THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV2016-03084

BETWEEN

DR. ROODAL MOONILAL

CLAIMANT

AND

MIRROR GROUP PUBLICATION LTD.

AND

JULIET DAVY

DEFENDANTS

Before The Honourable Mr.Justice Robin N Mohammed

Date of Delivery: Thursday 6 February 2020

Appearances:

Mr. Larry Lalla instructed by Mr. Vivek Lakhan-Joseph for the Claimant

Mr. Michael Quamina instructed by Ms. Gitanjali Gopeesingh for the Defendant

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JUDGMENT

A. INTRODUCTION

1. The Claimant is a politician and a member of the House of Representatives. The First Defendant operates a newspaper commonly known as the "TNT Mirror", a newspaper which is published twice weekly with general circulation in Trinidad and Tobago. The Second Defendant is a journalist and a political activist. Between May and June 2016, the Second Defendant wrote two articles, which were published in the First Defendant's newspaper. Both articles were based on a list of the alleged richest people in Trinidad and Tobago and focused on the alleged wealth of the Claimant, who was ranked on that list. The Claimant has now brought the instant proceedings against the Defendants contending that the articles were defamatory of him.

2. The Claimant claims against the Defendant the following reliefs:
   (i) Damages, including aggravated and exemplary damages for libel arising out of the Defendants' publication of newspaper articles in the Friday 27 May, 2016 Weekday Edition of the "TNT Mirror" newspaper, under the headline "PNM caught sleeping" and in the Friday 3 June, 2016 Weekday Edition of the said newspaper, under the headline "Who is fuelling the crime?"
   (ii) Interest
   (iii) Costs
   (iv) Further or other relief as the Court may deem appropriate.

B. THE CLAIMANT'S CASE

3. The Claimant avers that he was at all times an accomplished professional, a holder of public office, an elected member of the House of Representatives and the Member of Parliament for Oropouche East.

4. On Friday 27 May 2016 at page 11 of the Weekday Edition of the TNT Mirror ("the said newspaper"), the Defendants' published or caused to be printed an article with the headline ***"PNM caught sleeping"*** carrying a large photograph of the Claimant

("the first article"). The Claimant contends that the publication was defamatory, and contained false allegations in the form of direct statements and innuendos. The words complained of are:

> *"… Someone reminded me that Dr. Roodal Moonilal is said to be the fourth richest man in Trinidad and Tobago with $2.58b to his credit. Therefore, the response from Mr Garcia should have been to ask the goodly Dr. Moonilal what is the source of his wealth?*
>
> *But the PNM seems to be disinterested in setting the wheels of motion in place to deal with "stink mouth" Moonilal and others, and reluctant to take the bull by the horn to start putting their activists in place to protect their interests. Imagine Junior Sammy, a well-known and established business mogul, is eleventh on the same list of the richest 25 people with $83.38m compared to Dr Moonilal who as recent as 2010 was allegedly broke and could not pay his wife's tuition fees, according to allegations made by Jack Warner.*
>
> *Now he has even more money than Warner himself.*
>
> *Well in this time of recession we should consider borrowing money from Dr Moonilal and even send President Maduro by him for financial assistance for Venezuela."*

5. The very next week, on the 3 June, 2016, in the Weekday Edition of the said newspaper, another article with the headline ***"Who is fuelling the crime?"*** and carrying a large photograph of the Claimant ("the second article"), was published or caused to be printed and published by the Defendants continuing from the first article

and containing defamatory, false allegations in the form of direct statements and innuendos concerning the Claimant. The words complained of are summarised below:

> ***"It is indeed a fact that not everything you read on the newspaper or on social media is true.***
>
> *Therefore, it is mind-boggling to me that in the wink of an eye, a politician can amass a fortune in the tune of billions without any hard evidence; let me put it this way, when he is not known to the public as a businessman or the heir of a family dynasty.*
>
> *I am speaking of no other than the Member of Oropouche East, the local slim shady, Dr. Roodal Moonilal, who is weighing much lighter on the scale but is a whopping ($2.58b) heavyweight in the pocket. At least that is the word on social media.*
>
> *…*
>
> *It cannot be that there are people sitting in our Parliaments passing judgment on citizens who worked for a honest day pay and deserved to be paid being vilified by a politician who in the short space of five years is alleged to be ranked with the likes of ANSA MCAL as a billionaire…he simply does not have the moral authority to point fingers at anyone.*
>
> *…*
>
> *At the beginning, I prefaced my column by stating that not everything you read in the papers is true, and I stand by this comment on the basis of the publication of Trinidad's 25 most riches people, and the obscenity of Dr Moonilal falling in the billionaire category.*
>
> *…*
>
> *Therefore it is sickening to say the least, to listen to Dr Moonilal take the moral high road against Kerwyn Garcia who claims he worked honestly for his salary and was paid, when in comparison the population is in shock about his billionaire status and the source of his wealth.*

Notice, that I have alluded that this could possibly be a hoax, because even Dr Moonilal has denied claims about a palatial property that was posted on social media being his. He claimed that this was impossible since he was still living with his mother, I guess to save rent.
Anyway folks, none of the so called criminals from Laventille didn't make the list so one must ask, who is fuelling the crime?"

6. The Claimant contends that the both articles in their natural and ordinary meaning were understood to mean that the Claimant:
   (a) Improperly and or illegally and or corruptly misappropriated public funds to the tune of $2.58 billion in the 5 year period between 2010 and 2015;
   (b) Possesses financial resources for which he cannot legally account;
   (c) Committed white- collar crimes and is guilty of misconduct in public office;
   (d) Was, during his tenure as Housing Minister, involved in activities with the Trinidad and Tobago Housing Development Corporation, which warrant investigation by law enforcement authorities;
   (e) Is a criminal;
   (f) Is corrupt;
   (g) Is a dishonest individual;
   (h) Lacks morality and integrity;
   (i) Habitually wages unfounded and unjustified personal attacks against those in politics and their families;
   (j) Is unworthy of the public's trust;
   (k) Is not fit to hold public office;
   (l) Deserves to be condemned and ridiculed by right-thinking members of the Trinidad and Tobago public;
   (m) Has caused shock and outrage amongst the Trinidad and Tobago public because of his accumulation of such a large amount of money through obviously illegal/dishonest/corrupt means.

7. The Claimant has pleaded particulars of innuendo contending that both articles taken in their entirety, were understood to mean that the allegation circulating via social media is verified and true, and that therefore the Claimant necessarily engaged in fraudulent, dishonest and or other potentially criminal acts in order to amass such a fortune.

8. The Claimant has pleaded the following Particulars of Loss and Damage:

(i) The articles have lowered the Claimant in the estimation of ordinary, reasonable readers nationally and internationally.

(ii) The articles have brought the Claimant into public scandal, odium, disrepute and contempt and have severely injured his character, credit and reputation in the estimation of right-thinking persons generally, and have caused the Claimant considerable embarrassment and distress;

(iii) The falsities expose the Claimant to unjustifiably and unfairly defending his name in public and to ward off calls for criminal investigations into and concerning the same;

(iv) The falsities led to damage to his national, professional and personal reputation, which he has rightfully earned over the years through his position as a public officer;

(v) The Defendants published the articles without any full and proper investigation into the truth or accuracy of the allegations and information contained therein, which constitutes a flagrant act of irresponsible journalism and a reckless and wanton disregard for the Defendants' duty to publish in the public's interest in a fair, accurate and non-malicious manner;

(vi) The Defendants published or caused to be published the words in the articles knowing that they were false and or recklessly not caring whether they were true or false;

(vii) The Defendants published or caused to be published the defamatory words and statements to encourage mass republication and to cause widespread damage to the Claimant's national, professional, political and personal reputation;

(viii) The Defendants had or reasonably ought to have known that the words published were defamatory in nature and would have severe consequences for the Claimant's national, professional and personal reputation;

(ix) The Defendants purposely and intentionally repeated allegations and rumours which they knew to be false, and expanded upon them negatively.

9. A Pre-action Protocol Letter dated Thursday 2 June 2016 was sent to the Defendants.

C. THE DEFENCE

10. The Defendants admit the publication of both the first and second articles but deny that the words contained therein are defamatory or false allegations in the form of direct statements or innuendos of and concerning the Claimant.

11. The Defendants aver that the Second Defendant was at all material times a freelance columnist for the First Defendant. The said newspaper is published twice weekly and its circulation is approximately fifteen thousand copies per week.

12. The Defendants aver that the words used were honest comment, made in good faith and without malice upon a matter of public interest, based on a list of the 25 richest persons in Trinidad and Tobago, which was published on the internet and Facebook on or around the 22 September 2015. The said list was thereafter circulated amongst the general public via email, Short Message Service (SMS) and WhatsApp messages.

13. The Defendants have also pleaded a series of newspaper articles wherein accusations against the Claimant were made by various persons.

14. The Defendants contend that the words were commentary premised on the Claimant being named on the said list, and accordingly the words were understood to bear the meanings as set out hereunder:
    (a) It is of concern when a politician acquires a significant amount of wealth when he is not known as a businessman or the heir of a family dynasty;
    (b) That it is alleged that the Claimant is ranked as billionaire on the said list;
    (c) That while not everything one reads in true, and the author stands by this comment, if the Claimant is in fact a billionaire, that would be obscene;
    (d) If the Claimant is a billionaire then the Integrity Commission and the Financial Intelligence Unit are not doing their job;
    (e) That the Claimant cannot take the moral high road complaining about fees paid to an attorney-at-law when the population is in shock about his presence on the list;
    (f) That the list could possibly be a hoax.

15. The Defendants deny that the Claimant is entitled to the reliefs sought.

D. <u>THE EVIDENCE</u>

16. The Claimant served as sole witness for his case. The Second Defendant served as sole witness for the Defendants.

The Claimant- Dr Roodal Moonilal

17. The Claimant has listed his qualifications in his statement of case[1] and his witness statement[2] in detail. In summary, he is possessed of multiple degrees from both local and international universities and has attained a Ph.D. from the Institute of Social

[1] Paragraph 1 of the Statement of Case under heading "Relevant Particulars of the Claimant's Background"
[2] Paragraph 2 of his witness statement filed 26 September 2017

Studies, The Hague. He is also a qualified attorney-at-law. He has also held numerous positions both locally and internationally, as a tutor, lecturer and advisor.

18. Most notably and relevant to these proceedings, the Claimant has stated that he has been a Member of Parliament since 2001, having served in the roles of Government Senator, and then being elected to the House of Representatives. He has served as Minister under various Ministries and sat on numerous committees of Parliament.

19. The Claimant has stated that he has declared his assets and liabilities annually to the Integrity Commission, pursuant to the Integrity in Public Life Act, since 1998. He is also in receipt of certificates of compliance from the said Commission for the period 2000-2014.

20. The articles have caused the Claimant irreparable harm and distress. When he read the articles, he was very distressed that a national newspaper and a journalist could print such an articles without regard for their truth or the effect that the articles would have on him, his name, his family and its reputation and life.

21. The Claimant recalled that immediately following the Defendants' publication of the articles there were occasions when persons confronted him and sort to embarrass him at social events based upon their reading of the articles. In addition, this has caused his family members grave embarrassment when persons approached them and alluded to the alleged wealth and ill-gotten monies he has been accused of amassing.

22. In cross-examination, the Claimant testified that he did not take any steps to have the web searched for the said list, and did not address the articles by way of words or reply.

23. He agreed with Counsel for the Defendants that a person who holds public office and is said to also have a significant fortune would be a person of public interest. He also agreed that the Second Defendant stated in her second article that it was alleged that the Claimant was being ranked and that she alluded that this could be a hoax.

24. When cross-examined on his Statement of Case that he has an established national, international and professional reputation as a person of utmost integrity, and asked whether he has provided any evidence of that, he referred to his academic and professional work experience as stated in his Witness Statement. The Claimant also cited his adherence to the Integrity in Public Life Act.

25. The Claimant agreed with Counsel for the Defendants that what he was relying on was a third party view, that is, the public's view when he spoke of his reputation as stated above.

26. The Claimant testified that he did not state in detail or state with any particularity in his Witness Statement, how the articles caused him irreparable harm and distress.

27. He also testified that he has addressed the said list by seeking the protection of the Court.

The Second Defendant- Juliet Davy

28. The Second Defendant has been a candidate for both local and general elections for the United National Congress ("UNC"). She knows the Claimant professionally and was employed under his Ministry as a CEPEP field officer when he was the Minister of Housing.

29. She has been involved in print and broadcast media since 2000. She has always commented on the political landscape via the aforesaid mediums and via social

media. Due to this, she was approached to write commentaries for the Mirror Group Publications Limited (the First Defendant).

30. She began working as a freelance writer for the First Defendant in 2011.

31. The Second Defendant has admitted to knowing that the Claimant is a well-known public figure and from her knowledge and experience in the media, he is one of the most popular, controversial, flamboyant and outspoken Members of Parliament.

32. The Second Defendant's friend, Hazel Smith, reminded her of the said list when she was preparing her commentary for that week. She recalls seeing the list and hearing many people discussing same, as it was widely circulated by email, Facebook and WhatsApp. In order to address the matter in her article, she was able to easily find the said list on the internet. It was a list of the 25 richest people in Trinidad and Tobago and Dr Moonilal appeared at number 4.

33. She stated that she found the list on www.imgur.com, which is stated on the internet to be ranked as one of the top 50 websites in the world.
34. As it relates to the first article, the Second Defendant states that she provided her opinion that the PNM was sleeping and that Mr Noel Garcia was being naïve when he failed to address the accusation of Dr Moonilal against him of a conflict of interest in relation to payment of legal fees by the State to his nephew. She goes further to state that she sought to make the point that Mr Garcia should have asked Dr Moonilal to state the source of his wealth.

35. The Second Defendant denies malicious intent and states that she wanted to legitimately discuss the Claimant's name being on the list as she was of the view that the public would also want to discuss same.

36. With respect to the second article, she states that she sought to highlight the fact that the average citizen who is not in a positon of power is subjected to all sorts of checks and balances, while others, including the Claimant, apparently have significant financial wealth without having to account. She again relied on the said list.

37. The Second Defendant relies on her opening statement in the second article, which stated that one should not believe everything one reads in the newspaper and social media.

38. The Second Defendant states that her second article is a commentary that if the list was true then the institutions set up as watchdogs were quite simply not doing their jobs.

39. In cross-examination the Second Defendant testified that she is an activist of the People's National Movement (PNM) but denied that she was giving advice to the PNM when she wrote both articles.

40. She testified that at the time of writing the articles, she was a columnist for The TNT Mirror, and acknowledged that she had a serious professional responsibility, because great damage could be done to a person's reputation via newspapers. When questioned on whether she agreed that because of that, at all times she had a duty to act responsibly, she testified 'yes'.

41. She testified that she understood that at all times she had a duty not to unfairly malign the Claimant's character.

42. When cross-examined on the said list, she admitted that she did not say in her witness statement what the original source of the list was, or who complied it, or how that list came to be compiled. She also testified that she did not have anything in her

witness statement about the process that was followed in the preparation of the said list. She testified further that she could not in fact say whether any process at all was followed in the preparation of the said list, and that she could not say whether the said list was accurate.

43. The Second Defendant testified that she acted as a responsible journalist at all times in relation to the said list but agreed with Counsel for the Claimant that she did not show in her Witness Statement any steps taken to verify the list or the steps she took to try to verify the list.

E. THE ISSUES

44. Taking into account the pleadings (including the relief sought), evidence and submissions of both parties, the Court has resolved that the issues for determination at trial are as follows:
    - **(a) Did the words published in the first and second articles bear any defamatory meaning in their natural and ordinary meaning, including inferred meanings?**
    - **(b) If so, have the Defendants met the requirements of their defence of honest comment?**
    - **(c) If the defence fails, is the Claimant entitled to damages and what measure of damages ought to be awarded to the Claimant?**

45. I shall consider each issue in turn.

F. LAW AND ANALYSIS

(a) Did the words published in the first and second articles bear any defamatory meaning in their natural and ordinary meaning, including inferred meanings?

46. **Gatley on Libel and Slander**[3] 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 is made in a permanent form or is broadcast or is part of a theatrical performance, it is a libel."*

47. There is no issue as to the publication of the articles as the Defendants have admitted to publishing the articles in the TNT Mirror, and have admitted that the articles were written by the Second Defendant. The Defendants' evidence is that the Second Defendant is a freelance writer for the TNT Mirror and prepared the articles for her column based on the information contained in the said list that she found on the internet.

48. Mendonça JA in **Kayam Mohammed & Ors v TPCL & Ors**[4] re-iterated the established learning as to the factors to be considered by a court in determining whether the words are defamatory:

> *"10. There was no dispute as to the proper approach of the Court in determining the meaning of words alleged to be defamatory. The principles were recounted by Lord Nicholls in **Bonnick v Morris [2003] 1 A.C. 300** (at para 9):*
>
> > *"Before their Lordships' Board the issues were reduced to two: meaning and qualified privilege. As to meaning, the approach to be adopted by a court is not in doubt. The principles were conveniently summarized by Sir Thomas Bingham MR in **Skuse v Granada Television Ltd. [1966] EMLR 278, 285-287**. In short, the court should give the article the natural and*

[3] 12th ed at page 6 paragraph 1.5

[4] Civ App No 118 of 2008

ordinary meaning it would have conveyed to the ordinary reasonable reader of the "Sunday Gleaner" reading the article once. The ordinary reasonable reader is not naïve; he can read between the lines but he is not unduly suspicious. He is not avid for scandal. He would not select one bad meaning where other, non-defamatory meanings are available. The court must read the article as a whole, and eschew over-elaborate analysis and, also too literal an approach. The intention of the publisher is not relevant. An appellate court should not disturb the trial Judge's conclusion unless satisfied he was wrong."

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."*

*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 words may include any implication or inference stated (at p.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 of the words, the Court cannot recognize, 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. …"

49. The issue was also helpfully summarized by Tugendhat J in **Cooper and another v Turrell [2011] EWHC 3269 (QB)**:

"[33] In deciding at the trial of a libel action the meaning of the publications complained of, the court adopts the same test as it applies in deciding what meaning such words are capable of bearing. That test was most recently set out by Sir Anthony Clarke MR in ***Jeynes v News Magazines Ltd [2008] EWCA Civ 130*** *at para 14 as follows:*

"The legal principles relevant to meaning . . . may be summarised in this way:

(1) The governing principle is reasonableness.

(2) The hypothetical reasonable reader 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.

(3) Over-elaborate analysis is best avoided.

(4) The intention of the publisher is irrelevant.

(5) The article must be read as a whole, and any 'bane and antidote' taken together.

(6) The hypothetical reader is taken to be representative of those who would read the publication in question.

(7) In delimiting the range of permissible defamatory meanings, the court should rule out any meaning which, 'can only emerge as the produce of some strained, or forced, or utterly unreasonable interpretation...."

(8) It follows that 'it is not enough to say that by some person or another the words might be understood in a defamatory sense.'"

[34] It is not the function of the court simply to either reject or accept the meaning put forward by the Claimant. The court must reach its own conclusion. …."

50. The Claimant set out the law on repetition in defamation cases**. <u>Gatley on Libel and Slander</u>**[5] states:

"If you repeat a rumour you cannot say it is true by proving that the rumour in fact existed; you have to prove that the subject matter of the rumour is true. The "reputation rule" reflects a fundamental canon of legal policy in the law of defamation…that the words must be interpreted and the implications they contain justified by reference to the underlying allegations of fact and not merely by reliance upon some second-hand report or assertion of them. This is because repeating someone else's libellous statement is just as bad as

[5] 12th Ed at para 11.18

making the statement directly and therefore for the purpose of the law of libel a hearsay statement is the same as a direct statement."

51. The Claimant submitted that it is therefore no defence for the Defendants to say that they are merely repeating what is allegedly published by some unidentified person on the internet. This Court agrees.

52. This Court has carefully considered the words used in both articles.

The First Article

53. As it relates to the first article, the words, *"Someone reminded me that Dr Roodal Moonilal is said to be the fourth richest man in Trinidad and Tobago with $2.58b to his credit. Therefore, the response from Mr Garcia should have been to ask the goodly Dr Moonilal what is the source of his income,"* may not on its natural and ordinary meaning be considered defamatory despite asking the ordinary reader to question the Claimant's worth.

54. However, the article continues, ***"…compared to Dr Moonilal who as recent as 2010 was allegedly broke and could not pay his wife's tuition fees, according to allegations by Jack Warner. Now he has even more money than Warner himself."***

55. Taken as a whole, the first article on its natural and ordinary meaning has the ability to create in the mind of the reader the impression that the Claimant has within the period 2010 to the date of the said list or at least the date of the first article, gone from broke to billionaire. The use of the word "alleged" does nothing to quell the tide of doubt that could be created in the mind of the ordinary reader.

56. The words of the first article ineluctably leaves in the mind of the ordinary reader, the impression that the Claimant who is a Parliamentarian and was a Minister during the

period 2010-2015, has possibly misused his office for financial gain or has improperly within a five-year period during which he was meant to serve his country, attained unexplainable wealth.

57. This Court therefore finds that the words contained in the first article are defamatory on their natural and ordinary meaning.

The Second Article

58. The Second Defendant prefaced her second article by saying that not everything you read on the internet is true but then goes on to make a bold statement that in the wink of an eye, Dr Moonilal, a politician, has amassed a fortune to the tune of billions, when he is not known to be a businessman or the heir of a family throne. She then went on to refer to the first article.

59. The Second Defendant claims to be informing the public so that they can make wise decisions. She goes on to state that ***"It cannot be that there are people sitting in our Parliament passing judgment on citizens who worked for a honest day pay and deserved to be paid being vilified by a politician who in the short space of five years is alleged to be ranked with the likes of ANSA McCAL as a billionaire …he simply does not have the moral authority to point fingers at anyone."***

60. She went further to state:

> ***"Therefore it is sickening to say the least, to listen to Dr Moonilal take the moral high road against Kerwyn Garcia who claims he worked honestly for his salary and was paid, when in comparison the population is in shock about his billionaire status and the source of his wealth.***
>
> ***Notice, that I alluded that this could possibly be a hoax, because even Dr Moonilal has denied claims about a palatial property that was posted on***

social media being his. He claimed that this was impossible since he was still living with his mother, I guess to save rent.

Anyway folks, none of the so called criminals from Laventille didn't make the list so one must ask, who is fuelling the crime?"

61. This Court is of the view that the second article when constructed according to its natural and ordinary meaning, undoubtedly creates in the mind of the ordinary reader the impression that the Claimant being a politician has amassed unexplainable wealth within a short space of time, a time when he was a Parliamentarian and not a businessman or heir to a throne. It leaves the impression on the minds of ordinary readers that the Claimant, as a politician, is of a corrupt nature, or how else would he explain such wealth.

62. The second article calls into question the moral authority of the Claimant to pass judgment on citizens when he has in a short space of time attained billionaire status. She went further to question the Claimant's "moral high road" as "the population is in shock about his billionaire status and the source of his wealth."

63. The Second Defendant went on to state "Anyway folks, none of the so called criminals from Laventille didn't make the list so one must ask, who is fuelling the crime."

64. Here we have an article which at its core is dedicated to raising questions regarding the alleged billionaire status of the Claimant, based on a list found on the internet, and which concludes by asking the rhetorical question, since none of the so called criminals of Laventille have made it on the list, who is fuelling the crime?

65. Tied into the entire article, the above words undoubtedly asks the ordinary reader, though rhetorically, to consider whether the Claimant, a politician who has denied owning a palatial property and lives with his mother, is in fact a contributor to crime, because of his alleged unexplainable wealth. It also begs the question in the mind of the ordinary reader as to whether the Claimant is a man of immoral, illegal and corrupt means.

66. It is not in dispute that the Claimant is a politician and a Member of Parliament with lengthy service to his country. The Second Defendant in her evidence attested to the fact that she knows the Claimant professionally and has worked under his Ministry when he was the Minister of Housing.

67. When cross-examined on the said list, the Second Defendant admitted that she did not say in her witness statement what the original source of the list was, or who complied it, or how that list came to be compiled. She also testified that she did not have anything in her witness statement about the process that was followed in the preparation of the said list. She testified further that she could not in fact say whether any process at all was followed in the preparation of the said list, and that she could not say whether the said list was accurate.

68. The Second Defendant also testified that she acted as a responsible journalist at all times in relation to the said list but agreed with Counsel for the Claimant that she did not show in her Witness Statement any steps taken to verify the list or the steps she took to try to verify the list.

69. It cannot be that persons who regard themselves as professional journalists, and acknowledge a professional duty to professional responsibility, would write articles based on a document found disseminating on the internet, without first seeking to verify its contents. While freedom of speech is a pillar of every democratic society,

with this freedom comes the onus of responsibility, a responsibility that journalists ought to regard with the utmost severity, particularly when articles are contained in a National Weekly newspaper, which is printed twice weekly and has a circulation of fifteen thousand copies.

70. While the Defendants' have sought to deny that the Claimant is of national, international and professional reputation with utmost integrity, this Court is not satisfied that they have succeeded in so proving. Neither of the two articles quoted by the Defendants, which shower allegations against the Claimant, is an article from which investigations have found the Claimant guilty of breaches of the law or codes of conduct.

71. This Court therefore finds without hesitation that the words contained in the first and second articles are defamatory when construed in their natural and ordinary meaning.

(b) If so, have the Defendants met the requirements of their defence of honest comment?

72. "Honest comment" on a matter of public interest is one of the principal defences to an action for defamation. The defence of honest comment (or fair comment as it used to be known) reflects the protection that English Law affords to an honest person who expresses an opinion, however "prejudiced, exaggerated or obstinate" that view may be. Aside from the requirement that the comment must be on a matter of public interest, it must also be based on facts which are true and the comment must be recognisable as comment as distinct from an imputation or statement of fact: see **Waterson v Lloyd and Carr [2013] EWCA Civ 136**.

73. Rampersad J in **<u>Jwala Rambaran v Dr Lester Henry</u>**[6], set out the law on fair comment. He stated:

> "28. **Gatley on Libel and Slander** (12th edn, 2013) states at paragraph 12.7 under the rubric **'<u>Centrality of recognisability as comment</u>'**:
>
> *"It is a fundamental rule that the honest comment defence applies to comment and not to imputations of fact. If the imputation is one of fact, the defence must be justification or privilege ..."*
>
> 29. DaCosta C.J. in the Bahamian case of **<u>Osadebay v Solomon Supreme Court of Bahamas No. 803 of 1979</u> (unreported)** stated:
>
> *"Again, the comment must be an expression of an opinion and not an assertion of fact and the critic should always be at pains to keep his facts and his comments upon them severable from one another. For if it is not reasonably clear that the matter purported to be fair comment is such, he cannot plead fair comment as a defence. The facts themselves must be truly stated as Fletcher Moulton, L.J. observed in **Hunt v. Star Newspaper Co. ([1908–10] All E.R. Rep. at 517);***
>
> > *"In the next place, in order to give room for the plea of fair comment, the facts must be truly stated. If the facts upon which the comment purports to be made do not exist the foundation of the plea fails. This has been so frequently laid down authoritatively that I do not need to dwell further upon it: see, for instance, the direction given by Kennedy J., to the jury in Joynt v. Cycle Trade Publishing Co. ...which has been frequently approved of by the courts. Finally, comment must not convey imputations of an evil sort except so far as the facts truly stated warrant the imputation."* [Emphasis added]

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[6] CV2014-03990

30. As a result, the court has to first of all look at the statements to determine whether they are comments or imputations of fact. Following on from that, if they are in fact comments, then the court has to consider the principle applicable at common law to this defence. That principle was set out in **Ramlakhan v T & T News Centre Ltd CA Civ 30 of 2005** (15 February 2008, unreported), where Mendonça JA said:

> *"(40) The position at common law is that the defendant may rely on the defence of fair comment only if he proves every fact on which the comment is based is true or is the subject of privilege. The question of privilege is not relevant to this case. In [Kemsley v Foot [1952] 1 All ER 501], supra, Lord Porter stated (at [506]):*
>
> > *"In a case where the facts are fully set out in the alleged libel, each fact must be justified and if the defendant fails to justify one, even if it be comparatively unimportant, he fails in his defence.""*

74. The Defendants have provided no evidence proving that the Claimant is in fact worth $2.58b as stated in the said list. The Second Defendant in cross-examination also admitted to not performing her due diligence in seeking to verify the authenticity and accuracy of the said list. No corroborating evidence was provided to support the words used in the article, which was based on the said list.

75. When cross-examined on the said list, she admitted that she did not say in her witness statement what the original source of the list was, or who compiled it, or how that list came to be compiled. She also testified that she did not have anything in her witness statement about the process that was followed in the preparation of the said list. She testified further that she could not in fact say whether any process at all was followed in the preparation of the said list, and that she could not say whether the said list was accurate.

76. This Court is of the opinion that the words contained in the articles are a mixture of comments and imputations of fact derived from an unknown source and not fair comment. The Defendants had no facts whatsoever to substantiate their use of the said list. The Second Defendant also prefaced her second article, and concluded the said article by saying that the said list may be a hoax. Accordingly, the defence of honest comment is not available to the Defendants as this Court is not satisfied that the Defendants held an honest opinion that the said list is true. The Defendants have also failed to satisfy the criteria stated by Mendonça JA in ***Ramlakhan*** supra.

77. The Court agrees with the submission of the Claimant that the defence of honest comment fails.

78. On the issue of malice, counsel for the Defendants submitted that the Claimant cannot avoid the fact that he failed to make it an issue in this case, and in fact, when the absence of malice was specifically pleaded in the Amended Defence, no Reply was filed to counter that averment. Counsel relied on the authority of **Phillip Ayoung Chee v Lester Goetz**[7], a decision of Boodoosingh J in which the learned Judge stated at paragraphs 15 - 18 of the judgment:

> *"15. In England, as a rule of pleading, it is necessary to file a reply when qualified privilege is contended, if the claimant intends to allege that the defendant acted with malice. It must set out particulars of the facts or matters from which malice is to be inferred. Practice Direction 53, paragraph 2.9 of the English CPR…*
>
> *16. Gatley on Libel and Slander 11th edition states at paragraph 30.5:*
>
> *….It is not sufficient merely to plead that the defendant acted maliciously. The plea must be more consistent with the presence of malice than with*

[7] CV2010-4799

its absence; if it is not, it is liable to be struck out….The claimant must allege specific facts from which it is alleged the inference is to be drawn…

17. Part 73.2 (c) or our CPR states that the claimant's "statement of case" in a defamation claim must, where the claimant alleges that the defendant maliciously published the words or matters, give particulars in support of the allegation.

18. While there is no rule requiring a Reply in this jurisdiction, it follows, in my view, that once the defence of qualified privilege is raised a defendant[8] (sic) ought to seek permission of the court to file a reply if he intends to challenge the defence. This is more so if malice is not alleged on the statement of case. Without a reply, and in the absence of any particulars of malice on the statement of case, a claimant would be unable to rebut a successfully made out defence of qualified privilege. In any event, when looking at Part 73.2 (c) this must be read with the definition of statement of case, which includes a reply."

79. Against the above backdrop, counsel for the Defendant submitted that the Claimant has simply failed to establish any malice on the part of the Defendants and therefore the Claimant's claim for defamation must fail.

80. Counsel for the Claimant, however, disagrees with the submission that a reply was necessary to rebut the averment in paragraph 10 of the Defendants' Amended Defence which alleged that ***"the words used were honest comment made in good faith and without malice"***.

[8] It appears clear that this reference should be to the **"claimant"** and not "defendant"

81. The Court's attention was drawn to the "new" approach to pleadings that obtains under the CPR of this jurisdiction which is encapsulated at paragraph 27.1 of Blackstone's Civil Practice 2016 wherein the learned authors state as follows:

> *"Although a claimant may file a reply to a defence, he does not have to do so, and failure to file a reply must not be taken as an admission of any of the matters raised in the defence. If a reply is filed, but fails to deal with a matter raised in the defence, the claimant shall nevertheless be taken to require that matter to be proved."*

82. Counsel further submitted that the Defendant having pleaded the absence of malice, there was no need for the Claimant to reply to that since the parties in any event were joined on that issue on the basis that the defence of honest comment is defeated by "malice" and malice may be evidenced by the fact that there was no factual basis for the fundamental statements in the two offending articles.

83. To bolster this rebuttal argument, counsel drew the Court's attention to the fact that in cross-examination the Second Defendant admitted:

    (a) having not done any verification of the information contained in the alleged internet post;
    (b) not knowing who exactly had compiled the list; and
    (c) not knowing what process had been used to compile the information in the internet post.

84. Counsel therefore concluded that on the basis of the above admissions, the Second Defendant could not credibly have an honest belief in the information in the internet post since there was no basis for believing that the facts on which the information was based were true.

85. I have taken into account that there is no similar or equivalent Practice Direction in this jurisdiction to Practice Direction 53 of the UK CPR. In this regard, although I agree with Boodoosingh J in the ***Phillip Ayoug Chee*** case that CPR Part 73.2 (c) should be read to include a reply, I also agree with the authors of Blackstone's Civil Practice 2016 at paragraph 27.1 where it is stated that failure to file a reply must not be taken as an admission of any matters raised in the defence.

86. I therefore uphold the submissions of counsel for the Claimant on this issue.

(d) If the defence fails, is the Claimant entitled to damages and what measure of damages ought to be awarded to the Claimant?

87. The Claimant pleaded a case for damages including aggravated and exemplary damages. It was submitted on behalf of the Claimant that the appropriate award for damages is at least $600,000.00 for each publication.

88. The Defendants' submitted that if the Court is minded to awarded damages, the Claimant should be awarded nominal damages.

89. **Gatley on Libel and Slander** [9]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."

90. Mohammed (Margaret) J stated in **Heidi Joseph v Ama Charles**:[10]

[9] 12th Edition paragraph 9.4
[10] CV2016-02996

"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."

91. Jamadar JA (as he then was) stated in **Faaiq Mohammed v Jack Austin Warner**:[11]

> "52. Awards for general damages in defamation must achieve the objectives of fair and just compensation, sufficient to fully vindicate the damaged reputation to the public at large, to provide consolation for injury to feelings suffered by reason of the wrong done, and to do so effectively and for all times in the context of the local environment."

92. In **TnT News Centre Ltd v John Rahael**[12] 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;
    - (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.

93. 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 MGN**[13] 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

[11] Civ App No 252 of 2014
[12] Civ App No 166 of 2006
[13] [1997] QB 586

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."

94. **<u>Gatley on Libel and Slander</u>**[14] states:

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

95. The Defendants pleaded that the TNT Mirror is published twice weekly and its circulation is approximately fifteen thousand copies per week.

[14] 12th Edition at page 335 paragraph 9.5

96. For a successful defamation claim, publication to only one person is required. However, in the instant case, the publication was to thousands of people, therefore the greater the publication, the greater the harm to the Claimant's reputation.

97. In **Gatley on Libel and Slander**[15] 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."*

98. There is therefore no need for the Claimant to provide evidence that the publication was read by any number of citizens.

99. The Court notes that in **John v MGN**[16] the most important factor in assessing damages 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.[17]

100. Both articles directly concern the Claimant's personal integrity and call into question his character. The Claimant is a qualified individual who has been involved in public life since 2001, and has been involved in Parliamentary business at a senior level, therefore the defamatory words contained in the articles ought to be deemed to be of a serious gravity.

101. In **TnT News Centre** Kangaloo 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:

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[15] 11th ed at paragraph 6.2
[16] [1997] QB 586
[17] CV201-02996 Heidi Joseph v Ama Charles

“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.”

102. 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.”

103. The Claimant has stated in his Witness Statement that the articles have caused him irreparable harm and distress and stated that he recalled occasions where persons confronted him and sought to embarrass him at social events based upon the reading of the articles.

104. However, the Claimant did not set out a single instance of the distress, or embarrassment, which the publications caused. In cross-examination, he testified that he could identify 12 situations, none of which was pleaded nor contained in his evidence.

105. Kokaram J in **Faaiq Mohammed v Jack Austin Warner** is instructive in this regard. The Court outlined three guidelines which ought to be taken into account 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 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 Miloslavsky 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)"

106. The Court had regard to the following cases in assessing damages:

107. On 22 May 2019, in **Faaiq Mohammed v Jack Austin Warner**[18], the Court of Appeal increased the award of damages from $200,000.00 to $500,000.00 with an uplift for compelling aggravating factors. The Court of Appeal also increased the award of exemplary damages from $20,000.00 to $150,000.00. This was a matter involving a young politician who was being defamed by a senior politician, the Respondent, where the Respondent consciously, intentionally, wilfully and

[18] CvA 252 of 2014

relentlessly defamed the Appellant over a continuous period of seven days, in circumstances where there was absolutely no evidence to show any truthfulness in or justification for the statements made and repeated.

108. In September 2017, in **Jwala Rambarran v Dr Lester Henry**[19], Rampersad J awarded the Claimant $550,000.00 inclusive of an uplift for aggravated damages. The Defendant appeared on a radio talk show and made certain allegations against the Claimant, who was at the time, the Governor of the Central Bank. The allegations concerned the Claimant using Central Bank's monies to improve his private property.

109. In June 2014, in **Trinidad Express Newspapers & Ors. v Conrad Aleong**[20] where the Court of Appeal in a unanimous judgment increased general damages from $450,000.00 to $650,000.00, with the trial judge's award of $200,000.00 for exemplary damages being upheld. The defamatory statements were contained in seven articles and spread over the course of five weeks. They were part of an investigative journalist series. Aleong was an experienced and successful accountant who enjoyed a good reputation. The trial judge summarised the import of the allegations as follows: "The overall impression of the claimant conveyed by the articles to the reasonable reader, was that he was a dishonest and devious man who had manipulated the airline's accounts to declare profits which were in fact fictitious, so as to get an undeserved bonus, who sold the valuable assets of BWIA for his and other persons' private gain, who engaged in deals, smear tactics and personal vendettas." Clearly this was a case of alleged corruption in public affairs.

110. In April 2014, in **Julien v Trinidad Express Ltd**.[21], Rampersad J awarded the sum of TT$450,000.00 (as well as exemplary damages of TT$150,000.00), for

[19] CV2014-03990
[20] CvA no 122 of 2009
[21] CV2007-00348

defamatory statements made about the Chairman of the University of Trinidad and Tobago - UTT (a State entity), which suggested that he was mismanaging public funds in an illegal and corrupt manner. This was also a series of investigative articles (five) which focussed on Kenneth Julien, who was at the time a chartered engineer, President of UTT, had served on several State Boards in the highest capacities, and who had been awarded the Nation's highest civilian award in 2003, the Trinity Cross, for his "leadership role in national economic development". Again, this was a case of alleged corruption in public affairs.

111. In February 2014, in **Rowley v Annisette**[22], Boodosingh J awarded general damages in the sum of TT$475,000.00 (which included an uplift for aggravation), for defamatory statements published on two consecutive days (8th and 9th October, 2009), that suggested that the then Leader of the Opposition and political leader of the PNM, Dr. Keith Rowley, was involved in corrupt transactions involving abuses of office and improper conduct as a public official.

112. In July 2013, in **Mohammed v Trinidad Express Ltd**[23], Gobin J awarded general damages in the sum of TT$325,000.00 (which included an uplift for aggravation), for defamatory statements that suggested that Nizam Mohammed, a senior attorney-at-law, former Member of Parliament and Speaker of the House of Representatives, had been referred to the Disciplinary Committee of the Law Association of Trinidad and Tobago, "which made an order against him". This was in fact not true. It was a one-off publication, and the following day the newspaper published a correction and apology - "It was not Mohammed ... The error is regretted."

[22] CV2010-04909
[23] CV2011-00264

113. On July 30 2015, in **Ramlogan v Warner**[24], Mohammed (Robin) J awarded general damages inclusive of aggravated damages in the sum of $600,000.00 with an additional award of exemplary damages in the sum of $200,000.00 to the claimant in circumstances where the defendant's defamatory words cast aspersions on the character of the claimant imputing that he had committed acts that were corrupt, illegal and improper and had lacked the integrity in the discharge of his duties as a member of the Government, more particularly, as Attorney General. The matter was worsened by the fact that the defendant was a well-known politician and former Vice-President of FIFA who attracted much media attention and who chose to utter the defamatory words during the course of elections campaigning.

G. AGGRAVATED DAMAGES

114. in **Sutcliffe v. Pressdrum Ltd**[25], Nourse LJ stated that:

"The conduct of a defendant which may often be regarded as aggravating the injury to the plaintiff's feelings, so as to support a claim for 'aggravated' damages includes a failure to make any or any sufficient apology and withdrawal; a repetition of the libel; …persistence by way of a prolonged or hostile cross-examination of the Claimant…".

115. The Court is of the opinion that the Claimant is entitled to an award of aggravated damages as the Defendants failed to issue an apology and repeated the unverified information on the said list.

H. EXEMPLARY DAMAGES

116. In **Rookes v. Barnard**[26], the court determined exemplary damages may be awarded where the tortious act has been done *"with guilty knowledge, for the*

[24] CV2014-00134
[25] [1991] 1 Q.B. 153 CA at 184
[26] [1964] AC 1129

motive that the chances of economic advantage outweigh the chances of economic, or perhaps physical penalty.”

117. The Court is not satisfied that this is a suitable case for exemplary damages, as the Claimant has not proven that the defamatory articles were published with the motive of economic advantage.

118. I have taken into account that the Claimant in the instant case is a public official, the extent of the publications, the severity of the publications, and the injury to the Claimant’s reputation and feelings. I am of the opinion that the instant case is in line with **Rowley v Annisette** and accordingly award the Claimant $475,000.00 inclusive of an uplift for aggravated damages.

I. DISPOSITION

119. In light of the above analyses and findings, the order of the Court is as follows:

ORDER

I. The Defendants shall pay to the Claimant, damages inclusive of aggravated damages, in the sum of $475,000.00.

II. Costs of the Claim shall be paid by the Defendants to the Claimant to be quantified on the Prescribed Scale of Costs in accordance with CPR 1998 Part 67 Appendix B, which said costs have been quantified in the sum of $69,000.00.

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Robin N Mohammed
Judge