

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV 2016-02996

BETWEEN

HEIDI JOSEPH

Claimant

AND

AMA CHARLES

Defendant

Before the Honourable Madame Justice Margaret Y. Mohammed

Dated the 1st June 2018

APPEARANCES:

Ms. Kalena Maharajh instructed by Ms. Whitney St Clair Attorneys at law for the Claimant.
Ms. Gem Emmanuel and Ms. Elena Da Silva Attorneys at law for the Defendant.

JUDGMENT

Introduction

“Social web technologies have profoundly changed the way in which the average individual interacts with the Web, no longer merely taking from the wealth of content online but now actively contributing to it to a potentially large audience. This power, however comes with inherent concerns in particular attacks on

reputation in light of the way in which individuals perceive and do not appreciate the power of these technologies.”¹

1. This matter concerns certain statements made by the Defendant about the Claimant on the social media website Facebook. The Claimant is seeking compensation for damage to her reputation allegedly caused by the publication of certain words on the Trinidad and Tobago Prison Service (“the TTPS”) Facebook page by the Defendant.
2. The Defendant admits to publishing the words on her personal Facebook page but she denies that she caused the publication on the TTPS Facebook page. The Defendant also denies that the words have a defamatory meaning.

The Claimant’s case

3. The Claimant contends that on or about 24th January, 2016, she was on her way to drop her children at her sister Kimbilie Freeman’s house when she saw the children’s father, Samuel Harry’s (“Samuel”) motor vehicle parked in front of the Defendant’s home. Her children confirmed that they visited the Defendant’s home with their father. After the Claimant saw the Defendant greet the children and escort them to her home and Samuel watching from the front door of the Defendant’s house, the Claimant continued on her way to work with the knowledge that the children would be safe in the care of their father.
4. The Claimant then received messages and phone calls from Samuel who chastised her for leaving the children. The Claimant also received several messages from her co-workers and a supervisor at the Women’s Prison, Golden Grove, that a person called ‘Emma’ made several calls and left several messages to the prison requesting the Claimant to collect her children.
5. Thereafter, the Defendant sent abusive messages to the Claimant’s mobile phone and alleged that the Claimant left her children unattended alongside the road without clothes

¹ Ent. L.R.2012, 23(5), 126-129 “The Threat posed to reputation by the emergence of social web technologies”
Sarosh Khan

and that the children were hungry. The Claimant contends that the messages were from 1:28pm to 6:59pm on 24th January, 2016 and from 9:41am to 5:04pm on 25th January, 2016.

6. On 24th January, 2016, the Defendant wrote and published the following words:

“Trying to get on to Heidi Joseph she left her kids in the road at my home and I am unable to contact her. Anyone with information or who can relay the message please assist asap?? Beyond the Tape Ian Alleyne The TV6 News.” (“the words ”)

7. On the said day, the words were posted on TTPS Facebook page located at (<https://www.facebook.com/Trinidad-Tobago-Prison-Service-1549615285283227/>).

8. The Claimant contends that in the natural and ordinary meaning, the words meant and were understood to mean that:

- (i) The Claimant left her children unattended alongside a road and is incompetent and irresponsible as a mother;
- (ii) The Claimant is not a woman of impeccable character and good standing in society;
- (iii) The Claimant is not fit to be a member of the Trinidad and Tobago Prison Service.

9. The Claimant further contends that by reason of the publication of the words, her reputation has been seriously injured and she has suffered considerable hurt, distress and embarrassment based on the following:

- (i) Allegations to tarnish the Claimant’s character were made known to her coworkers who further subjected her to numerous telephone calls to clarify that the incident took place on the 24th day of January, 2016;

- (ii) The Claimant thereafter overheard her colleagues talking about her abandoning her children alongside a road and spoke about her negatively, which caused her to feel hurt and embarrassed;
- (iii) Due to the Claimant's colleagues gossiping about the words, the Claimant was ashamed to return to work but did so to keep her job;
- (iv) The Claimant received a letter from her Superintendent, dated the 8th March, 2016, requesting that she report to the Prison Administration for a meeting on the 18th March, 2016. At the meeting the Superintendent asked the Claimant if she knew a person by the name of "Ama Charles" as she has made a report stating that the Claimant left her children by the roadside unattended and that she was harassing her. The Superintendent further enquired about the words and after approaching the Claimant about her conduct as a Prison Officer, the Superintendent informed the Claimant that the matter would be dealt with by the Investigations and Discipline Section;
- (v) The Claimant was insulted and deeply hurt by the allegations made against her at the meeting with her Superintendent since for the first time in her years of service at the TTPS, her character was brought into question, as she was informed that the matter maybe forwarded to the Investigations and Discipline Section;
- (vi) The Claimant was summoned to report to a meeting on the 23rd May 2016 with the Prison Administration. The Claimant received the letter on the said date of the scheduled meeting and was unable to report to the meeting. However, she went to the Administration building to inform them as to the reasons for her missing the meeting and she was informed that a meeting would be rescheduled and she would be informed accordingly;
- (vii) The Claimant became stressed and anxious at work since she feared that once the Investigations and Discipline Section was instructed to investigate

the matter she would wrongfully be suspended from her job or her job may be terminated due to the words.

10. In these circumstances, the Claimant is claiming general damages for libel in respect of the words published on 24th January 2016 on the TTPS Facebook page; interest on the sum pursuant to section 25 of the **Supreme Court of Judicature Act**²; an injunction to restrain the Defendant from further publishing or causing to be published the same or any similar libelous matter concerning the Claimant; costs.

The Defence

11. By her amended defence³, the Defendant admits to posting the words complained of to her personal Facebook page to be seen by her friends and family to assist her in relaying the message to the Claimant that she should collect her children but she denies that these words have a defamatory meaning. The Defendant further contends that she inquired as to how to report a Prison Officer but the Claimant's name was not mentioned in the private messages nor did the words of the private messages have a defamatory meaning. If the Claimant has suffered damage, injuries or loss, it is the Defendant's contention that the damages were caused solely or partially by the actions of employees at TTPS for further publishing private messages sent by the Defendant to the administrator of the TTPS Facebook page bringing the incident to the attention of persons who may not have read the words on the Defendant's personal Facebook page.

The Reply

12. In her reply to the amended defence⁴, the Claimant contends that:
 - (i) The Defendant did not genuinely seek the assistance from her friends and family on Facebook to relay a message to the Claimant as the parties did not share mutual friends on Facebook;

² Chapter 4:01

³ Amended Defence filed 28th November 2016

⁴ Reply to Amended Defence filed 7th December 2016

- (ii) The Defendant's post on Facebook was her successful efforts to disseminate information about the Claimant to defame her and publicly scandalize and embarrass her;
 - (iii) In the Defendant's post on Facebook, she tagged "Beyond the Tape", "Ian Alleyne" and "TV6 News" which are all public and popular social media sites and anyone who subscribes to their page can view their posts.
13. It was common ground that the Defendant published the alleged words on her Facebook page and that words published on a social media website are capable of being a libel (See **DRA and ors v Jenelle Burke**⁵). The issues which arose for determination at the trial were:
- (a) Was the Defendant responsible for the publication of the words on the TTPS Facebook page?
 - (b) If she was, did the words bear any meaning defamatory of the Claimant in their natural and ordinary meaning, including inferred meanings;
 - (c) If the words are defamatory, whether they are defensible on the ground of justification; and
 - (d) If the Defendant is not able to make out the defence of justification, what, if any, are the general damages that the Claimant is entitled to recover?

Was the Defendant responsible for the publication of the words on the TTPS Facebook page?

14. **Gatley on Libel and Slander**⁶ defines the term "defamation" as:
- "The term 'defamation' is used as a collective term for the torts of libel and slander. It is committed when a person publishes words or matter to a third party that contain an untrue imputation that harms the reputation of the claimant. Broadly speaking, if the publication

⁵ CV 2016-02974

⁶ 12th ed at page 6 paragraph 1.5

is made in a permanent form or is broadcast or is part of a theatrical performance, it is a libel.”

15. **Halsbury’s Laws of England Volume 32 (2012) at paragraph 566** explains that:
“An individual who posts defamatory material on the internet is a publisher of that material if it is subsequently accessed and read by a third party.”
16. The Claimant’s evidence in chief was that on 25th January, 2016 she received photos on her phone via WhatsApp from a colleague of screenshots of Facebook posts made by the Defendant about the Claimant and her children. The Claimant recognized that the post was made on the TTPS Facebook page on 24th January 2016 which stated “*Trying to get on to Heidi Joseph she left her kids in the road at my home and I am unable to contact her. Anyone with information or who can relay the message please assist asap??*” The Defendant also tagged “Beyond the Tape”, “Ian Alleyne” and “TV6 News” to the Facebook post.
17. According to the Claimant, from the screenshots which she received, she read that the Defendant made enquiries on the TTPS Facebook page about reporting a “prison officer” and asked to have an urgent meeting with the Head of the Women’s Prison.
18. Thereafter, on 26th January 2016, the Claimant said she visited the Defendant’s personal Facebook page and she saw that the Defendant wrote the words complained of “*Trying to get on to Heidi Joseph she left her kids in the road at my home and I am unable to contact her. Anyone with information or who can relay the message please assist asap??*”
19. In cross-examination, the Claimant admitted that that she was not familiar with Facebook. She saw the words in a screenshot but not on the TTPS Facebook page. The only Facebook page she saw the words on was the Defendant’s personal Facebook page. When questioned about the screenshots the Claimant stated:

“*Question: You received screen shots?*”

“*Answer: Yes from colleagues in prison service. One of them is here today.*”

Question: A Screen shot is an image copied from a phone screen or computer at any given time.

Answer: Yes.

Question: Agree it does not necessarily show a webpage where it originated?

Answer: Could be.”

20. The Claimant was shown exhibit “C” of her witness statement which showed an image with the words “Trinidad and Tobago Prison Service M”. She stated that she did not know what the “M” stood for. It was suggested to her that the “M” stood for “Messages” and one cannot comment on a private message. To that the Claimant responded that she was not a “Facebook user really”. The Claimant did not agree that the words were never posted on the TTPS Facebook page and that the screenshots were edited to make it look like they were.
21. Based on the Claimant’s evidence, she did not see the posting of the words by the Defendant on the TTPS Facebook page.
22. The Defendant’s witness Ms. Arlene Elias in her evidence in chief⁷ stated that she worked with the Claimant at the TTPS. On 25th January, 2016, she received a telephone call from a colleague who told her to visit the TTPS Facebook page to read a post about the Claimant and her children. Ms. Elias visited the page and saw a post made by Emma Joseph stating that she was trying to locate “Heidi Joseph” because “Heidi Joseph” left her children by the roadside. She also read Emma Joseph’s comments about contacting the Head of the Women’s Prison, Children’s Authority and Ian Alleyne.
23. Ms. Elias evidence in cross-examination stated that she saw the words complained of at the office on the TTPS Facebook page. She admitted that someone else showed her the post at first but she confirmed it after she went to her desk and pulled up the post on the TTPS Facebook page. She disagreed that she came to give evidence as a favour to her friend, the

⁷ Witness Statement of Arlene Elias filed 17th March, 2017

Claimant, and she agreed she did not print the webpage where she saw the words complained of.

24. I formed the opinion that Ms. Elias was a witness of truth when she said that she saw the words on the TTPS Facebook page since her evidence was unshaken in cross-examination. In my opinion, the failure by Ms. Elias to print the webpage did not diminish the credibility of this aspect of her evidence since she had no reason at that time to print it.
25. The Defendant's evidence was that after the Claimant left her children at her home around 1:00pm she contacted the TTPS and left a private message on the TTPS Facebook page for the Claimant to pick up her children. Thereafter, she published the words on Facebook seeking the assistance of her friends and family to message the Claimant about collecting her children. The Defendant stated that based on the privacy settings for her post only her family members and friends (about 50 persons), the administrators of the pages "Beyond the Tape", "Ian Alleyne" and "The TV6 News" would have seen the post. The Defendant also stated that she sent a private message to the TTPS via Facebook to enquire about reporting a prisons officer since she thought the Claimant's actions were an attempt to harass and intimidate her. She stated that she did not mention the Claimant's name in the private message.
26. In cross-examination the Defendant confirmed that she posted the words on her personal Facebook page. She disagreed that if a person posts something on Facebook and tags certain individuals or pages, the people who are viewers of the page are able to see the post. She was of the opinion that the privacy settings prevented them from seeing the post. When asked to explain how the privacy settings work the Defendant stated:
- "Question: Explain to the Court how to activate privacy settings.*
- Answer: On the settings you can have custom, friends, friends of friends, friends only, me only or you could say who you do not want to see it. So I put it to friends only and I started xing off who I did not want to see it. So it wasn't public.*

Question: I put it to you that is not how it works. When you post something and tag Heidi Joseph anybody who are friends with Heidi Joseph will be able to see comment.

Answer: I disagree.

Question: You tagged Beyond the Tape. Anyone who likes Beyond the Tape, not just administrators are able to see the comments. Anyone who likes Ian Alleyne would have been able to see it as well as TV 6 news.

Answer: I disagree.”

27. The Defendant also stated in cross-examination that she “untagged” certain people from seeing the post on her personal Facebook page but two of her friends, who were not mutual friends with the Claimant, were able to see the post. She disagreed that she posted the words on the TTPS Facebook page. She repeated that she sent a private message to the TTPS Facebook page “*Trying to understand the chain of command. Steps for making a report on a prison officer. Thanks.*” She then acted on the private message by sending a letter to the Prison Authorities informing them of the “malicious act” that was done and how it threatened her safety and security.
28. There was no evidence before the Court from any expert on information technology. In order to assess the evidence of the Defendant on her privacy setting and her tagging of certain persons useful guidance is set out in **Defamation on Facebook: Isparta v Richter 2013 6 SA 529 (GP)**. In that article the authors A. Roos and M. Slabbert examined the South African case **Isparta v Richter** which was an action instituted by the Plaintiff for defamation against the Defendants comments made by the First Defendant on her “Facebook Wall”. The First Defendant “tagged” the Second Defendant concerning the defamatory postings. For the first time in a South African Court damages were awarded for defamatory comments made on Facebook. In the Article the authors gave a brief but useful overview of Facebook and the concept of tagging. At page 2846 they stated:

“Facebook: a brief overview

Facebook is an online social network/networking service that was launched in 2004 and became available worldwide in 2006. A social networking service is a web-based service that allows the user to create a profile (by listing personal information which may include a user’s name, gender, hometown, relationship status, birthday, profile picture, educational background, employment situation, lists of personal interests and contact details), to establish connections with other users (by inviting users to become “friends”) and to access the websites of users that have accepted the invitation to be “friends”. Various activities may be performed on Facebook, for example users may leave messages for friends (publicly or privately), upload photographs, “tag” themselves or others people in the photographs (identifying the person), update their “status”, comment on other users’ postings, “poke” a friend (clicking on a button resulting in a message being send to a friend that “you have been poked” by the user), indicate that they “like” a particular posting, and “subscribe” to specific users’ public postings (without adding that user as a friend).

All these activities are shown on a part of the website initially referred to as the user’s “Wall”. (These days it is called a Timeline, but since the judgment still refers to Wall, we will use that terminology). Users may limit their “visibility” by using the “privacy settings” allowed by Facebook. “Visibility” refers to the extent to which the user’s profile and postings may be accessed by other users or even by persons using a search application, such as Google. The privacy settings are continuously changing. At present a person may leave his or her profile open to the public, or may limit it to certain categories of people, such as his or her “friends and their friend”, friends only” (but people identified in a picture posted by the user – that is “tagged” in the picture – will also have access to the posting), or specific categories of friends grouped together as “acquaintances”, “close friend” or “family”. However, certain information in the profile remains visible to everyone even if the user utilises the most private of the privacy settings. This includes a user’s name, profile picture (if one has been posted) and gender. A user

may also “tag” another user to any postings on his or her Wall. The name of the tagged user will then appear at the end of the user’s message as “with... (tagged user’s name)”. The message will then also appear on the tagged person’s Wall. The tagged person’s consent is not required before being tagged, but he or she may remove his or her name from the message.

Facebook is a free service. Anyone over 13 years (or who says that s/he is older than 13) with a valid email address may join Facebook.” (Emphasis added).

29. In my opinion, the Defendant was responsible for publishing the words for the following reasons. Firstly, the Defendant deliberately tagged the administrators of the pages “Beyond the Tape”, “Ian Alleyne” and “The TV6 News” over whom she knew she had no control. It was not in dispute that the Defendant posted the words complained of on her Facebook page and it was intended by the Defendant for third parties to see the posting. The Defendant also admitted that the administrators of the pages “Beyond the Tape”, “Ian Alleyne” and “The TV6 News” would have seen the post. There was no evidence from the Defendant that she had control over the actions of the administrators of the pages of the aforesaid popular television programs in this jurisdiction. Given the very nature of social media, a publication can no longer be viewed in the traditional narrow sense but it must be looked at broadly in order to address the ever changing avenues which computer engineers in Silicon Valley and elsewhere invent to publicize information in a permanent form. In my opinion, when the Defendant published the words on her Facebook page and she “tagged” persons whom she knew she had no control over, she implicitly gave them permission to forward her publication to third parties. In such circumstances, the Defendant must remain ultimately responsible for the words which she initially published once they remained in the form she originally published. By the Defendant tagging certain parties, she must bear the responsibility of where her words ultimately ended up, in this case the TTPS Facebook page.

30. Secondly, even with the Defendant’s privacy setting on her Facebook page, she had no control over the actions of the persons whom she permitted to see the post. Based on the

Defendant's own evidence, her intention in posting the words was to circulate the information so that the Claimant could have collected her children. It was therefore her intention for the information to have wide circulation. The Defendant also acknowledged that even with her privacy settings, the persons whom she allowed to view the words, could have forwarded the post to other third parties. There was no conclusive evidence from the Defendant to demonstrate that there was absolutely no means of a third party forwarding her post to the TTPS Facebook page. Therefore, it was highly probably that when the Defendant posted the words on her Facebook page one of the persons whom she permitted to view the post caused it ultimately to be on the TTPS Facebook page which Ms. Elias saw.

If she was, did the words bear any meaning defamatory of the Claimant in their natural and ordinary meaning, including inferred meanings?

31. Sir Thomas Bingham MR in **Skuse v Granada Television Limited**⁸ laid down the approach to be adopted by a Judge in the determination of the defamatory meaning of words where the Judge is sitting without a jury. He stated that:

- i. *“The court should give to the material complained of the natural and ordinary meaning which it would have conveyed to the ordinary reasonable viewer ...*
- ii. *The hypothetical reasonable reader [or viewer] is not naïve 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...*
- iii. *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... Its audience would not have given it the analytical*

⁸ [1993] EWCA Civ 34 at paragraph 14

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. iv. 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.'

- iv. 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 or would be likely to affect a person adversely in the estimation of reasonable people generally.*
- v. In determining the meaning of the material complained of the court is 'not limited by the meanings which either the claimant or the defendant seeks to place upon the words'.*
- vi. The defamatory meaning pleaded by a plaintiff is to be treated as the most injurious meaning the words are capable of bearing and the*

question 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?”

32. The aforesaid principles were approved and adopted by the Privy Council in **Bonnick v Morris**⁹. 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, 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...”

33. In this jurisdiction the Court of Appeal in **Kayam Mohammed and ors v Trinidad Publishing Company Limited and ors**¹⁰ 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:

⁹ (2002)UKPC 31

¹⁰ Civ Appeal No 118 of 2008

'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.'

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....."*

34. The Claimant contends that the words posted on the TTPS Facebook page in their natural and ordinary meaning meant and/or were understood to mean that:
- a. the Claimant left her children unattended alongside a road and is an incompetent and irresponsible mother;

- b. the Claimant is not a woman of impeccable character and good standing in society; and
- c. the Claimant is not fit to be a member of the Trinidad and Tobago Prison Service.

35. The entire text of the words complained of are *“Trying to get on to Heidi Joseph she left her kids in the road at my home and I am unable to contact her. Anyone with information or who can relay the message please assist asap?? Beyond the Tape Ian Alleyne The TV6 News.”*
36. The natural and ordinary meaning of the words was that the Claimant left her children without supervision on the roadside in front of the home of the Defendant. The Claimant did not inform the Defendant that she was leaving her children there unsupervised. The Claimant left and after she left the Defendant tried to contact the Claimant or anyone associated with the Claimant to inform her to collect her children. In my opinion, the ordinary, reasonable person reading this posting would have concluded that the Claimant was an irresponsible mother for leaving her children by the road unsupervised in front of the house of a third party whom she did not know and that she was not fit to be a parent. But that was not all. In my opinion, the sting in the words were the last words attached to the posting which stated *“Beyond the Tape Ian Alleyne The TV6 News”*. The Court can take judicial notice that the *“Beyond the Tape”* and *“Ian Alleyne”* are television programs which highlight acts of crimes in this jurisdiction and the *“the TV6 News”* reports on any alleged criminal activity. In my opinion these last words in the post would have coloured the opinion of the ordinary, reasonable person into thinking that the actions by the Claimant with respect to the treatment of her children was of such gravity that it was a criminal act which had been committed.
37. I am not of the view that the natural and ordinary meaning of the words complained of meant that the Claimant was not a fit member of the TTPS since there was no reference to the Claimant’s occupation in the posting. However, the ordinary and reasonable person

who would have read this posting on the TTPS Facebook page would have thought that the Claimant was in some way associated with the TTPS.

38. For these reasons, I have concluded that the words complained of are capable in law of being defamatory for part of the meaning which the Claimant has asserted.

If the words are defamatory whether they are defensible on the ground of justification?

39. **Section 3 of the Libel and Defamation Act¹¹** provides for the defence of justification as follows:

“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.”

40. The requirements for making out a defence of justification are set out in **Gatley on Libel and Slander** at paragraph 11.9 as follows:

“...for the purposes of justification, if the defendant proves that “the main charge, or gist, of the libel” is true, he not justify statement or comments which do not add to the sting of the charge or introduce any matter by itself actionable.

It is sufficient if the substance of the libelous statement be justified, it is unnecessary to repeat every word which might have been the subject of the original comment. As much must be justified as meets the sting of the charge, and if anything be contained in a charge which does not add to the sting of it, that need not be justified.

¹¹ Chapter 11:16

When considering the substantial truth it is important to “isolate the essential core of the libel and not be distracted by inaccuracies around the edge-however substantial...”

41. The onus was on the Defendant to plead and prove affirmatively that the defamatory words of which the Claimant complained are true or substantially true. Therefore, the onus was on the Defendant to prove the defence of justification.
42. The particulars pleaded in the defence of justification at paragraphs 1-11 of the Amended Defence was in effect to the following: On or around 24th January 2016 at approximately 12:05pm the Claimant drove off, leaving her two children at the roadside in front of the Defendant’s house. Her husband who is a friend of the Defendant was not at her house at that time and he did not return until approximately 3:00pm.
43. It was not in dispute that the Claimant dropped her children in front of the Defendant’s house. However, the reasons for this action were in dispute with both sides giving diametrically opposite version of the incident at the trial. The determination of the validity of the Defendant’s defence of justification depends on the Court finding which version of the events from the evidence of the witnesses was more likely. In **Winston McClaren v Daniel Dickey and ors** ¹² Rajnauth-Lee J (as she then was) repeated the approach the Court should adopt where there are different versions of the events as:

*“12. Where there is an acute conflict of evidence, the Judicial Committee of the Privy Council has laid down the following principles in the case of **Horace Reid v Dowling Charles and Percival Bain** Privy Council App. No. 36 of 1987. At page 6, Lord Ackner delivering the judgment of the Board examined the approach of the trial judge”:*

“Mr James Guthrie, in his able submissions on behalf of Mr Reid, emphasized to their Lordships that where there is an acute conflict of evidence between neighbours, particularly in rights of way disputes, the impression which their evidence makes upon the trial judge is of the greatest importance. This is certainly true. However, in such a situation,

¹² CV 2006-01661, unreported

where the wrong impression can be gained by the most experienced of judges if he relies solely on the demeanour of witnesses, it is important for him to check that impression against contemporary documents, where they exist, against the pleaded case and against the inherent probability or improbability of the rival contentions, in the light in particular of facts and matters which are common ground or unchallenged, or disputed only as an afterthought or otherwise in a very unsatisfactory manner. Unless this approach is adopted, there is a real risk that the evidence will not be properly evaluated and the trial judge will in the result have failed to take proper advantage of having seen and heard the witnesses.”

13. Accordingly, the trial judge must check the impression that the evidence of the witnesses makes upon him against

- (i) contemporary documents, where they exist;*
- (ii) the pleaded case; and*
- (iii) the inherent probability of improbability of the rival contentions.”*

(Emphasis added)

Consistency between the evidence and the pleaded case

44. In **The Attorney General of Trinidad and Tobago v Anino Garcia**¹³, the Court of Appeal stated that any deviation by a Claimant from his pleaded case immediately calls his credibility into question.
45. The Claimant pleaded that on or about 24th January, 2016, she was on her way to drop her children at her sister Kimbilie Freeman’s house when she saw the children’s father, Samuel’s motor vehicle parked in front of the Defendant’s home. Her children confirmed that they would visit the Defendant’s home with their father. After the Claimant saw the Defendant greeting the children and escorting them to her home and Samuel watching from the front door of the Defendant’s house, the Claimant continued on her way to work with the knowledge that the children would be safe in the care of their father.

¹³ Civ. App. No. 86 of 2011 at paragraph 31

46. The Claimant's evidence to support her pleading was at paragraphs 2 and 3 of her witness statement. The Claimant stated that on the said 24th January, 2016, she had to report for work at 1:00pm at the Women's Prison, Golden Grove where she was a Prison's Officer and as such she made arrangements with her husband to pick up her children at her sister's house. While on her way to her sister's house, her daughter kept asking if she could stay with her father and the Defendant at the Defendant's house so that they can play with the Defendant's children. Whilst driving, the Claimant noticed her husband's car in front of the Defendant's house and her daughter pointed to the Defendant's house and again repeatedly asked if she could stay with her dad and "Aunty Ama" to play with "Aunty Ama's" children. The Claimant approached the Defendant's house, blew her horn and saw her husband watching from the front door. The Defendant then came out of the house and approached the vehicle. The Claimant enquired of her husband. The Claimant's children left the car, ran towards the Defendant and greeted her with a hug. The Defendant agreed for the children to stay at her home since their father was there. The Claimant stayed parked and watch the Defendant take the children into her house before she drove away to work and at no point the Defendant objected to the children staying at her home with their father.
47. In cross-examination, the Claimant stated that her husband, Samuel was in a relationship with the Defendant and she got that impression from the information she received and images she saw of them. She stated that she did not have a problem with the relationship but she had previously argued with her husband about the Defendant staying at her home and sleeping in her bed. She stated that she never threatened the Defendant and prior to 24th January, 2016, she never met the Defendant. However, on the night of 15th December 2015, she received two anonymous abusive phone calls from the same telephone number which the Defendant sent her text messages on 24th January, 2016. She said she knew it was the same number from a phone log she obtained from Digicel but that document was not before the Court.
48. The Claimant also stated that prior to 24th January, 2016, she only knew where the Defendant lived because her children informed her that the Defendant lived "inside by" her sister. She stated that her sister lives in Samaroo Village which according to her is two to

three minutes' drive away from the Defendant and the two communities fall in the same geographical area. She admitted the Defendant does not live in Samaroo village. She was adamant that she was going to her sister's home to drop off the children when they asked if they could stay at the Defendant's home instead. She told them that she would take them to the Defendant's home provided that their father was there. When she arrived at the Defendant's house, she blew her horn twice and saw her husband looking out the front door. Shortly after, the Defendant came outside to where her car was parked on the road. She asked for her husband and explained to the Defendant that he had to keep the children while she was at work. The Defendant then decided she would take the children to the house where their father was.

49. The Claimant was cross-examined about the route she used to go to her sister's house on the 24th January 2016 in relation to the Defendant's house. She agreed her sister does not live on Omeara Road but that one can enter Omeara Road to get to Samaroo Village. She agreed that Olton Road is past Samaroo Village but it is not the entrance to access Samaroo Village. When questioned if she can only access the Defendant's house via Olton Road, she disagreed stating she can access the Defendant's house via Omeara Road and Olton Road. It was then suggested to her:

“Question: What I am suggesting to you is that to get to your sister's house you cannot pass Unityville where the Defendant lives. You would have exited Olton road to get to her house because her house is Unityville via Olton Road.

Answer: Don't agree.

Question: Won't agree it's a dead end inside of Unityville.

Answer: Don't agree with that.”

50. The Claimant's evidence was in a large part consistent with her pleaded case. She was on her way to drop her children to her sister's house for their father to collect them before assuming a shift at work when she was asked by her daughter to stay with the Defendant. She was prompted to stop at the Defendant's house since she saw her husband's car in front. When she blew the horn in front the house, she saw her husband

at the front door and the Defendant came out of the house; approached her car; she asked for the children's father; the children ran towards the Defendant who hugged them; the Defendant agreed to keep the children at her home since their father was there; the Defendant did not object taking the children and she ensured that the children were in the house before she drove away.

51. The Claimant also pleaded that she then received messages and phone calls from Samuel after she dropped off the children, and he chastised her for leaving the children. The Claimant also received several messages from her co-workers and a supervisor at the Women's Prison, Golden Grove, that a person called 'Emma' made several calls and left several messages to the Prison requesting the Claimant to collect her children.
52. Thereafter, the Defendant sent abusive messages to the Claimant's mobile phone stating that the Claimant had left her children unattended alongside the road without clothes and that the children were hungry. According to the Claimant the messages started from 1:28pm to 6:59pm on 24 January, 2016 and from 9:41am to 5:04pm on 25 January, 2016.
53. In cross-examination, the Claimant stated that after she left the Defendant's house her husband telephoned her and messaged her five minutes later. She did not notice the messages until she arrived at work and she saw that he was asking her where the children were. She said that she found that to be strange. She also confirmed that at 1:00pm when she arrived at work she received several messages that someone called "Emma" said for her to come and pick up her children. She agreed that she responded to the Defendant's text messages at a later time to other allegations in the text messages concerning her rent. She did not respond to the allegations in the text messages that she left her children in front of the Defendant's house. She was unable to leave work so she called her sister and asked her to pick up the children. She maintained that she received hundreds of messages from the Defendant berating her for leaving her children on the road. She stated that she still felt comfortable leaving the children at the Defendant's house because she knew that their father was there. Her sister attempted to go for the children but then Samuel contacted her. She did not agree that the reason why she left her children at the Defendant's house was

because she and the Defendant did not share an amicable relationship and that she was bitter and upset about her husband spending time with the Defendant.

54. Again, the Claimant's evidence on the events after she left the children with the Defendant and Samuel was that she received several messages from both the Defendant and Samuel about her leaving the children at the Defendant's house.

55. The Defendant pleaded that she and Samuel had been friends for approximately one (1) year and during this time he brought his and the Claimant's children, ages four (4) and six (6), to the Defendant's house to spend time with her and her children. Over the period of time she has been friends with Samuel she never met the Claimant but the latter had threatened to "set her up" and to "get her" via text messages sent to Samuel. On or around the 24th January 2016 at approximately 12:05 pm the Defendant heard the repeated honking of a horn outside of her house at Unity Ville via Olton Road, Arima. The Defendant looked through the window and saw the Claimant honking the horn of her vehicle. At the time, Samuel was not at the Defendant's home but his vehicle was parked in her yard. The Claimant shouted from the car enquiring whether Samuel was there and the Defendant informed her that he was not. The Defendant felt threatened and went inside to get her mobile phone to inform Samuel that the Claimant was at her house. When the Defendant returned outside the Claimant was driving off, leaving her two children at the roadside in front of the Defendant's house. The Defendant stood outside with the children for a while hoping the Claimant would return to collect them. The Defendant then attempted to call Samuel several times but her calls went unanswered. The Defendant then called the Claimant's workplace, the TTPS around 1:00pm but she was informed that the Claimant had not yet arrived for work. The Defendant left a message with one Ms. Joefield requesting the Claimant to pick up her children. The Defendant called again at 1:30 pm and 1:45 pm and she was informed by the said Ms. Joefield that the Claimant received the message. The Defendant also messaged the Claimant numerous times but she did not respond to the messages.

56. The Defendant's evidence in chief was consistent with her pleaded case on the events before, during and immediately after the dropping off the children.
57. In cross-examination, she stated that she met Samuel in August 2015 and they bonded over their respective children. She has a close bond with the Claimant's children and they addressed her as "Aunty Ama." She stated she was aware of the Claimant but did not know who she was. However, the Defendant said that she and the Claimant had a mutual friend but the mutual friend did not know that she knew the Claimant nor that she was "Aunty Ama." She stated that the mutual friend was the Claimant's best friend. She disagreed that she could have contacted the Claimant by contacting their mutual friend since she did not have a contact for the mutual friend. They were only work colleagues and were in separate departments.
58. The Defendant stated that on 24th January 2016, she was at home when she heard a car horn beeping. When she looked outside she saw a white car and she saw the Claimant's daughter seated on the front seat and she realized it was Claimant since she saw her picture before. She walked outside and the Claimant enquired if her husband, Samuel, was there and she said "no". The Claimant told her if her husband wasn't there then why was his car there. The Defendant then returned to her house to call Samuel who was not home but was "*in the back looking for land.*" When she came back outside, she saw the Claimant had reversed in front of the Defendant's mother's house. She took the children out of the car, left them on the side of the road and drove off. She disagreed that Samuel was at her home which was why the Claimant was comfortable leaving her children at her house. When questioned if she can pass through Unity Ville to get to Samaroo Village she said that was not possible since Unity Ville is a "dead end".
59. Samuel in his evidence in chief¹⁴ stated that he and the Defendant became friends around October 2015. On 24th January, 2016 when he went to the Defendant's house around 3:00pm he was shocked to see his children there. The Defendant informed him that the Claimant dropped the children at the roadside and that she had been calling him. He said

¹⁴ Witness statement of Samuel Harry filed 10th March 2017

he saw several missed calls from the Defendant on his phone and thereafter he took his children home.

60. In cross-examination, Samuel stated that his and the Claimant's children had a close bond with the Defendant. He stated that he and the Defendant were good friends at the time and were now getting into a relationship. Prior to 24th January, 2016, he had communication with the Claimant concerning the children. She informed him that her mother could not keep the children so she would drop them off at her sister's home so that he could pick them up for 1:00pm. On 24th January, 2016, he visited the Defendant's home around 10:30am but then left to "see about some land issues" and he did not return until 3:00pm. He stated he missed the calls from the Defendant. He could not remember if he communicated with the Claimant around 12:24pm and 12:25pm on the said day. He maintained that he could not recall if he tried to communicate with the Claimant.
61. Mrs. Hermaline Charles in her evidence in chief¹⁵ stated that she is the Defendant's mother. On 24th January, 2016, she heard a vehicle horn honking outside and upon approaching her front door, she noticed a woman, whom she later knew was the Claimant, blowing the horn of her vehicle in front of the Defendant's house. She observed the Defendant opening her front door and the Claimant shouted from her vehicle enquiring about Samuel. The Defendant informed the Claimant that Samuel was not there and returned inside. However, the Claimant exited her vehicle and helped the two children out of the vehicle. She then placed their bags on the ground, returned to the vehicle and drove off. The Defendant then came outside to meet the children and "stood frozen for a long while." In cross-examination she agreed that she could not hear any conversation between the Defendant and the Claimant because of the distance of her house from the roadway.
62. In my opinion, the credibility of Ms. Hermaline Charles' evidence was undermined when she admitted that she did not hear any conversation between the Claimant and the Defendant since she was some distance away from them. At best, she observed the

¹⁵ Witness statement of Hermaline Charles filed 10th March 2017

Claimant honking the horn of her vehicle outside the Defendant's house on the 24th January 2016.

Contemporaneous documents

63. The contemporaneous documents on this issue were the pre-action protocol letter dated the 6th April 2016 from the Claimant's attorney at law to the Defendant; the response dated 19th April 2016 and the text messages which were exchanged between the Claimant and the Defendant after the Claimant left the Defendant's house.
64. The contents of the pre-action protocol letter were consistent in large part to the Claimant's pleaded case and her evidence. The only inconsistency was that in the letter she stated that she saw Samuel peek through the curtains of the Defendant's house and in her pleadings and evidence she said she saw him at the front door. In my opinion this was not a significant deviation to undermine the credibility of the Claimant's evidence since it still established that the Claimant saw Samuel at the Defendant's home when she dropped off the children.
65. The contents of the Defendant's response letter was also consistent with her pleaded case and her evidence.
66. There were numerous text messages which passed between the Claimant and the Defendant from the Sunday 24th January 2016 at 1:28 pm until Tuesday 26th January 2016 and which were annexed to the Defendant's witness statement in the bundle of documents as "AC 1". The content of the messages revealed a boisterous exchange between the parties of a personal nature with personal attacks being made by both of them. Notably, in the exchange the Defendant referred to the Claimant leaving her children at her house at 13:28 (1:28pm) and in a posting dated Sunday 24 January 2016 at 18:17 (6:17 pm) the Defendant texted a message to the Claimant that "Their FATHER took them". In my opinion, the text messages undermined the evidence of Samuel that he only returned to the Defendant's home after 3:00pm when he collected the children.

Inherent probability or improbability of the rival contentions.

67. In my opinion there were several aspects of the Defendant's version of the events which were more improbable than the Claimant's for the following reasons.
68. Firstly, it was highly improbable that Samuel was not at the Defendant's home when the Claimant drove up with her children since his vehicle was parked in front of it. If indeed he was not at the Defendant's house, there was no reasonable explanation from neither the Defendant nor Samuel how he left the Defendant's house to do his errand. In my opinion, the Defendant and Samuel's evidence that Samuel was not at the Defendant's house at the time of the incident was concocted since there were no credible details of the nature of the land matter, where he went and what time he left the Defendant's home.
69. Secondly, it was also more probable that the Claimant saw the children's father Samuel at the house when she left the children there since this was consistent with Samuel's car being in front of the Defendant's house. In my opinion, it was immaterial where she saw him whether at the front door, or looking through the window of the house.
70. Thirdly, it is inherently improbable that any reasonable person would deliberately put her own young children ages four (4) and six (6) in front of a stranger's house just to "set up" the Defendant. The Claimant's children live with her and in my opinion the only person who stood to lose more by such action was the Claimant since her children would have been traumatized but such actions. There was not a shred of evidence from the Claimant nor Samuel that the children were traumatized from the incident. In my view, if the Defendant's version of the events were true, it was highly probable that the two young children would have been traumatized.
71. Fourthly, even if the Claimant and the Defendant did not know each other or they did not have a cordial relationship, the two parties knew of each other sufficiently enough to be aware that the Claimant's children had a comfortable relationship with the

Defendant and in staying by the Defendant's house. Therefore, even if the Claimant had left her children in the road in front of the Defendant's house as she alleged, it is inherently improbable that the Claimant's action of leaving her children could be perceived as a threat to the Defendant.

If the Defendant is liable what measure of damages should be awarded?

72. The Claimant pleaded a claim for general damages. She did not claim aggravated and/or exemplary damages. It was submitted on behalf of the Claimant that the appropriate award for damages in the instant case is \$90,000.00.
73. Counsel for the Defendant submitted that due to the paucity of evidence the Claimant can only recover nominal damages.
74. **Gatley on Libel and Slander 12th Edition paragraph 9.4** states that:
“In case of libel and slander actionable per se the law therefor presumes damage arising from the publication and the claimant is entitled to look to an award of damages sufficient to vindicate his reputation according to the seriousness of the defamation, the range of its publication and the extent to which the defendant persisted with the charge.”
75. Therefore, once a person is libeled, without any lawful justification or excuse, it will be presumed that he suffered injury to his reputation and his feelings, for which he may recover damages. It follows that there is no explicit requirement for the person libeled to produce any evidence to prove such injury as he starts off with a presumption of damage. However, to attract a substantial award of damages evidence must be provided.
76. In **TnT News Centre Ltd v John Raphael**¹⁶ Kangaloo JA stated that the purpose of an award of damages in a defamation action is threefold in nature:
a. to compensate for the distress and hurt feelings;

¹⁶ Civ Appeal No 166 of 2006

- b. to compensate for any actual injury to reputation, which must be proved or may reasonably be inferred; and
- c. to serve as an outward and visible sign of vindication.

77. In **TnT News Centre Ltd v John Rahael** the Court of Appeal in this jurisdiction adopted the principles of Sir Thomas Bingham in **John v MGM**¹⁷ where Kangaloo JA stated:

“The successful plaintiff in a defamation action is entitled to recover, as general compensatory damages, such sum as will compensate him for the wrong he has suffered. That sum must compensate him for the damage to his reputation; vindicate his good name; and take account of the distress, hurt and humiliation which the defamatory publication has caused. In assessing the appropriate damages for injury to reputation, the most important factor is the gravity of the libel; the more closely it touches the plaintiff’s personal integrity, professional reputation, honour, courage, loyalty and the core attributes of his personality, the more serious it is likely to be. The extent of the publication is also relevant; a libel published to millions has a greater potential to cause damage than a libel published to a handful of people.”

78. In the 12th edition of **Gatley on Libel and Slander** published in 2013 the authors stated at page 335 paragraph 9.5 that the following matters affect the level of the award:

“Damages are “at large” in the sense that they cannot be assessed by reference to any mechanical, arithmetical or objective formula and they are peculiarly the province of the jury (where there is a trial by that method). The jury (or the judge if sitting alone) is entitled to take into consideration a wide range of matters including the conduct of the claimant, his credibility, his position and standing, and the subjective impact that the libel has on him, the nature of the libel, its gravity and the mode and extent of its publication, the absence or refusal of any retraction or apology and the conduct of the defendant from the

¹⁷ [1997] QB 586

time the libel was published down to the verdict....the conduct of the claimant in the course of litigation.”

79. In assessing the award of damages which the Claimant is entitled to I will examine the evidence under the following factors:
- (a) The extent of the publication;
 - (b) The gravity of the allegation;
 - (c) The impact upon the Claimant’s feeling, reputation and career

The extent of the publication

80. Although a successful claim for defamation requires publication be to just one person, the greater the circulation of publication, the greater the harm to the Claimant’s reputation.
81. The Claimant’s evidence was that she did not see the posting of the words on the TTPS Facebook page. Her witness, Ms Elias evidence was that she saw the posting on the TTPS Facebook page. She said that before she saw the posting she received a telephone call from a colleague who is also a Prisons Officer and who encouraged her to visit the TTPS Facebook page to view the posting about the Claimant.
82. In **Gatley on Libel and Slander 11th ed at paragraph 6.2** the authors opined that:
“Where material has been issued to the public within the jurisdiction in the form of a book or newspaper, the claimant is not required to plead or prove publication to particular persons. But the same is not true of publication on a web site. There may be evidence as to how many times the material was accessed or it may be legitimate to draw an inference about that from the circumstances, but there is no presumption of law that in such a case there has been a substantial publication within the jurisdiction.” Emphasis added

83. **Gatley** cited the English High Court decision **Al Amoudi v Brisard**¹⁸ where it was held that there is no presumption of publication via the internet that defamatory material has been accessed and read.
84. Based on the evidence at least two (2) persons saw the posting about the Claimant on the TTPS Facebook page. Apart from this evidence there was no evidence adduced by the Claimant to demonstrate the number of persons who actually saw the posting about her on the TTPS Facebook page. In my opinion the publication of the words on the TTPS Facebook page does not necessarily mean that the circulation was widespread in the absence of such evidence. As such the Court cannot conclude that the publication was extensive in the absence of such evidence.

The gravity of the allegation

85. In **John v MGM**¹⁹ the Court took the position that in assessing the appropriate damages for injury to reputation, the most important factor to be considered is the gravity of the libel. The more closely it touches the Claimant's personal integrity, professional reputation, honour, courage, loyalty and the core attributes of his personality, the more serious it is likely to be.
86. The content of the publication concerns the Claimant's personal integrity and her loyalty towards her children but it did not include any reference to the Claimant's professional reputation.
87. In my opinion, the nature of the allegations in the publication were of a very serious nature since it called into question the fitness of the Claimant as a parent in a society where the acts of parents with their children are under immense scrutiny both by private citizens and state agencies. Therefore, in determining the quantum of damages to the

¹⁸ [2006] EWHC 1062 QBD 1 W.L.R 113

¹⁹ [1997] Q.B. 586.

Claimant, I have attached significant weight to this factor since the very nature of the libel went to the core of the Claimant's fitness as a parent.

The impact upon the Claimant's feeling, reputation or career

88. In **TnT News Centre Kangaroo JA** pointed to the need for evidence to portray the full extent of the Claimant's hurt, humiliation and distress. At page 14 it was stated as follows:

"that where the injury to the claimant's reputation is negligible, the evidence in relation to the claimant's injured feelings assumes prominence in the assessment exercise."

89. And at page 15:

"However, a major element in the assessment exercise was conducted based solely on the presumption of damage in relation to injury to feelings and distress. There was however no evidence before the learned judge as to the full extent of the respondent's hurt, humiliation and distress."

90. According to the Claimant's evidence she has been a Prisons Officer I for the past ten (10) years. The harm which the Claimant alleged included :

- a. receiving phone calls from coworkers to clarify the incident;
- b. overhearing colleagues speaking about her causing her to feel hurt and embarrassed; and
- c. being ashamed to return to work due to gossiping.

91. At paragraphs 15 and 16 of the Claimant's witness statement she described the effect of the publication on her feelings was that she was "*hurt and ashamed*" and "*embarrassed to return to work*". Other than these statements there was no evidence of any other injury to the Claimant's feelings. The Claimant did not set out in her

witness statement a single instance of the distress, hurt of humiliation which the publication caused. Further, there was no evidence that the Claimant lost friends and acquaintances as a result of the publication.

92. The Claimant also testified that she was being subjected to a disciplinary investigation due to a report made by the Defendant to the Claimant's superintendent. In cross-examination the Claimant stated that she believed she was called into a meeting with her supervisor because of the screenshots. In the absence of any evidence from the Supervisor at best this is simply speculation on the part of the Claimant.
93. In cross-examination, the Claimant confirmed that she was still employed in the TTPS; the matter was not forwarded to the Investigations and Discipline Section; to date she has not faced any disciplinary action. Based on the Claimant's own evidence she has not been adversely affected at work due to the publication.
94. Based on the aforesaid assessment of the Claimant's evidence, I am not of the opinion that an award of nominal damages is adequate to compensate the Claimant for her loss as a result of the publication. In particular, I have attached some weight to the gravity of the allegation where the sting was that the Claimant was an unfit mother. In my opinion, such a serious allegation cannot draw an award of nominal damages.
95. In determining the award of damages to compensate the Claimant for her loss, the guidance by Kokaram J in **Faiiq Mohammed v Jack Austin Warner**²⁰ was instructive. The Court outlined three guidelines which ought to be taken as:

“[53]First for the award to be proportional it would be a good practice for the Court after conducting the above analysis to step back and conduct a “self check” recognising that the level of damages should not be pitched to high so as to create the chilling effect of the constitutional right to freedom of expression, nor should it be so low as to reduce the significance of the purpose of the award. One's desire to punish another member of the public therefore in

²⁰ CV 2013-04726 at paragraphs 53, 56 and 57

making defamatory remarks should be sufficient to send the signal that unjustifiable remarks would not be tolerated in a democratic society but not be interpreted to stifle in the slightest degree stern debate, heated criticism and boisterous comment. See Tolstoy Milsolavsky v United Kingdom [1995] 20 E.H.R.R. 442.

[56] Second it is entirely legitimate for the Court to draw comparisons to other decided cases in defamation and can strive to bracket the level of award in certain categories. A suitable bracket for a defamatory remark of corruption against a public official from the survey of cases is from \$150,000.00 to \$800,000.00. Even in the search for an appropriate bracket the Court must be alive to the peculiarities of the reputation under review and the reasons for the inconsistencies....

[57] Finally the Court can legitimately make a reality check by examining comparative awards in personal injury cases where the Court has attempted to compensate pain and suffering and hurt feelings. See John v MGN (supra)''

96. In addition to the aforesaid evidence I also considered the sums awarded in the following cases.
97. In **TNT News Centre**, delivered by the Court of Appeal on the 9th July 2009, it was alleged that Mr. Rahael, then Minister of Health and a Member of Parliament, was involved in a drug trade and a “marked man”. The Court of Appeal reduced the award of \$400,000.00 to \$250,000.00 on the ground that there was no direct evidence as to the full extent of the injury to his feelings and reputation. This case can be distinguished from the instant case as the Claimant in this case was not a public figure.
98. In **Luanna Taylor v T&T News Centre Limited and David Millette**²¹, delivered on the 28th August 2009, Stollmeyer J (as he then) awarded the Claimant the sum of

²¹ CV 2006-01002

\$70,000.00 including an amount for aggravated damages following allegations that the Claimant's appointment at NP was politically motivated. This case can be distinguished from the instant case as the libel in this case as there was not a widespread publication of the words complained of.

99. In **Gita Sakal v Michael Carballo**²², Boodoosingh J on the 26th November 2012 awarded the Claimant the sum of \$50,000.00. The Court was of the view that the Claimant was not of the prominence of other public figures to attract a higher award.
100. In **Carl Tang v Charlene Modeste**²³ Master Alexander on the 13th March 2013 awarded the Claimant, a teacher the sum of \$18,000.00 for words published in a letter with limited publication. The Court considered that the libel was not broad-based in terms of the general population but was contained mainly within his professional circle at the school where he was employed.
101. In **Faiiq Mohammed** Kokaram J on the 24th July 2013 awarded the sum of \$220,000.00 to the Claimant who was a public official who was accused of corruption. The Claimant in the instant case was not a public official. Further, there was no evidence of widespread publication of the word.
102. I have taken into account that the Claimant was not a public figure as in the **Faiiq Mohammed** and the **TnT News Centre** cases and there were no allegations of corruption as in the **Luanna Taylor** matter. The instant matter is more in line with the **Gita Sakal** and the **Carl Tang** cases but I have attached significant weight to the gravity of the allegation. In my opinion, an appropriate award of damages to compensate the Claimant for her loss is \$75,000.00.

²² CV2009-02468

²³ CV2010-03657

Conclusion

103. Having considered the evidence I concluded that the Defendant was responsible for publishing the words because she deliberately tagged the administrators of the pages “Beyond the Tape”, “Ian Alleyne” and “TV6 News” over whom she had no control and whom she admitted would have seen the post. The Defendant in publishing the words on her Facebook page and “tagging” persons whom she had no control over implicitly gave them permission to forward the publication to third parties. The Defendant must remain responsible for the words she initially published once they remained in the form she originally published. Regardless of her privacy settings on her personal Facebook page, she had no control over the actions of the persons whom she permitted to see the post and based on her evidence, her intention was to circulate the information so that the Claimant could have collected her children. There was no conclusive evidence from the Defendant to demonstrate that there was no means of a third party forwarding her post to the TTPS Facebook page. Therefore, it is highly probable that one of the persons whom the Defendant permitted to view the post in her Facebook page caused it to be on the TTPS Facebook page.
104. In my opinion, the ordinary, reasonable person reading the post would have concluded that the Claimant was an irresponsible mother for leaving her children by the road unsupervised in front of the house of a third party whom she did not know. The Court takes judicial notice that “Beyond the Tape” and “Ian Alleyne” are programmes which highlight acts of crime and “TV6 News” reports on any alleged criminal activity. As such, the words on the post could have coloured the opinion of the ordinary, reasonable person into thinking that the actions by the Claimant with respect to the treatment of her children was of such gravity that it was a criminal act committed.
105. The Claimant is therefore awarded the sum of \$75,000.00 in general damages together with interest thereon at the rate of 2.5% per annum from 5th September, 2016 to the date of judgment. I also award the Claimant her costs.

Order

106. Judgment for the Claimant.
107. The Defendant to pay the Claimant general damages in the sum of \$75,000.00 together with interest thereon at the rate of 2.5% per annum from 5th September, 2016 to the date of judgment.
108. The Defendant to pay the Claimant prescribed costs in the sum of \$19,652.08.

**Margaret Y Mohammed
Judge**