. When I weigh all the aforesaid matters I have concluded that even if the matters complained in the Express Articles were defamatory they concerned the investigation of, and reported on, issues which were of grave public concern and interest. They met the required standards of responsible journalism on matters of public interest and the Second to Seventh Defendants are therefore entitled to rely on the **Reynolds** public interest Defence.

Whether the defence of absolute privilege was made out in respect of the Sixth Express Article?

156. I have already found that the Sixth Express Article did not contain any defamatory statements as alleged by the Claimants. I have also found that even if the alleged statements were defamatory they met the standards of responsible journalism on matters of public interest. However, I will still briefly address the Defence of absolute privilege which the Second to Seventh Defendants pleaded with respect to the Sixth Article, on the basis that it was a fair and accurate report of proceedings in public.

157. The defence of absolute privilege attaches to statements made in or in connection with judicial proceedings. The defence of absolute privilege for statements made in judicial proceedings is available under **section 13(1)** of the **Libel and Defamation Act**[50] The report's fairness and accuracy are not to be judged by the standards of a professional law reporter[51].

158. According to the transcript of proceedings for 4th December 2000, the matter was called before His Worship Omar Jokhan. The First Claimant was present and he was represented by his attorney at law, Mr Gookool. The following persons gave evidence , Ms Helena Alexander, the Second Claimant's mother, Mr Modeste, WPC David and WPC Ashby.

159. In my opinion the facts in the entire Sixth Express Article are not in dispute namely that: the Second Claimant was found in a playpen in conditions which were not fitting for a child in a bar in Siparia; the First Claimant was charged with child neglect; the proceedings were before His Worship Omar Jokhan Senior Magistrate in the Siparia Magistrates Court; the Second Claimant's mother had given evidence as well as two investigating police officers; and the date of the article the hearing was adjourned. Therefore the Second to Seventh Defendants have satisfied the requirements to rely on the defence of absolute privilege in respect of the Sixth Express Article.

[50] Chapter 11:16
[51] Hope v.Leng (1907)TLR 243

THE ISSUES BETWEEN THE CLAIMANTS AND THE GUARDIAN DEFENDANTS

Whether the First Claimant's cause of action in respect of the Second Guardian Articles are statute barred?

160. The Eighth Defendant raised the defence of limitation against the First Claimant with respect to the Second Guardian Articles which were added to the claim by an amended Statement of Claim approximately 4 years and 3 months after publication.

161. **Section 3 of the Limitation of Certain Actions**[52] ("the Limitation Act") provides that no action in tort shall be brought after the expiry of four years from the date on which the cause of action accrued. In cases of libel, the cause of action accrues from the date of publication and each publication gives rise to a separate cause of action [53]. The Online Guardian Republication and the Second Guardian Article were published on 14th and 15thNovember 2000 respectively but were only added to the claim by the Amended Statement of Claim filed on 2nd March 2005, approximately three months after the expiration of the four year limitation period.

162. In the closing submission the Claimants conceded that (a) the Second Guardian Articles were not pleaded in the specially indorsed Writ of Summons filed on 9th November 2004 and, (b) they were included late in the Amended Statement of Claim filed on 2nd March 2005. In making this concession the Claimants asked the Court to exercise of its discretion to override the limitation period and therefore allow the First Claimant to pursue his action with respect to the Second Guardian Articles.

163. The Claimants' submissions were based on 3 grounds namely (a) that the delay of a little less than 4 months is not prejudicial to the Eight to Tenth Defendants but it would be highly prejudicial to the Claimants not to be allowed to pursue a claim with respect to those

[52] Chapter 7:09 of the Laws of Trinidad and Tobago
[53] Duncan and Neill on Defamation, 3rd Ed @ para 22.01

publications; (b) a liberal interpretation of sections 5,6 and 9 of the Limitation Act means that any cause of action including an action in defamation can be subsumed under section 9 and (c) that an award of general damages in a defamation action is akin to an award in personal injury cases.

164. **Sections 5 and 6 of the Limitation Act** state:

"5. (1) Subject to subsection (6), this section applies to any action for damages for negligence, nuisance or breach of duty where the duty exists by virtue of a contract or any enactment or independently of any contract or any such enactment where the damages claimed by the plaintiff for the negligence, nuisance or breach of duty consist of or include damages in respect of personal injuries to the plaintiff or any other person. (emphasis mine).

6.(1) An action under the Compensation for Injuries Act shall not be brought if the death occurred when the injured person could no longer maintain an action and recover damages in respect of the injury, because of a time limit in this Act or in any other enactment or for any other reason." (emphasis added).

165. **Section 9 of the Limitation Act** states:

"9. (1) Where it appears to the Court that it would be inequitable to allow an action to proceed having regard to the degree to which –

(a) the provisions of section 5 or 6 prejudice the plaintiff or any person whom he represents and

(b) any decision of the Court under this subsection would prejudice the defendant or any person whom he represents,

the Court may direct that those provisions shall not apply to the action or to any specified cause of action to which the action relates." (emphasis added).

166. Sections 5 and 6 apply only to personal injury claims arising in negligence, nuisance, contractual or statutory breach of duty and pursuant to the Compensation for Injuries Act.

167. In support the Claimants also cited the authorities of **Ayesha Abrahim v Trinidad Electrical Contractors Ltd**[54]**; Lalchan Babwah v Steve Hagely and anor**[55]**; Horton v Sadler and anor**[56] and **Cain v Francis**[57]. In **Ayesha Abrahim,** the Claimant instituted her claim for damages for personal injuries which she sustained when she fell off a ladder at a job site. In **Lalchan Babwah**, **Horton** and **Cain** each respective Claimant's action was for damages for personal injuries sustained by in a motor vehicle accident. All these cases deal with personal injury claims which are different from the instant action which a claim grounded in defamation.

168. The Claimants also relied on the learning of Lord Denning in the English Court of Appeal in **Letang v Cooper**[58] who held the view that *"breach of duty"* was wide enough to encompass all torts including defamation of character.

169. In **Letang v Cooper,** the Plaintiff issued a writ claiming damages for loss and injury caused to her by the defendant's negligence in driving his car and/or the commission by him of a trespass to the person of the plaintiff. In her statement of claim she pleaded negligence and but the particulars were as if her claim in trespass. Elwes J. held that the plaintiff's action in trespass was not an action for damages for "breach of duty" subject to a limitation period of three years under section 2 of the Limitation Act, 1939, as amended by section 2 (1) if the Law Reform (Limitation of Actions, etc.) Act, 1954, and he awarded the plaintiff damages for the defendant's trespass. The defendant appealed and it was allowed on the basis the plaintiff's cause of action was an action for negligence and as such it was statute-barred under section 2(1) of the Law Reform (Limitation of Actions, etc.) Act, 1954. Both Lord Denning M.R. and Danckwerts L.J. held that the injury to a plaintiff was caused by the defendant's intended act and that when the act is not intended, a plaintiff's only cause of action is negligence. Lord Diplock L.J. found the based on the facts the plaintiff's action of was in negligence and therefore her action was statute-barred under section 2 (1) of the

[54] CV 2014-03834
[55] CV2014-02485
[56] (2007) 1 AC 307
[57] (2009) 2 All ER 579
[58] [1965] 1 QB 232

Law Reform (Limitation of Actions, etc.) Act, 1954. Lord Denning at page 241 noted that the phrase "breach of duty" was wide enough to encompass all torts:

> "*Our whole law of tort today proceeds on the footing that there is a duty owed by every man not to injure his neighbour in a way that is forbidden by law. Negligence is a breach of such a duty. So is nuisance. So is trespass to the person. So is false imprisonment, malicious prosecution or defamation of character."*

170. Lord Denning found concluded that if the plaintiff had a cause of action in trespass, her action was still statute-barred under that section.

171. In my opinion **Letang** does not assist the Claimant since the Court did not determine that personal injury claims were to be equated with defamation actions.

172. The importance of not equating a claim in personal injuries with a claim in defamation was noted by the authors of **Gatley on Libel and Slander**[59] when discussing the relevance of personal injury damages with that of damages for defamation claims. After examining the various approaches by the Courts the authors summed up the position as:

> "*Ultimately, it has to be recognized that damage to reputation is very different from personal injury and any comparison between the two is of limited utility*."

173. The First Claimant's cause of action is in libel and in my opinion it cannot be equated with the breach of a duty and therefore it does not fall within the purview of section 9 of the Limitation Act. As such the Court is not bestowed with any discretion to extend or override the limitation period under section 9 of the Limitation Act. Therefore the First Claimant's claim in libel in respect of the Second Guardian Articles is statute-barred, having been raised after the expiration of the four year limitation period.

[59] 12th ed at par 9.9

Whether the First Guardian Article and the Second Guardian Articles refer to the First Claimant?

174. The words complained of by the Claimants in the First Guardian Article were:

(a) Front page headline:

"Cops Rescue boy in cage: 4 year-old found filthy in Siparia club"

together with two photographs taken by the Tenth Defendant, the first showing an image of the Second Claimant being taken out of his playpen by PC Pajotte and the second, showing an image of the Second Claimant standing in his playpen, and captioned:

"UNCAGED:…… Julio Almando Ready, 4 stands in the wooden cage from which he was rescued hours before by officers of the Siparia Community Police".

(b) The following words in the article:

"A naked four-year old boy, caked in his own filth, was rescued from a makeshift wooden cage, shortly before mid-day yesterday by officers of the Siparia Community Police… Julio Almando Ready, of Coora Road, Siparia, was found in a cage around 11 am by a party of officers including WPC Ashby, PC's Gabriel, Mohammed and Pajotte, who entered Ready's Restaurant and Bar, a stone's throw away from the Siparia Police Station …. The cage … was littered with filthy disposable diapers, plastic bags, a dusty cushion and a piece of cloth. Pieces of brown carpet were nailed to the floor of the cage. The cage was kept in a poorly ventilated room close to the bar's kitchen. Persons who tipped off the police said the child was often left screaming inside his prison while his relatives served patrons at the bar outside. When the Guardian arrived at the scene, the room with the cage reeked of human faeces. Cobwebs hung from every corner of the room. PC Gabriel

said the naked child seemed happy as he lifted out of his filthy prison. He was covered in filth and had sore marks on his feet. His fingernails were dirty and his face pale. Julio is a slow learner and has problems remembering. Police said. Even though he is close to five years old, he cannot speak fluently, investigators added. The child lives in a house with a male relative, who works as a fisherman at Erin. The man reportedly gained custody of the child three years ago, according to officers. Sources said the relative spent days away from home… Modeste told the Guardian Julio was kept in the cage because he was mischievous. 'We don't keep him there all the time. He does sleep with (named called) upstairs at nights.' He admitted that Julio was kept in his prison throughout the weekend, especially when the bar is busy. When asked why the child was covered in filth, he responded: 'Ask (named called) Modeste admitted it was not a good idea to keep Julio locked up…. Shortly after he was rescued…..he had defecated himself…."

175. The entire First Guardian article states:

"A NAKED four-year-old boy, caked in his own filth, was rescued from a makeshift wooden cage, shortly before midday yesterday by officers of the Siparia Community Police.

Julio Almando Ready, of Coora Road, Siparia, was found in the cage around 11 am by a party of officers, including WPC Ashby, PCs Gabriel, Mohammed and Pajotte, who entered Ready's Restaurant and Bar, a stone's throw from the Siparia Police Station.

The cage, which measured close to five feet in height, was littered with filthy disposable diapers, plastic bags, a dusty cushion and a piece of cloth. Pieces of brown carpet were nailed to the floor of the cage.

The cage was kept in a poorly-ventilated room close to the bar's kitchen.

Persons who tipped off the police said the child was often left screaming inside his prison while his relatives served patrons at the bar outside.

When the Guardian arrived on the scene, the room with the cage reeked of human faeces. Cobwebs hung from every corner of the room.

PC Gabriel said the naked child seemed happy as he was lifted out of his filthy prison. He was covered in filth and had sore marks on his feet. His fingernails were dirty and his face pale.

Julio is a slow learner and has problems remembering, police said. Even though he is close to five years old, he cannot speak fluently, investigators added.

The child lives in the house with a male relative, who works as a fisherman at Erin. The man reportedly gained custody of the child three years ago, according to officers.

Sources said the relative often spent days away from home. He left Julio in the care of his friend, Ainsley Modeste 57, who operates the bar.

Modeste told the Guardian Julio was kept in the cage because he was mischievous. "We don't keep him there all the time. He does sleep with (name called) upstairs at nights."

He admitted that Julio was kept in his prison throughout the weekend, especially when the bar is busy. When asked why the child was covered in filth, he responded: Ask (name called).

Modeste admitted it was not a good idea to keep Julio locked up, but denied he (Julio) was not socialised. He claimed the boy had started attending the Siparia Union Presbyterian Kindergarten.

Shortly after Julio was rescued, he was taken to the Siparia Community Police Division. He had defecated on himself, but could not be cleaned until he was taken for a medical examination at the San Fernando General Hospital.

Police said charges of child neglect will be laid against Julio's relatives.
The youngster will be left at the San Fernando General Hospital until he could be placed in a foster home. PC Gabriel and WPC Ashby are continuing investigations".

176. In the case of the Second Guardian Article, the Claimants complained of the following:

(a) The caption under the photograph of the Second Claimant:
"JULIO ALMADO READY ….. healthy and happy at hospital"

(b) The following words in the article:

"On Monday around 11 am WPC Ashby and PC's Gabriel, Mohammed and Pajotte went to a Siparia club and found Julio standing naked inside the cage. He was caked in his own excrement. Soiled disposable diapers, plastic bags and a dusty cushion were strewn inside the cage. It was in dusty room under a staircase, a few feet from the stove…."

177. The entire Second Guardian article states:

Guardian South Bureau
SIPARIA man, charged with child neglect, told police investigators yesterday he will do anything in his power to ensure he regains, custody of four-year-old relative, Julio Almando Ready, who was found imprisoned in a makeshift cage on Monday. In a statement to the Siparia Community Police, the man confessed he had built a makeshift confinement for Julio several months ago, after the child almost set fire to his home unintentionally.

Police said the man, of Coora Road, Siparia, had been taking care of the child since he was three months old and did not want him to be placed in a foster home.

On Monday around 11am, WPC Ashby and PCs Gabriel, Mohammed and Pajotte went to a Siparia club and found Julio standing naked inside the cage. He was caked in his own excrement. Soiled disposable diapers, plastic bags and a dusty cushion were strewn inside the cage.

It was in a dusty room under a staircase, a few feet from the stove. The boy is currently at the San Fernando General Hospital Paediatric Ward and is said to be in a healthy and happy condition. Julio was taken for a medical examination on Monday.

The relative was not at home at the time. He had left Julio in the care of Ainsley Modeste 57.

Police said late yesterday the 43-year-old relative was expected to be charged for child neglect by way of summons. He is expected to appear before a Siparia magistrate today to answer the charge. Officers said the man was angry over police intervention in the matter and promised to fight tooth and nail" to regain custody of the child, whom he said he loved dearly.

The man told investigators what the media had termed a cage was in fact a playpen, which he had built for Julio to keep him out of trouble.

He said Julio was mischievous and would often get into trouble, investigators said. On one occasion, Julio turned on the gas tank of the stove and was lighting a match when Modeste intervened, police said.

Since then, the relative decided to build a confinement playpen" for the boy. The cage is made of wooden bars, topped off with a piece of ply. There was a small door at the top of the cage and a lock to prevent Julio from climbing out.

The relative could not explain why the youngster was not placed in a day care centre, police said. Up to late yesterday, investigators were trying to obtain a record of Julio's attendance at the Siparia Union Presbyterian School.
The relative was unavailable for comment yesterday. He told neighbours he intended to take action against the police for humiliation.
JULIO ALMANDO READY … healthy and happy at hospital."

178. It was argued on behalf of the First Claimant that the First Guardian Article and the Second Guardian Articles referred to him on the basis of the words used in the said articles; subsequent articles of various newspaper defendants; and the evidence of persons who said that they knew that the said articles referred to the First Claimant.

179. The words which the First Claimant relied on in the First Guardian Article as referring to him were:

"Julio Almando Ready, of Coora Road, Siparia, was found in a cage around 11 am by a party of officers…who entered Ready's Restaurant and Bar, a stone's throw away from the Siparia Police Station …."

"…the child was often left screaming inside his prison while his relatives served patrons at the bar outside"
"The child lives in a house with a male relative, who works as a fisherman at Erin. The man reportedly gained custody of the child three years ago, according to officers." Sources said the relative spent days away from home…"

180. In the Second Guardian Articles, the First Claimant relied on the mention of the bar and the details of the "*disposition*" of the playpen as referring to him.

181. In neither of the aforesaid articles the First Claimant was named nor was he referred to as the father of the Second Claimant. This is not fatal to the First Claimant's case since it is possible that he may have been identified based on pleaded extrinsic facts supported by evidence.

182. The First Claimant did not plead the extrinsic facts which he relied on for his identification in the First Guardian Article and the Second Guardian Articles. There was no pleading setting out the extrinsic facts known to others which would have assisted them in identifying him as the "*male relative*" who had custody of the Second Claimant but who spent days away from home because of his occupation as a fisherman. In the absence of such a pleading there is no basis for the Court finding that the reasonable reader would have inferred that the First Claimant was the "*male relative*" referred to in the First Guardian Article.

183. The First Claimant also did not plead the subsequent articles which he relied on as identifying him in the First Guardian Article and the Second Guardian Articles. Even in the Claimants closing submission it was not stated which subsequent articles the First Claimant relied upon to connect him to the Guardian Articles. In my opinion the subsequent articles which the First Claimant submitted he was relying on to prove his identification ought also to have been pleaded as extrinsic facts which connected him to the First Guardian Article and the Second Guardian Article.

184. The First Claimant also contended that multiple witnesses gave evidence that they knew that the First Guardian Article and the Second Guardian Articles referred to him. However, with the exception of one witness, Hayden Davidson, none of the Claimants' witnesses gave evidence that they read the First Guardian Article or the Second Guardian Articles. Paulimus Kenny Alfonso evidence was he saw the TV6 news and read the newspaper which had the same story[60]; Cecil Tavernier said he saw the TV6 news[61]; Wayne Morris said he saw the TV6 news and read the Express and the Newsday[62] which he confirmed

[60] Paragraphs 5 and 7 of his witness statement, pg 477 of the Trial Bundle;
[61] Paragraph 2 of his witness statement, pg 481 of the Trial Bundle;
[62] Paragraph 7 of his witness statement, pg 483 of the Trial Bundle

during cross-examination[63] and Cecelia Lorna Peters read the Express newspaper[64] . However, Hayden Davidson did not identify which "*newspaper stories*" from the Guardian he read. There was no evidence from him that when he read the "*newspaper stories*" from the Guardian, he understood them to be referring to the First Claimant. Indeed his evidence was that people with whom he came into contact after the "*newspaper stories*" made negative comments about the First Claimant[65]. In my opinion Hayden Davidson's evidence did not assist the First Claimant in determining if the First Guardian Article and/or the Second Guardian Article were referring to him since there was no indication as to whether the persons making negative comments about the First Claimant read the First Guardian Article and the Second Guardian Article understood them to be referring to him.

185. In my opinion, a reasonable reader who read the First Guardian Article and the Second Guardian Articles in the absence of any extrinsic evidence would have understood that the Second Claimant was kept by his relatives in Ready's Restaurant and Bar while a male relative, who had custody of the Second Claimant for three years, spent days away from home because of his occupation as a fisherman.

186. The reasonable reader would not have identified the First Claimant as the "*male relative*" without knowledge of the extrinsic fact that he was the owner of Ready's Restaurant and Bar and/or that the Claimants lived in the same building as Ready's Restaurant and Bar and/or the First Claimant was a fisherman and/or the First Claimant had custody of the Second Claimant and/or the First Claimant was the father of the Second Claimant. There was also no evidence that the First Claimant and/or Ready's Restaurant and Bar were known to the public at large so that the reference to Ready's Restaurant and Bar would lead reasonable readers to infer that the First Claimant was the person to whom the First Guardian Article and the Second Guardian Article referred to.

[63] Transcript for 12th October 2016 @ pg 30 lines 28-39 and @ pg 31 lines 1 - 8.
[64] Paragraph 5 of her witness statement, pg 2 of the Trial Bundle
[65] Page 488 of the Trial Bundle

187. Therefore in the absence of pleading any extrinsic facts which the First Claimant relied on to prove that the First Claimant was referred to in the First Guardian Article and the Second Guardian Articles and in light of the limited evidence of Hayden Davidson, in my opinion the First Claimant has failed to establish that the reasonable reader would have understood that the First Guardian Article and the Second Guardian Article referred to him.

188. Having found that the First Claimant's cause of action against the Guardian Defendants is statute barred and that he failed to establish that the reasonable reader would have understood that the First Guardian Article and the Second Guardian Article were about him this brings his claim against the Guardian Defendants to an end. However, I will address the other issues on liability which were raised in the pleadings between the Claimants and the Guardian Defendants.

Whether the First Guardian Article and the Second Guardian Articles bear any meaning defamatory of the Claimants

189. The Claimants contended that the words complained of in the First Guardian Article and the Second Guardian Articles, have the same meanings as the publications made by other Defendants in this action, namely, the TV6 Broadcasts and the First Express Article which I have referred to above. The Claimants also contended that there were immoral and scandalous connotations arising from the First Guardian Article which reported that the Second Claimant was found in a bar.

190. In the Claimants' submissions their main objection to the First Guardian Article and the Second Guardian Article was that the Second Claimant was named. To support this argument they relied on the Code of Practice of the Trinidad and Tobago Publishers and Broadcasters Association a document which was not disclosed. **Part 28.13** of the **Civil Proceedings Rules 1998** as amended preclude a party from relying on or producing any document at trial which was not disclosed by the date specified for disclosure. In the instant matter the Claimants did not disclose the Code of Practice and as such they cannot rely on

it. Further it was not tendered into evidence neither was it put to the Guardian Defendant's witness, Ms Sookraj, during her cross-examination.

191. The Claimants also relied on **Section 87(5) of the Children Act**[66]which states that:

> *"87(5) No person shall publish the name, address, school, photograph or anything likely to lead to the identification of the child or young person before the Court, save with the permission of the Court or in so far as required by this Act. Any person who contravenes this subsection is liable, on summary conviction, to a fine of four hundred dollars." (emphasis ours)*

192. Section 87(5) must be read in the context of the entire section 87 which states:

> *"87. (1) A Magistrate, when hearing charges against children or young persons, or when hearing applications relating to a child or young person at which the attendance of the child or young person is required, shall, unless the child or young person is charged jointly with any other person not being a child or young person, sit either in a different building or room from that in which the ordinary sittings of the Court are held, or on different days or at different times from those at which the ordinary sittings are held, and a Magistrate's Court so sitting is in this Act referred to as a Juvenile Court.*
>
> *(2) Where, in the course of any proceedings in a Juvenile Court, it appears to the Court that the person charged or to whom the proceedings relate is of the age of sixteen years, nothing in this section shall be construed as preventing the Court, if it thinks it undesirable to adjourn the case, from proceeding with hearing and determination of the case.*
>
> *(3) Provision shall be made for preventing persons apparently under the age of sixteen years whilst being conveyed to or from Court, or whilst waiting before or after their attendance in Court, from associating with adults charged with*

[66] Chapter 46:01

any offence other than an offence with which the person apparently under the age of sixteen years is jointly charged.

(4) In a Juvenile Court no persons other than the Magistrate and officers of the Court and the parties to the case, their Attorneys-at-law, and other persons directly concerned in the case, shall, except by leave of the Magistrate, be allowed to attend; but bona fide representatives of a newspaper shall not be excluded except by special order of the Court.

(5) No person shall publish the name, address, school, photograph or anything likely to lead to the identification of the child or young person before the Court, save with the permission of the Court or in so far as required by this Act. Any person who contravenes this subsection is liable, on summary conviction, to a fine of four hundred dollars."

193. In my opinion, the intention of the Legislature in **section 87 of the Children Act** was to protect the identity of minors when they are charged with crimes and appear before the Magistrates' Court. The Second Claimant was not charged with any crime therefore the Claimants reliance on section 87(5) is without merit.

194. It was submitted on behalf of the Guardian Defendants that the following words did *not* appear in the First Guardian Article and the Second Guardian Articles:

(a) *completely covered in filth"*;

(b) "*surrounded by faeces";*

(c) *"the stench from the entire place was overwhelming";*

(d) "*kept in the cage for the past year";*

(e) *"in the kitchen of a Siparia bar";*

(f) "*Julio did not talk much. Most of what he said was unintelligible. He made a howling noise when he opened his mouth….*";

(g) "*Julio is the second person to be found in caged quarters in recent weeks. Richard Kolahal, a 28 year old handicapped man, was rescued by the Princes Town Community Police, last month when he was found locked in a room at a house in*

Cedar Hill, Princes Town. Kolahal who is at the Hindustan Islamic Centre, had been kept locked in a room for two years".

195. The Guardian Defendants argued that in the absence of the aforesaid words in the First Guardian Article and the Second Guardian Articles, the Claimants ought not to be permitted to rely on the meanings attributed to those words unless they can establish that those meanings flow from the natural and ordinary meaning of the other words used in the said articles. The Guardian Defendants also submitted that the Court must ascertain the meaning of the words complained of in respect of the First Guardian Article and the Second Guardian Articles in the context of the words used in each such article.

196. I agree with the submission by the Guardian Defendants since the authorities are consistent that the Court can only examine the words used in the First Guardian Article and the Second Guardian Articles to ascertain the natural and ordinary meaning which flow from them.

197. The Guardian Defendants also submitted that the Claimants attributed the most scandalous meaning to the words complained of such as:

(a) The Second Claimant was emaciated, malnourished and in poor health;

(b) The Second Claimant was subject to physical abuse and ill-treatment of the worst kind imaginable;

(c) The Second Claimant's physical welfare and life was in danger;

(d) The Second Claimant was kept like an animal in the zoo and/or as a prisoner or slave against his will;

(e) That the kitchen where the Second Claimant was found was as stink as a sewer or cesspit;

(f) The Second Claimant was an abnormal child, who did not go outdoors, did not go to school, did not go to church, did not visit and play with friends or family and was generally not cared for or loved by anyone;

(g) The Second Claimant was an abnormal or retarded child much like an animal who could not talk properly or at all and,

(h) The Second Claimant was handicapped or disabled or retarded in some way which rendered him unwanted, unloved and abandoned.

198. I have noted that the Claimants have not complained about the words which give context to the words complained of and which would negate the imputations they have asserted which were that the Second Claimant was unwanted, unloved and abandoned or generally not cared for or loved by anyone and/or he did not go to school and/or that he was an abnormal and much like an animal he could not speak properly or that he was handicapped in some way. In the First Guardian Article the Claimants have not referred to the following:

(a) immediately after stating that the "*relative often spent days away from the house*", the First Guardian Article goes on to state that" *He left Julio in the care of his friend, Ainsley Modeste, 57, who operates the bar"*;

(b) immediately after stating that "*Modeste admitted that it was not a good idea to keep Julio locked up*", the First Guardian Article goes on to state that "*[Modeste] denied that he (Julio) was not socialised. He claimed that he had started attended the Siparia Union Presbyterian Kindergarten*" and,

(c) immediately after stating that "*He had defecated on himself*", the First Guardian Article states "*but could not be cleaned until he was taken for a medical examination at the San Fernando General Hospital*".

199. In **Kayam Mohammed** the proper approach the Court is to apply when determining the natural and ordinary meaning of the words is that the Court is to proceed on the basis that the ordinary reasonable reader would not necessarily select the most scandalous meaning possible[67]. In ascertaining the natural and ordinary meaning of the First Guardian Article the entire article must be examined to determine the context of the words complained of[68]. According to the First Guardian Article, the Second Claimant was a young child who was being taken care of by a male relative; the male relative left the Second Claimant with a friend while he went to sea for days to make his living as a fisherman; the friend was the operator of a bar and instead of supervising the Second Claimant, locked him in a wooden

[67] See paragraph 31 of the judgment
[68] Gatley on Libel and Slander 12 ed at paragraph 3.31

cage in the kitchen of the bar during the day while patrons were being served; his reason for doing so was because the Second Claimant was mischievous; the only time that the Second Claimant was removed from the cage was at night when he went upstairs to sleep with the male relative; the Second Claimant was kept in diapers and relieved himself while he was in the cage; the Second Claimant was not cleaned after he relieved himself; the cage was dirty and the room with the cage reeked of faeces; the Second Claimant was happy when he was rescued by the police; the police said that the Second Claimant was a slow learner, had trouble remembering and did not speak fluently but his caretaker denied that he was not socialised and said that he had started kindergarten; the police intended to charge the Second Claimant's relatives with child neglect.

200. In my opinion, the reasonable reader would have understood the First Guardian Article to mean that arrangements were made for the care of the Second Claimant, which were unsatisfactory, while the male relative went off to work; the Second Claimant was kept unsupervised in a dirty cage; he was not toilet trained and he had to wear diapers; the Second Claimant was found by the police in a soiled condition and was left in that state until he could be medically examined. Although the Second Claimant went to school, he was non-communicative with the police when they rescued him.

201. According to **Gatley on Libel and Slander,**[69] in determining whether there is any immoral or scandalous connotation, the Court must have regard to the state of public opinion at the time and place of publication. The First Guardian Article was published in November 2000. At the time of publication, people from all levels of society and throughout both Trinidad and Tobago openly patronised bars and still do. There is nothing in the First Guardian Article to suggest that Ready's Restaurant and Bar was anything other than a run of the mill bar. In my opinion, the reasonable reader would not have imputed that because the Second Claimant was found in a bar it was associated with some immoral and scandalous activity.

[69] 12th ed at paragraphs 2.25 and 2.28

202. The Claimants complained about approximately 8 lines of the Second Guardian Article which comprised approximately 71 lines. The Second Guardian Article stated that the First Claimant was charged with child neglect and in his statement to the police, he stated that he would do anything in his power to ensure that he regained custody of the Second Claimant; that he had been taking care of the Second Claimant since he was three months old and he did not want the Second Claimant to be placed in a foster home; that he would fight to regain custody of the Second Claimant whom he loved dearly and, that he called the cage a playpen and which he said he built to keep the Second Claimant out of trouble.

203. In my opinion, the recounting of the First Claimant's statements to the police negate the imputations contended for by the Claimants that the Second Claimant was abandoned, unwanted and unloved and/or that the First Claimant was guilty of physically abusing the First Claimant in the most abhorrent manner. The ordinary reasonable reader would have understood that the Second Guardian Article was about a case of neglect and the omission to take proper care of the Second Claimant. Further, the ordinary reasonable reader would have understood that the First Claimant believed that he was acting in the best interests of the Second Claimant by keeping him in a locked cage so that he would not harm himself or others.

204. In the Second Guardian Article the ordinary reasonable reader would also view the First Claimant as a single parent struggling to deal with a child acting in a manner which was dangerous to himself and others and who believed that he was acting in his child's best interests by keeping him in a locked playpen so that he would not hurt himself or others. The ordinary reasonable reader would have been left with the overall impression of the First Claimant's side of the story. In my opinion, the First Claimant would not have been discredited, lowered in the estimation of others, shunned, avoided or exposed to hatred, contempt or ridiculed as a result of the publication of the words complained of in the First Guardian Article and the Second Guardian Article.

205. Further, the Second Claimant would have elicited sympathy from the ordinary reasonable reader after reading the First Guardian Article and the Second Guardian Article since he

was a child at the time and his care was the responsibility of others. In this regard the Second Claimant would not have been discredited, lowered in the estimation of others, shunned, avoided or exposed to hatred, contempt or ridicule by reason of the lack of proper supervision for him.

206. I do not share the Claimants' view that the words complained of were defamatory of them.

Whether the First Guardian Article and the Second Guardian Articles are true in substance and in fact

207. In the Defence filed by the Guardian Defendants they pleaded that even if the First Guardian Article and the Second Guardian Articles were defamatory they relied on the Defence that, the inclusion of the alleged defamatory material was justifiable.

208. Although I have already concluded that the natural and ordinary meaning of the First Guardian Article and the Second Guardian Articles to the reasonable reader were not defamatory of the Claimants, for completeness I will address the defences raised by the Guardian Defendants.

209. **Section 3 of the Libel and Defamation Act**[70] provides for the defence of justification as:

> *"3. In any action for defamation or libel, the defendant may plead the truth of the matters charged by way of justification in the same manner as he might do in a like action in a Court in England and the plea shall be a sufficient answer in law to any such action; and if, on the issue joined on such plea, a verdict is given for the defendant, the defendant shall have final judgment and recover his costs of the suit."*

210. The requirements for making out a defence of justification are set out in **Gatley on Libel and Slander**[71] as**:**

[70] Chapter 11: 16
[71] 12thed @ paras 11.7 to 11.8

"11.7. For the purposes of justification, only the 'substantial' truth of the imputation must be proved. The defendant can rely on the defence of justification if he proves that 'the main charge, or gist, of the libel' is true.This is an objective requirement: it is the facts as they were, not the facts as they appeared to the defendant or some other observer that must be proved. If the gist of the libel can be proved, then there is no need also to prove peripheral facts that do not add to the sting of the charge or introduce any matter that is separately actionable: 'it is sufficient if the substance of the libellous statement can be justified……as much must be justified as meets the sting of the charge, and if anything be contained a charge which does not add to the sting of it, that need not be justified.' Hence, when considering substantial truth, it is important to 'isolate the essential core of the libel and not be distracted by inaccuracies around the edge – however substantial……..Publishers can be permitted a degree of exaggeration even in the context of factual assertions, and – provided the sting of a libel has been established – 'it is no part of the court's function to penalise a defendant for sloppy journalism, still less for tastelessness of style'……..The whole context of the imputation complained of is relevant to the determination of the meaning and can provide the basis for the defence of truth. The nature of the sting of the libel can be shaped by the context of the publication as a whole. This can be particularly important, for example, should a claimant seek to sue on one allegation only when it might be argued that this comprised only part of a wider imputation. Words cannot be taken out of context. The claimant is not entitled to take a blue pencil to the article so as to change its meaning, and then prevent the defendant from seeking to prove the truth of the words in their unexpurgated form." (Emphasis added)

"11.8. The requirement that the defendant need prove only the substantial truth of what has been published entails that a defence of truth may succeed even though the publication was inaccurate in a number of

respects. If the defendant can prove that the main charge or gist of the libel is true, a slight inaccuracy in one or more of its details will not prevent him from succeeding in a defence of truth."

211. The onus was on the Guardian Defendants to prove the Defence of justification. There were five particulars of justification which they pleaded.

212. The first particular was that: *"The 2nd Claimant is and was at all material times a minor who was found in a structure with bars and a lid which structure measured approximately five feet in height and was equipped with a padlock*." According to paragraphs 7 and 8 of the First Claimant's witness statement, the structure was "*4 feet high, 4 feet diameter with 1" x 3" white pine bars apart….*" with "*a cover……..made with ¼" plywood*" and "*a very small lightweight padlock to better secure it*".

213. During cross-examination, he admitted the possibility that the structure could have been five feet[72]. The Claimants' witness, Mr. Modeste, also confirmed that the Second Claimant was in a playpen equipped with a cover and a padlock at the time of the police intervention. According to his witness statement:

"The playpen is 4 ft high, 4 ft circular in diameter……The cover is made of ½ inch plywood. In about June 2000 a cover and about September 2000 a padlock was added to the playpen……On Monday 13th November 2000……around 11:45 a.m. At that time, I placed Julio in the playpen……Shortly after that…….I heard loud voices and commotion……I say (sic) a tall man in plainclothes rushing towards me ……The tall man shouted at me 'where d child – you lock up'. He pointed to Julio and said remove this child from the playpen."[73]

214. This evidence was consistent with Mr. Modeste's evidence in the Magistrates' Court where he stated:

[72] Transcript for 10th October 2016 at pg 25 lines 35-39 and pg 67 lines 16-19
[73] Pgs494 and 496 of the Trial Bundle:

"The police took the child from a playpen. The playpen is circular diameter 4' height approximately 4'.....There was a cover when the police came. The cover is made of ½" plywood. There is a lock to secure that cover."[74]

215. During cross-examination, the First Claimant accepted Mr. Modeste's evidence as true and correct[75].

216. It was not in dispute that the Second Claimant was a minor at the time of publication. In my opinion the evidence of the First Claimant and his witness Mr Modeste demonstrated that the structure which the Second Claimant was kept in was true in substance and fact.

217. The second particular of justification which the Guardian Defendants pleaded was: "*The said structure was kept in a room with no or poor ventilation close to the kitchen of Ready's Restaurant and Bar, Coora Road, Siparia"*. According to the First Claimant's evidence the said structure was kept in the kitchen of the bar, near the stairway[76]. It was disputed whether the kitchen had no or poor ventilation. According to the First Claimant's evidence in his witness statement the kitchen was about 24 feet x 12 feet; with two doors – an entrance door and a door leading to the bar – and a large window facing the entrance door and five windows over the kitchen sink. However, the First Claimant was not present at the material time and would therefore be unable to speak to the ventilation in the kitchen on the day in question.

218. On the other hand, according to paragraph 8 of the witness statement of the Ninth Defendant, Ms. Sookraj, upon entering the room, she immediately noticed that the room was not well lit or ventilated[77]. Ms. Sookraj's evidence on the issue of the lighting or ventilation in the kitchen was not challenged by the Claimants during cross-examination.

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[74] Pg 316 of the Trial Bundle

[75] Transcript for 10th October 2016 @ pg 76 lines 31-41 and pg 77 lines 1-2:

[76] Paragraph 15 of the 1st Claimant's witness statement at page 471 of the Trial Bundle and Transcript for 10th December 2016 @ pg 67 lines 35 - 40.

[77] Pg 535 of the Trial Bundle

219. The Claimants relied on the evidence from Mr Michael Bruce, the Newsday photographer, and Mr Richard Charan, the Newsday reporter, during their cross-examination they said that the room was well-lit. I have attached little weight to the evidence of Mr Bruce and Mr Charan on this matter since they were not there at the same time as Ms. Sookraj [78]. Further, Mr. Charan and Mr. Bruce gave conflicting evidence as to the location of the structure in the house. On the one hand, Mr. Charan said that he saw the structure in the living room, while Mr. Bruce said that he saw the structure in what appeared to be a kitchen[79]: and the evidence of Mr. Bruce was in relation to lighting, not ventilation and even so, in relation to lighting, his evidence was adduced in respect of an entirely different day, namely, the next day, 14th November 2000[80]. In any event, the evidence of Ms Sookraj on the issue of lighting and ventilation was not challenged in cross examination.

220. I therefore accept that Ms Sookraj's evidence of the lighting and ventilation in the kitchen was consistent with the location of the kitchen, namely, in the downstairs portion of the house and at the back of the bar and for this reason I was satisfied that the Guardian Defendants had proven this particular.

221. The third particular of justification pleaded was "*In or around the said structure were dirty diapers and litter, to wit, plastic bags, a piece of cloth and a dusty cushion".* According to paragraph 8 of the witness statement of Ms Sookraj the cage had what appeared to be pieces of brown carpet nailed to the floor of it and there were dirty disposable diapers, plastic bags, a dusty cushion and a piece of cloth on the floor of the cage[81]. Ms. Afiya Butler, the Express reporter saw the wooden cage on the same day as Ms Sookraj. She corroborated Ms. Sookraj's evidence that the structure was not clean[82]. While Ms. Butler could not recall at the time of the trial, some 16 years later, whether there were dirty diapers in the structure, her distinct recollection was the scent of faeces. However when she signed her witness

[78] Paragraph 3 of Mr. Charan's witness statement @ pg 581 of the Trial Bundle and paragraph 5 of Mr. Bruce's witness statement @ pg 587 of the Trial Bundle.
[79] Paragraph 5 of Mr. Charan's witness statement @ pg 581 of the Trial Bundle and paragraph 5 of Mr. Bruce's witness statement @ pg 587 of the Trial Bundle.
[80] Transcript for 13th October 2016 @ pg 50 lines 20-41 and pg 51 lines 1 – 12.
[81] Pg 535 of the Trial Bundle
[82] Transcript for the 14th October 2016 at pg 12 lines 15-18 and lines 28-41

statement, 9 years after publication, she was able to confirm her observations on the day which included that there was a dirty diaper in the structure. The Claimants' own witness, Mr. Modeste, also corroborated the evidence of Ms. Sookraj and Ms. Butler that there was at least one dirty diaper in the structure[83].

222. The Claimants contended that Mr. Bruce's evidence disproved the evidence of the witnesses of the other Defendants. However, the evidence of Mr. Bruce, on which the Claimants rely, concerns his observation on 14th November 2000, the day ***after*** Ms. Sookraj and Ms. Butler made their observations of the condition of the structure[84].

223. Therefore based on the evidence of Ms Sookraj, Ms Butler and Mr Modeste I accept that the Guardian Defendants were able to prove the said particular.

224. The fourth particular of justification which the Guardian Defendants relied on was "*The room in which the said structure was located reeked of urine and faece*s". According to paragraph 8 of the witness statement of Ms Sookraj the room smelt of urine and faeces. According to Ms. Butler's evidence her distinct recollection was also the scent of faeces. This was also consistent with the evidence of the Claimants' own witness, Mr. Ainsworth Modeste, who stated that the Second Claimant took off a pamper which was dirty with faeces, he put it in a bin in the room but he (Mr. Modeste) was not permitted to clean the Second Claimant. He also stated that he was instructed by the First Defendant to put the dirty pamper in the structure[85].

225. The Claimants relied on the evidence of Mr. Howell, the Guardian Photographer, and Mr. Bruce, the Newsday Photographer to dispute the contention under this particular. Mr. Howell stated that he did not see the Second Claimant covered in faeces. He was earlier cross-examined on the issue of the scent of faeces on the Second Claimant and he stated that he would not have remembered the scent because of the distance between him and the

[83] Trial Bundle page 496 witness statement of Ainsworth Modeste
[84] Transcript for 13th October 2016 @ pg 50 lines 20-41 and pg 51 lines 1 to 4.
[85] Trial Bundle page 496 witness statement of Ainsworth Modeste

Second Claimant when he saw him[86]. As such, his evidence did not in any way negate the evidence from Ms. Sookraj, Ms. Butler and the Claimants' own witness, Mr. Modeste. Also, Mr. Bruce's observation that he saw no faeces in the structure was made sometime after the police and the media had left the premise which is of little assistance.

226. Based on the evidence I have concluded that it was therefore more likely than not that the room reeked of faeces and as such the fourth particular of justification was proven.

227. The fifth particular pleaded in the Guardian Defendant's Defence of justification was that "*The 2nd Claimant smelt filthy and had dirty fingernails and a pale face*". At paragraph 5 of Ms. Sookraj's witness statement she stated *" I noticed that the child' face was pale, his fingernails were dirty and the smell of faeces."*[87]. During cross-examination, she maintained that the Second Claimant was not clean when she saw him and that he smelt of faeces[88]. Ms. Butler's evidence corroborated Ms. Sookraj's evidence that when she saw the Second Claimant he was in front of her and he looked dirty and smelt of faeces[89]. Both Ms. Sookraj's evidence and Ms. Butler's evidence were corroborated by the Claimants' own witness, Mr. Modeste, whose witness statement confirmed that the Second Claimant soiled his pampers, took it off and remained in a soiled state[90]. The Guardian Photographer, Mr. Howell also confirmed that the Second Claimant looked "*very dirty*" when he saw him[91].

228. There were also certain facts which the Claimants admitted as true and which displaced the presumption of falsity in respect of the words complained of. The First Claimant admitted in cross-examination that:

(a) The Second Claimant was deliberately locked in the structure[92].

[86] Transcript for 12th October 2016 @ pg 99 lines 20 – 23.
[87] Trial Bundle page 534
[88] Transcript for 12th October 2016 @ pg 77 lines 1-2 and 15-24.
[89] Transcript for 14th October 2016 at pg 16 lines 31 to 40 and pg 17 at lines 1 to 4
[90] Trial Bundle page 496 witness statement of Ainsworth Modeste
[91] Transcript for 12th October 2016 @ pg 99 line 34.
[92] Transcript for the 10th October 2016 at pg 32 lines 20-26

(b) The Second Claimant was locked in the structure in order to prevent him from coming out when the Second Claimant could not be supervised and when food was being prepared in the kitchen.[93]

(c) A cage is something from which one cannot escape[94].

(d) The Second Claimant still wore diapers or pampers at the age of four and he did so while he was in the cage[95]

(e) On the 13th November 2000, the Claimant was naked after having taken off his pamper/diaper[96].

229. Therefore, even if the First Guardian Article and the Second Guardian Articles were defamatory, the Guardian Defendants were able prove the particulars of the defence of justification which they had pleaded.

If the First Guardian Article and the Second Guardian Articles are defamatory were they published on an occasion of qualified/Reynolds privilege.

230. The Guardian Defendants also relied on the defence of Reynolds privilege. I have already stated that the treatment of children in our society is matter of a public interest.

231. The next question is whether it was reasonable to include the words complained of in the First Guardian Article and the Second Guardian Article. As already stated the words complained of in the First Guardian Article informed the reader of the conditions in which the Second Claimant was found on 13th November 2000, his overall condition, his reaction to the police and of being rescued from the structure and the caretaker's response to the Second Claimant being kept in the structure. The words complained of in the Second Guardian Article repeated the conditions in which the Second Claimant was found on 13th November 2000. Therefore having regard to the public interest in the treatment of children,

[93] Transcript for the 10th October 2016 @pg 32 lines 20-26; pg 32 lines 34-37; and pg 33 lines 18-25
[94] Transcript for 10th October 2016 @ pg 53 lines 7-9:
[95] Transcript for 10th October 2016 @ pg 75 lines 20 – 23 and 36-39:
[96] Transcript for 13th October 2016 @ pg 76 lines 26-30 and 39 – 41 and pg 77 lines 1-3:

it was reasonable to include the words complained of in the First Guardian Article and the Second Guardian Article.

232. I will now consider whether the Guardian Defendants met the standards of responsible journalism regard must be had to the non-exhaustive list of considerations in **Reynolds** which I have set out aforesaid**.**

Source of information; verification; status of information; comment from First Claimant; gist of the First Claimant's side of the story; Urgency; Tone; circumstances of the publication.

233. According to the evidence of the Guardian reporter, Ms. Sookraj she received a telephone call from a police officer who informed her that the police were going to rescue a child who was being kept in a basement near the police station. Ms. Sookraj went to the police station where a police officer pointed out to her the Second Claimant. She went up to see the Second Claimant and observed that his face was pale, his fingernails were dirty and he smelt of faeces. She attempted to speak to the Second Claimant but he said nothing. She then went to the scene where she spoke to several people who were assembled in front of Ready's Restaurant and Bar. The information which she received from these persons confirmed that the police had taken a child from the bar. One woman told her that the child was locked up and he was bawling[97].

234. Ms Sookraj also stated that she spoke to one of the police officers present at the bar who informed her that the police had responded to the calls from patrons of the bar who said that the child was locked in a cage, that he was not being cleaned and that he could be heard screaming and banging inside his prison and the police had found him in the cage naked and covered in faeces. She also enquired about the parents of the Second Claimant and she was informed by the police officer that the father had custody but that he was not there[98].

[97] Paragraphs 4 – 6 of Ms. Sookraj's witness statement.

[98] Paragraphs 4 – 6 of Ms. Sookraj's witness statement**.**

235. Ms. Sookraj stated that she then walked into the room in question and made certain observations which she reported in the First Guardian Article. While she was there, the First Defendant provided information about the events leading up to the Second Claimant's removal from the structure as well as the Second Claimant's reaction to being removed from the structure. The police also informed Ms. Sookraj that the Second Claimant was a slow learner, could not speak fluently and that he had problems remembering things, which she duly reported[99].

236. Ms. Sookraj also interviewed Mr Modeste in whose care the Second Claimant was placed on 13th November 2000. He was not responsive at first but upon Ms. Sookraj explaining to him the importance of speaking out on a matter of public interest, he volunteered information which she duly included in the First Guardian Article[100].

237. She also spoke to a number of patrons of the bar and villagers in the area who corroborated the information provided by the police. She was satisfied from all that she had seen and heard that day that the information received from all her sources was credible and reliable.[101]

238. In writing the First Guardian Article, Ms Sookraj reported the information which she received from the police and which she corroborated by her own observations and from other sources. She also took the precaution of not naming the First Claimant since she did not have the opportunity to speak to him before publication. She took the decision to forward the First Guardian Article for publication because of its newsworthiness on a matter of public importance[102].

239. In the case of the Second Guardian Articles, Ms. Sookraj went to Ready's Restaurant and Bar to speak to the First Claimant but he was not there at the time. She obtained his side of

[99] Paragraph 9 of Ms. Sookraj's witness statement.
[100] Paragraph 10 of Ms. Sookraj's witness statement.
[101] Paragraph 11 of Ms. Sookraj's witness statement.
[102] Paragraph 12 of Ms. Sookraj's witness statement.

the story from the police officers who had questioned the First Claimant. The information which she received from the police officers was corroborated by the First Claimant's neighbours in Siparia. Having satisfied herself that the information was credible and reliable, she reported the information which she had received and corroborated and again she did not name the First Claimant since she still did not have the opportunity to speak to him[103].

240. In my opinion the First Guardian Article and the Second Guardian Articles met the standard of responsible journalism since they were balanced and not sensational. They recounted the events based on the information received and corroborated and they gave the First Claimant's side of the story, albeit communicated through third parties.

241. For the aforesaid reasons, I am satisfied that the **Reynolds** defence has been established in relation to the First Guardian Article and the Second Guardian Articles.

242. It was argued by the Claimants that the **Reynolds** defence may be defeated by malice. In support of this position they submitted that the re-enactment of the rescue of the Second Claimant and the acceptance by Ms Sookraj in cross examination fact that the story was a "juicy" one constituted malice.

243. In my opinion the Claimants' argument is without merit since the Court of Appeal in **Kayam Mohammed** stated at paragraph 60 that:

> *"The defence of Reynolds privilege is a complete defence and if established denies any remedy to the claimant."*

244. In any event, the re-enactment of the rescue of the Second Claimant which was done by the police and Ms Sookraj's acceptance that the story was a "juicy" one - does not constitute malice since all news reporters actively pursue stories which they consider to be newsworthy and the re-enactment of a scene is a journalistic tool which is used to convey a story in a visual form. Further, the Claimants did not challenge the evidence from the

[103] Paragraph 13 of Ms. Sookraj's witness statement.

witnesses for the Guardian Defendants that the publication of the photographs was motivated by any ulterior purpose. Further, the Claimants' reliance on the Newsday Editorial of 19th November 2000 which claimed that the police were induced to put the Second Claimant back into the cage so that the media could take photographs is the opinion of the Editor of the Newsday who had no authority to speak for the Guardian Defendants.

245. It was also submitted on behalf of the Claimants that there was a conspiracy between the First Defendant and the Guardian Defendants to recreate the purported "rescue". In my opinion this submission is without merit since there was no case of conspiracy pleaded by the Claimants in its original or amended Statement of Claim and there was also no credible evidence before the Court that the Guardian Defendants conspired with the First Defendant to recreate the purported "rescue". The only evidence elicited from the Guardian Photographer, Anthony Howell, was that he had been told by an unnamed person that "*we are going across now to see the boy in the cage*" and he was led by the police together with other persons to Ready's Restaurant and Bar where he took photographs of the Second Claimant in the structure[104]. Mr. Howell did not see how the Second Claimant got into the structure and the Second Claimant was already in the structure when he saw him there[105]. In any event, it is irrelevant to the gist or truth of what the photographs conveyed which was the Second Claimant had been removed from the structure by the police which was not in dispute.

THE ISSUES BETWEEN THE CLAIMANTS AND THE NEWSDAY DEFENDANTS

Whether the Newsday Article bear any meaning defamatory of the Claimants or either of them?

[104] Transcript for 12th October 2016 @ pg 100 lines 13- 18 and @ pg 102 lines 19-24.
[105] Transcript for 12th October 2016 @ pg 105 lines 26- 31.

246. The words complained of by the Claimants in the Newsday Article are set out below as:

(a) Headline *" Infant locked in a cage"* together with two photographs taken by the Thirteenth Defendant, the first showing an image of the Second Claimant sitting in a bed at the San Fernando General Hospital and the second showing an image of the Second Claimant's physical playpen and captioned *"Cage; the cage strewn with dirty diapers in which little Julio Al Mando Ready was found by the cops"*

(b) The following words in the Newsday Article written by the Twelfth Defendant *"NAKED and covered in his own excrement, an infant boy was found by police locked in a wooden cage, in a darkened room of the family's house yesterday… PC Gabriel…came upon a five foot high wooden cage. Inside was the naked boy surrounded by soiled diapers…the bars of the pen were stained with excrement."*

247. It is noted that the Claimants did not complain about most of the Newsday Article but only 3 out of the 15 paragraphs. The Newsday Article set out in its entirety stated:

"NAKED and covered in his own faeces in a wooden cage, in a darkened room of his family's house yesterday.

Little Julio Al Mando Ready is at the San Fernando General Hospital and his father is assisting the police with their investigation.

It's estimated that Julio is four years old. There is no birth certificate since his birth was never registered.

The discovery was made only two blocks away from the Siparia Police Station.

Community Police learnt of the child's situation from an anonymous phone call.

Acting on the information PCs Gabriel, Pajotte, Mohammed and WPC Ashby went to a restaurant and bar at Coora Road, Siparia.

One of the doors was partially open. Inside the dark building, they came upon a five foot high wooden cage. Inside was the naked boy, surrounded by soiled diapers.

The bars of the pen were stained with excrement. The boy's care-taker, Ainsley Modeste, was later found.

He said that the child's father, the owner of the bar was also a fisherman working out of the Erin fishing port. Modeste said the boy's father would often leave him at home, but always in the care of Modeste.

As to why the boy was kept in the cage, Modeste said that the child would run into the restaurant area. He had to be restrained in what Modeste described as a "play pen".

Modeste claimed that the boy was caged yesterday because he had been given a day off from school, because the school was infested with fleas.

The boy's 35-year old mother is said to have abandoned him soon after his birth. The boy's father has had legal custody since he was three months old.

Snr Supt for the South Western Division Police, Davanand Gosine, called the find "disturbing".

The boy, whose condition police described as "good", is being kept at the Paediatric Department of the hospital. Police investigations will determine whether he will be returned to his father."

248. The Claimants contended that the words complained of had the same meanings as the publications made by other Defendants in this action, namely, the TV6 Broadcasts and the First Express Article which I have already referred to. They also contended that the words that the Second Claimant was found "*in a darkened room of his family's house"* was understood to mean that he was kept in a room that was not used regularly or at all, as it was a store room and he was unwanted, unloved and abandoned. The words that "*the bars of the pen were stained with excrement"* were understood to mean that Second Claimant had strewn his own excrement on the play pen or otherwise played with it, like a dog or other animal and that he was kept in inhumane conditions.

249. The Newsday Defendants submitted that the pleaded meaning of the Newsday Article was over elaborate, too literal and in disregard to the context. Like the Guardian Defendants, the Newsday Defendants also submitted that it was wrong for the Claimants to mix up the meaning of different publications from the different Defendants since it was illogical to suggest that different words set in a different context all have the same meaning.

250. As with the First Guardian Article and the Second Guardian Articles the Newsday Article did not contain the following words:

(a) *completely covered in filth"*;

(b) "*surrounded by faeces";*

(b) *"the stench from the entire place was overwhelming";*

(c) "*kept in the cage for the past year";*

(d) *"in the kitchen of a Siparia bar";*

(e) "*Julio did not talk much. Most of what he said was unintelligible. He made a howling noise when he opened his mouth….*";

(f) "*Julio is the second person to be found in caged quarters in recent weeks. Richard Kolahal, a 28 year old handicapped man, was rescued by the Princes Town Community Police, last month when he was found locked in a room at a house in Cedar Hill, Princes Town. Kolahal who is at the Hindustan Islamic Centre, had been kept locked in a room for two years*".

251. In determining the ordinary meaning of the words complained of the context of the entire Newsday Article must be examined. The essence of the entire Newsday Article concerned the police investigation into the circumstances of Second Claimant being in the wooden play pen/cage. In my opinion a reasonable reader would have understood the Newsday Article to mean that the Siparia Community Police were investigating the discovery at a restaurant and bar at Coora Road, Siparia of a naked 4 year old boy covered in his own excrement and kept inside a locked wooden cage or play pen inside a darkened room, when left by his father with caregiver, a Mr. Modeste the barman.

252. In my opinion, the words complained of read in the context of the entire Newsday Article were not defamatory of the Second Claimant. The Second Claimant who was a child have elicited sympathy from the ordinary reasonable reader and he would not have been discredited, lowered in the estimation of others, shunned, avoided or exposed to hatred, contempt or ridicule by reason of the lack of proper supervision for him. Rather he would be viewed as a victim of neglect at the hands of his caretaker, Mr Modeste.

WHETHER THE NEWSDAY ARTICLE WAS TRUE IN SUBSTANCE AND IN FACT

253. The Claimants pleaded at paragraph 2 of the Amended Statement of Case that the Second Claimant was 4 and half years old and the First Claimant was a self-employed fisherman and bar owner and that he kept the Second Claimant *for very short periods of time in a playpen*. The Newsday Defendants did not admit paragraph 2 of the Amended Statement of Case.[106].

254. In support of the Amended Statement of Case the First Claimant stated the following in his witness statement[107] that: the Second Claimant had been in his care since he was three months old, his mother having *" ...left him in basket in my kitchen (and) didn't come back"* (paragraph 6); he admitted that at age 3 he built especially for the Second Claimant a homemade play pen (paragraph 7); he built for the play pen a plywood cover with a hasps and staple and a padlock (paragraphs 7 and 8) ; that he put the Second Claimant in there on a daily basis (paragraph 16); but he only did so whenever he or Mr. Modeste was cooking (paragraph 15).

255. The First Claimant stated in cross examination that:

> *"Q...And the word " cage' was used because you had constructed it in such a way, and your evidence to the Court this morning has been, it had been built in such a way, so as to ensure that Julio could not escape when he wanted to. That is why you put in the lid, that is why you put in the hasp that is why ultimately you put in the padlock, because you did not want him t get out when he wanted to. Isn't that so ? A: That is so.[108]"*

256. In further support of the Amended Statement of Case the Claimants relied on the witness statement of Mr Modeste[109] . According to Mr Modeste, the First Claimant was the Second

[106] e. g Newsday made no admissions to these paragraphs other than admitting that Second Claimant was a minor and resided at the Coora Street, Siparia address.
[107] Pages 468-475 Trial Bundle
[108] See cross examination of Jude Ready on 10 October 2016 pp 80 lines 21 to 29.
[109] Trial Bundle pp 494 - 500

Claimant's father and he was the owner of the bar and a fisherman working out of Erin fishing port. He said the First Claimant would often leave the Second Claimant at home, but always in the care of Mr Modeste. He also stated that the Second Claimant was kept in the cage since he would run into the restaurant area. The Second Claimant had to be restrained in what Mr Modeste described as a "play pen." Mr Modeste also stated that the Second Claimant was in the cage on the day the police intervened since he had been given a day off school, because the school was infested with fleas.

257. Mr Modeste stated that he prepared and cooked all of the Second Claimant's meals and he had never seen the Second Claimant's mother at the house ;the Second Claimant had been kept in the play pen since November 1999[110] ; the Second Claimant was kept in the play pen for about an hour a time ;the padlock was added to the play pen since September 2000; the police found the Second Claimant in the play pen ; and the Second Claimant was still in pampers at age 4.

258. The Claimant's witness, Mr. Paulimus Alfonso admitted in paragraph 3 of his witness statement that he saw the Second Claimant in the play pen[111].

259. Mr Wayne Morris' evidence in cross-examination was: [112]

> *"Q...when Mr. Ready told the Court on Monday, that he had had that playpen for more than a year , before 13 November 2000, do you accept the truth of Mr. ready's testimony to that effect ?*
>
> *A: Yes.*

260. Based on the Claimants' pleading and the evidence in support of their case, the following facts in the Newsday Article were true namely: the First Claimant had custody of the Second Claimant since he was 3 months old; it was the First Claimant's practice of putting the Second Claimant into an enclosed homemade circular wooden "cage"; Second Claimant was around 4 years old in November 2000; the Siparia Community Police went

[110] Confirmed by Jude Ready in cross examination on 10 October 2016 pp 68 lines 7 to 15.
[111] Page 447 of the Trial Bundle
[112] Eg pp 33 lines 24 to 26 and 39 to 41.

to a restaurant and bar at Coora Road, Siparia where they came upon a five foot high wooden cage where they found the Second Claimant**;** the First Claimant was the owner of the bar and a fisherman working out of Erin fishing port; the First Claimant would often leave the Second Claimant at home, but always in the care of Mr Modeste; the reasons for placing the Second Claimant in the cage was because he would run into the restaurant area and when the police found the Second Claimant he was in the cage because he had been given a day off school, because the school was infested with fleas.

261. In my opinion, material aspects of the circumstances surrounding the discovery of the Second Claimant were true based on the evidence of the First Claimant and his witnesses.

If the Newsday Article bear a defamatory meaning, whether it was published on an occasion of qualified/Reynold privilege.

262. Although I have determined that the natural and ordinary meaning of the words were not defamatory, I will still examine the merits of the Defence of qualified privilege/ Reynolds defence as pleaded by the Newsday Defendants.

263. I have already stated that the treatment of children in our society is matter of public interest and concern which the First Claimant accepted in cross-examination.

264. In determining whether it was reasonable to include the words complained of in the Newsday Article I have already stated that the essence of the Newsday Article was the police investigation into the circumstances of Second Claimant being in the wooden play pen. Having regard to the public interest it was reasonable to include these words.

Source of Information; Verification; Status of Information; comment from the Claimant; gist of the Claimant's side of the story

265. According to the evidence of Richard Charan and Mr Michael Bruce they went to the home of the Claimants and they saw a play pen/cage, they noted their observations and Mr Bruce photographed it.[113]

266. Mr Richard Charan's evidence was he received a telephone call from a police officer attached to the Siparia Police Station and as a result of the telephone call he went right away with the available photographer, Mr. Bruce to the Claimants home at Coora Road, Siparia. Mr. Charan's assessment was that the story was of human interest and would be a matter of public interest.

267. Upon arrival, Mr Charan observed that there was a business of a bar being operated there although it was closed at the time. At the premises both Mr Charan and Mr Bruce met Mr. Modeste, who identified himself as an employee and also the caretaker of the child who was the subject of the story. It was Mr. Modeste who led them through a side entrance of the bar to a portion of the building to the rear of the bar that appeared to be the living area.

268. Mr. Charan's account was that there in the living room was a wooden structure about 5 feet high and was cylindrical so that it contained items and was very filthy. It appeared to be some sort of cage or contained thing. Inside of it were dirty diapers and one or two toys obviously belonging to a young child. The structure was comprised of vertical planks of wood bound by a metal strip at the top of the structure. There was a circular covering at the top. There was a latch on one of the wooden planks with a pad lock on it. Each plank was approximately 4 inches wide and placed about 4 inches apart from the each other. Mr. Charan observed that the surrounding room and other parts of the building through which he had entered appeared to be well kept and well maintained.

[113] See Richard Charan witness statement paragraphs 2, 3, 4 & 5. Michel Bruce witness statement para 4, 5, 6 & 7.

269. Mr. Charan and Mr. Bruce then proceeded to the Siparia Police Station. According to Mr Charan the first to sixth paragraphs of the Newsday Article were based on conversations, questions and responses that that he elicited from a group of officers stationed at the Siparia Police Station on the evening of 13th November 2000.

270. Mr. Charan's testimony was that paragraphs 7 and 8 of the Newsday Article beginning with the words "*one of the doors was partially open…"* were based both on the reports of the various police officers and from his direct observations from the visit to the house and the interview with the Second Claimant's caretaker Mr. Modeste. He also stated that paragraphs 9 to 13 of the Newsday article were based on his discussions with Modeste. Mr. Charan stated that, after leaving the Ready residence he telephoned Senior Superintendent Davanand Gosine, South Western Division Police, whose comment on the matter was published at paragraph 14 of the Newsday article. According to Mr Charan paragraph 15 of the Newsday Article was based on information given to him by the police officers of the Siparia Station.

271. Both Mr. Charan and Mr. Bruce went the San Fernando General Hospital, Pediatrics department from Siparia Police Station where the Second Claimant was seen and photographed but not spoken to and this photograph was published next to the Newsday Article on page 41. Mr Charan's evidence was unchallenged in cross examination.

272. Mr Charan's evidence was corroborated in large measure by the Newsday photographer, Mr. Bruce. According to Mr Bruce, he was based at the Newsday South office and Mr Charan told him of an incident in Siparia. He was the only photographer available at the time therefore both he and Mr Charan proceeded to Siparia. When they arrived at a residence in Siparia at Coora Road it appeared to him that there was a business being operated from the house but it was not in operation at that time. According to Mr Bruce, Mr Charan spoke with someone and they were both led into the house and into a room that appeared to be a kitchen. Mr Bruce said he saw a stove in one part of the room which was generally neat and clean and he did not recall any smell. However, in the room, he saw an elevated wooden structure that looked like a cage. There was a latch on one of the vertical

wooden bars of the cage that fitted into the other part of the latch attached to the top lid of the cage. He did not recall seeking a pad lock on it. He also observed toys in the cage. He did not see a child in the cage and he did not recall observing any faeces or excrement in or around the cage, which was about 5 feet tall. He took photographs of the cage. He did not participate in any discussion with the man or with Mr Charan on the cage.

273. According to Mr. Bruce, he did not interview any police officers but he attended the San Fernando Hospital, Paediatric department where he saw a particular child and took photographs which were published by the Newsday on 14th November 2000 on page 41 and the photographs of the cage and the child sitting are the pictures taken by him. Mr. Bruce's evidence in cross-examination was essentially unchallenged[114].

274. Based on the evidence of Mr Charan and Mr Bruce, the Newsday Article was based on the observations of Mr Charan , the direct knowledge from the informants namely the police officers and the Second Claimant's caretaker, Mr Modeste. While no direct comment was sought from First Claimant since he was not available at the bar, Mr Charan obtained a comment from Mr. Modeste who was the Second Claimant's caregiver and an account of how he came to put the Second Claimant into the playpen. In my opinion, the Newsday Article contained the gist of the Claimants side of the story.

Urgency; tone; circumstances of publication

275. In my opinion, the Newsday Article was moderate in its tone and phrasing. Paragraphs 1 and 15 of the Newsday Article dealt with the fact that the matter was under police investigation. It reported what the police officers were alleged to have found or discovered and it did not adopt the allegations as statements of fact. All the circumstances of the publication, including the timing were set out in the Newsday Article and the very nature of the story made it urgent.

[114] Transcript pg 44 line 11 to pg 53 line 5

Malice

276. I have already stated that the defence of Reynolds privilege is a complete defence and if it is established it denies the Claimant any remedy. The Newsday Defendants pleaded a Defence of Reynolds qualified privilege and having found that they have established this defence the issue of malice does not arise.

277. In any event, the Claimants failed to put any alleged improper motive or lack of honest belief to any of the Newsday Defendant's witness in cross examination. On the contrary under cross-examination each of the Newsday Defendant's witness were questioned as to whom they interviewed and what they saw and where they went so to inform the publications and so nullified any basis for a finding of malice and provide the basis for an honest belief in the truth of the contents.

Conspiracy

278. It was submitted on behalf of the Claimants that the media which included the Newsday Defendants conspired with the First Defendant to recreate the alleged rescue of the Second Claimant. I agree with the submissions by the Newsday Defendants that this submission is without merit since based on the pleading and the evidence from the Newsday Defendants there was no basis for the Claimants to advance any suggestion that there was a conspiracy, in particular since none of this was put to the media Defendants in general and to Newsday Defendants in particular. Further the reference by the Claimants to the Newsday Editorial dated the 19th November 2000 could not be relied on in the absence of properly pleading and particularizing the allegation of a conspiracy.

279. The Claimants having failed to establish liability, the issue of damages does not arise.

COSTS

280. The Claimants submitted that if they are successful the Court should award costs on a prescribed basis using the sum awarded as damages as the basis for the calculation. It was also submitted on their behalf that in the event their claim was unsuccessful the Court

should apply Rule 67.5 (c) of the CPR since the claim was a non-monetary sum and as such the costs should be calculated as it was a claim for $50,000.00.

281. All Defendants who were a party to these proceedings argued otherwise. They submitted that the Court should apply Rule 67.5 (b) (ii) CPR which permits the Court to stipulate a sum as the value of the Claim.

282. Rule 67.5 (b) (ii) CPR states:

> *"(1) The general rule is that where rule 67.4 does not apply and a party is entitled to the costs of any proceedings those costs must be determined in accordance with Appendices B and C to this part and paragraphs (2)-(4) of this rule.*
>
> *(2) In determining such costs the "value" of the claim shall-*
>
> *(a) In the case of a claimant, be the amount agreed or ordered to be paid;*
>
> *(b) In the case of a defendant-*
>
> *i. Be the amount claimed by the claimant in his claim form; or*
>
> *ii. If the claim is for damages and the claim form does not specify an amount that is claimed, be such sum as may be agreed between the party entitled to, and the client liable to, such costs or if not agreed, a sum stipulated by the costs as the value of the claim ;or*
>
> *iii. If the claim is not for a monetary sum , be treated as a claim for $50,000.00"*

283. The Claimants claim was for damages and there was no sum pleaded in the Claimants pleadings. The Second to Thirteenth Defendants having been successful in my opinion Rule 67.5 (b) (ii) CPR is applicable.

284. The Claimants submitted that they were seeking the following damages. For the TV 6 Broadcasts the First Claimant sought $250,000.00 and the Second Claimant sought $150,000.00. For the First to the Sixth Express Articles the First Claimant sought $350,000.00 and the Second Claimant sought $250,000.00. Therefore the total award of damages the First Claimant sought from the Second to Seventh Defendants was $600,000.00 and the total award sought by the Second Claimant from the Second to Seventh Defendants was $400,000.00

285. For the First Guardian Article and the Second Guardian Articles Broadcasts the First Claimant sought $250,000.00 and the Second Claimant sought $150,000.00 from the Guardian Defendants.

286. For the Newsday Article the First Claimant sought $250,000.00 and the Second Claimant sought $150,000.00 from the Newsday Defendants.

287. The First Claimant also sought special damages in the sum of $112,000.00 as special damages against all the Second to Seventh, the Guardian Defendants and the Newsday Defendants.

288. I agree with the Defendants submissions that the stipulated sum to calculate the prescribed costs to be paid by the Claimants to the Defendants should be the quantum of damages each Claimant was seeking to be awarded. In this regard, the stipulated sum for the Claimants is as follows: the First Claimant against the Second to Seventh Defendants the sum of $600,000.00; the Second Claimant against the Second to Seventh Defendants the sum of $400,000.00; the First Claimant against the Guardian Defendants $250,000.00; the Second Claimant against the Guardian Defendants $150,000.00 and the First Claimant against the Newsday Defendants $250,000.00; the Second Claimant against the Newsday Defendants $150,000.00. I have not included the sum for special damages since it was unclear to me from the Claimants closing submissions what portion of the said sum each group of Defendants were to be liable.

ORDER

289. The Claimants action is dismissed.

290. The Claimants to pay the Second to Seventh Defendants costs in the sum of $140,500.00.

291. The Claimants to pay the Eight to Tenth Defendants costs in the sum of $78,000.00.

292. The Claimants to pay the Eleven to Thirteenth Defendants costs in the sum of $78,000.00.

Margaret Y Mohammed
High Court Judge