

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV2011-01810

BETWEEN

RUEBEN CATO

Claimant

AND

CARIBBEAN NEW MEDIA GROUP (CNMG) LIMITED

Defendant

Before the Honourable Mr. Justice R. Rahim

Appearances:

Ms. P. Elder S.C. leading Mr. A. Thomas for the Claimant.

Ms. L. Lucky Samaroo and Ms. V. Narinesingh for the Defendant.

Judgment

1. Before the court is the issue of quantum of damages for slander contained in the statements attributed to the Defendant in a radio programme “Front line” (“the talk show”) on the radio station Talk City 91.1 on the 22nd September 2009. Liability was admitted by the Defendant on the 24th July, 2012 at a Case Management Conference.

Background

2. The Claimant is and was at the material time the Transport Commissioner of the Transport Division, Ministry of Works and Transport (now the Ministry of Works and Infrastructure).
3. The Defendant is a limited liability company incorporated under the laws of Trinidad and Tobago with its registered office at 11A Maraval Road, Maraval, Port-of-Spain. The Defendant operates a media house consisting of three radio stations, namely, Sweet 100.1, Next 99.1 and Talk City 91.1 and a television station, namely CNMG-TV. Additionally, the Defendant broadcasts some of its programmes over the internet via the website www.ctntworld.com.
4. At around 11:00 am on the 22nd September 2009, the Defendant’s employee, Jennelle Brathwaite carried on a talk show and interviewed Dr. Samuel Joseph. Ms. Brathwaite, in the course of the interview, invited Dr. Samuel to comment on the topic that day **“How many more must die”**. Dr. Joseph expressed the opinion that many more will die and went on to talk about the manner in which ‘Heavy T’ drivers obtain their licence and subsequently drive on the nation’s roads. This gave rise to the following exchange:

Dr. Joseph told Ms. Brathwaite that he wanted to deal with *“how these guys get their licence”* to which she replied *“how they get them you tell us”*.

After Dr. Joseph expressed various illegal ways in which drivers allegedly obtained their ‘Heavy T’ licence Ms. Brathwaite asked Dr. Joseph:

“Yeh what I want to find out is you are aware of what is happening it very easy to buy a licence, aren’t the people at the licensing offices unaware of what is happening, why are they encouraging a crime?”

Dr. Joseph replied:

“But if they are doing the sale Jenelle why they won’t stop it if you buying a licence you ain’t going in the market at Macoya to buy a licence, you buying a licence where it is sold and the licence is sold at the licence office”.

Ms. Brathwaite then posed the following question to Dr. Joseph:

“So are you saying that the head person at the licence office is quite aware of what’s happening and they quiet with it?”

Dr. Joseph answered:

“You just spread out the can of worms now, because the head person at the licence office is practicing criminality at the highest level. I am saying these things because I want someone to challenge me on this one. PCK-1, PCK-1, ah say it again, an illegally registered vehicle is driven by the Transport Commissioner of Trinidad and Tobago. Yuh want me to say it again Jenelle...”

Ms. Brathwaite then said:

“I was about to ask you that”

Dr. Joseph continued:

“PCK-1 an illegally registered vehicle is driven and owed by the Transport Commissioner of Trinidad and Tobago”.

Ms. Brathwaite further enquired:

“Do you have proof of this?”

Dr. Joseph replied:

“Well ah saying it because I have proof. I am saying this because it exists and is the truth”.

After this verbal exchange, Ms. Brathwaite entertained a caller to the talk show who remarked:

“You see what that gentleman is saying is so true...”

Following this remark made by the caller, **Dr. Joseph** resumed his remarks as follows:

“As I was saying the Transport Commissioner, ah saying it again just in case somebody did not hear what I said drive vehicle PCK-1 which is an illegally registered vehicle”.

Ms. Brathwaite questioned Dr. Joseph further:

“Why is it illegally registered?”

Dr. Joseph replied:

“Why it is illegally registered, um hum, because it was not registered properly and it is a foreign used on another registration and I have proof of what I am saying”.

Compensatory/General Damages

Evidence

5. The Claimant's case was supported by his evidence and that of his wife, Donna Regis-Cato.
6. The Claimant gave evidence that at the time of the incident he held the post of Transport Commissioner and that he currently holds the post. He testified that as Transport Commissioner his duties include:
 - a. Ensuring conformity with established policies and procedures for the enforcement of applicable motor vehicle laws and regulations throughout the nation;
 - b. Collecting revenues;
 - c. Directing the supervision of traffic census; motor vehicle inspection and registration; issuance of drivers' permits;
 - d. Serving as a member of the Road Safety Association and the Transport Board and several other Cabinet appointed Committees.
7. The Claimant regards himself as a man of integrity and says that he is so regarded by his counterparts in his private and professional life. The Claimant testified that immediately after the airing of the talk show, he was called into the office of the then Minister of Works and Transport, Mr. Colmn Imbert and asked to account for the allegations made in the talk show. The Claimant testified that in compliance with the request he produced a report assuring the Minister his hands were clean.
8. According to the Claimant, the day after the talk show, on entering the office he was met with an unusual hush and snickers and lowered heads by employees. The Claimant testified that he felt embarrassed because his integrity, honesty, and loyalty had been called into question and gloated over by his employees and colleagues.

9. Additionally, the Claimant's evidence was that he was approached by friends and family and he would have to explain the facts surrounding the purchase of his car and registration. He testified that having to constantly hear of the allegations and assert his innocence is a source of deep frustration and anguish. The result, according to the Claimant, on his home life is that he has little interactions with his wife and children and any interaction is brief, sharp and reflects impatience. As a result, to alleviate the stress which had grown between his wife and himself, they attended counselling both at their church and at Mount St. Benedict.
10. The Claimant says he has not, to date, received an apology from the Defendant. The Claimant testified that he continues to work under stress and public scrutiny as a result of the incident.
11. Mrs. Regis-Cato has been married to the Claimant for 30 years. Together they have three children. Her evidence centred on how the talk show had affected their family life and she repeats the sentiments of the Claimant in that regard. She added that her husband experienced many sleepless nights as a result of the incident. She stated in cross examination that she did not hear the talk show but that she thought no less of her husband because of it.
12. Giving evidence for the Defendant was Kimberly Philip and Gail Seegobin.
13. Kimberly Phillip is the Managing Director of Market Facts & Opinions 2000 Ltd ("MFO"). MFO is a market research agency that conducts commissioned and syndicated market research.
14. According to Ms. Phillip, MFO was commissioned by the Advertising Agencies Association of Trinidad and Tobago ("AAATT") to manage and conduct media research including market research into radio-listening audience consumption. Media consumption was recorded in May 2009 for the period 10th May to 16th May 2009. The purpose of the survey was, *inter alia*, to provide independent and reliable tracking of media audiences in

order for, for example, advertising agencies to make informed decisions about advertising placements.

15. Media consumption was recorded using the diary method which placed diaries in a probability sample of households and with selected respondents intended to represent targeted demographics.
16. Ms. Phillip explained that for the period in May 2009, 1220 diaries were placed of which 962 were completed. Further, she stated that in the report, only those radio stations which accounted to more than 0.1% of overall audience were identified. Accordingly, Talk City 91.1 accounted for less than 0.1% and as such was not identified specifically. Ms. Phillip concluded that based on the results it would be more accurate to say that Talk City 91.1 could have a share as much as 3% or as little as 0%.
17. Ms. Seegobin is the head of Programme Radio at the Defendant. She admitted that on the 22nd September 2009, the talk show was being broadcasted from 11:00 a.m. to about 11:55 a.m. Ms. Seegobin stated that the show in general attracts very little listening audience locally and none internationally.
18. While Ms. Seegobin admits to the conversation taking place, she says that it was not at the behest of the Defendant's employee, Ms. Brathwaite. Further, while the Transport Commissioner was mentioned, Ms. Seegobin testified that she was not even aware who the Transport Commissioner was as he had not been named in the interview and only learned it was the Claimant when she received his letter of complaint dated 25th September 2009 from his attorney.
19. According to Ms. Seegobin, it is the sale of advertising spots which earns radio stations its most revenue. Prices charged for advertising spots are linked to the size of the audience during particular periods or programmes, and thus it is important to determine which periods earn the largest audience. She explained that the peak times are 6 a.m. to 9 a.m. and 3 p.m. to 6 p.m. The show Frontline is scheduled between the off peak period of

9 a.m. to 12 p.m. In relation to the surveys done to ascertain the listening audience, Ms. Seegobin stated in cross examination that the media survey pertained to the radio audience of the entire station and not that of one specific programme.

20. Ms. Seegobin gave evidence that the Defendant has no intention of repeating the broadcast and that the Defendant was willing to publish an apology. In this regard, she stated that the Defendant requested that the Claimant, through his attorney, draft an apology, state where he desired it to be published and inform the Defendant's attorney of same. However, she agreed that the allegation was that the Claimant had committed criminal conduct, and that it was a serious allegation. Further, that because of the seriousness of the allegation an apology should have been prompt and unambiguous.
21. Ms. Seegobin testified that the segment "Autogeddon", which formed part of the talk show, has since been cancelled (on the 30th September 2009) due to a lack of listening audience. However the talk show (Front line) still airs.

Submissions

22. The Claimant submitted that in light of (1) the position held by the Claimant as Transport Commissioner at the material time (2) the resultant negative view of the division in the minds of citizens and (3) the Claimant's prior record for honesty and integrity that the defamatory allegations severely impugned his reputation. In support of this Counsel relied on the case of ***Esther Louise Rantzen v (1) Mirror Group Newspapers (1986) Ltd. (2) Brian Radford (3) Richard Stott (4) Mirror Group Newspapers PLC*** 1993 WL 964291 which proposed that:

"Damage to reputation will involve consideration of the triviality of the libel, as here, or its gravity. Where a plaintiff asserts that he stands high in public repute his standing will be relevant. A plaintiff who is rich and famous should not obtain

a larger award than one who is not. There was no evidence that the article had any effect on the plaintiff's personal or professional standing.”

23. Counsel for the Claimant also urged the court to look with emphasis on the “serious emotional distress” being endured by the Claimant. This contention was based on the dicta of Lord Neuberger in **Chris Lance Cairns v Lalit Modi ; KC v MGM Limited [2012] EWCA Civ 1382** where he said:

“These distinct features apply to every defamation case, but the emphasis to be placed on each will vary from case to case. Sometimes, for example, there may be relatively little demonstrable damage to reputation, but serious emotional distress; on other occasions, the need for public vindication will predominate; in yet other cases the financial consequences of damage to the reputation of the individual may represent the most serious feature”

24. Further, it was stressed, on the Claimant’s behalf, that to date no apology was made by the Defendant. The Claimant, in reliance on the case of **Nizam Mohammed v The Trinidad Express Newspaper Limited CV 2011-00264**, where an award of \$325,000.00 was given, submitted that the gravity of the offending words are of greater degree and have more far reaching consequences than the circumstances of **Nizam Mohammed (supra)**. In **Nizam Mohammed**, an article had been published in the Express Newspaper in which it was stated that Mr. Mohammed’s appointment to the Public Service Authority (PSA) was objected to by Ms. Baptiste-Primus because he had previously been brought before the Disciplinary Committee of the Law Association which made an order against him. When Ms. Baptiste-Primus contacted the newspaper the next day and stated that she had not named the attorney whose appointment she had contested and that it was not Mr. Mohammed, a correction was published by the newspaper the following day. The court in this case made a distinction on the facts and stated that such allegations were highly defamatory and injurious to the claimant’s professional reputation. The Claimant there had been an attorney for some 37 years. The court also noted that though a correction was

published, it was not intended to be an apology to Mr. Mohammed specifically. The court noted at paragraph 10 that:

“An allegation that the Disciplinary Committee has made an order against an attorney because he has not discharged his duty to a client is a grave one. It carries an imputation that the body, statutorily constituted and vested with a duty to discipline lawyers has heard evidence and made findings of professional misconduct. It further imputes incompetence, dishonesty, lack of fitness for one’s profession, lack of professional ethics. This was a most serious libel when view in context.”

25. On this point Counsel for the Defendant noted that among the factors which led the judge to award a large amount was the fact that the Trinidad Express Newspaper enjoyed a wide circulation and that the Claimant in that case was a lawyer who relied on his good reputation to make a living. Counsel noted that at paragraph 11 of the judgment Gobin J cautioned readers of her judgment to take her decision in the context of the Claimant being a lawyer who must rely on his reputation to achieve a successful practice. She said:

“For lawyers, the importance of reputation cannot be overstated. A lawyer’s reputation for honesty, integrity, ethical behaviour and professional competence are worth more than all the financial rewards a successful practice may bring. Lawyers are repeatedly warned too, warned of how easily reputation may be lost, by breaches of the code of conduct, by misdeeds and misbehaviour. It is against this background that the ruling in this case is to be understood, for it is one thing for a lawyer by his own conduct to cause damage to his professional reputation. It is quite another for such injury to be the result of unjustifiable and reckless press reporting.”

26. Thus, counsel submitted that unlike Nizam Mohammed, the Claimant in the instant matter did not rely on his reputation to obtain employment. Counsel contended that the Claimant in fact has not lost any position or remuneration by reason of the publication.

27. In addition to the submission above, Counsel for the Defendant submitted that not only was the Claimant's name not called in the interview but that the programme was not widely broadcasted. Counsel submitted:

“ The extent of publication is very relevant to damages, as are the numbers who would recognize the Claimant as the subject of the libel. Thus there is usually evidence of the circulation of the newspaper carrying the libel, or of copies sold of the offending book. Where the Claimant is not expressly named, or an innuendo meaning is relied upon, there should be evidence from which the jury can deduce the number of persons likely to identify the Claimant as the person defamed”.

Gatley on Libel and Slander 10th ed. at para. 32.46

28. Further, it was argued on behalf of the Defendant that the maker of the defamatory words was a guest of the talk show and not the Defendant's employee.

29. In the circumstances of the case, attorney for the Defendant concluded that the sum of \$27,000.00 was a reasonable award. Counsel distinguished the cases of Emile Elias and Anor v Ganga Singh CV2006-00932, CV2007-04379 and Basdeo Panday v Kenneth Gordon PC No. 35 of 2004. In the Emile Elias (supra) the Claimant was awarded \$200,000.00 for libellous statements made by the Defendant and printed in a number of widely circulated newspapers. In the Basdeo Panday (supra), at first instance the court had awarded \$600,000.00. However, the Court of Appeal awarded \$300,000.00 on appeal and this was affirmed by the Privy Council. Counsel for the Defendant contended that in that case, the offending statement was made at a time when the Appellant was the Prime Minister and all public statements made by him were likely to be, and in fact were, widely published and circulated.

Findings

30. Slander or libel is concerned with the publication of matters conveying a defamatory imputation. A defamatory imputation has been expressed as one to the Claimant's discredit, or one which tends to lower him in the estimation of others, or causes him to be shunned or avoided, or exposes him to hatred, contempt or ridicule: **Gatley on Libel and Slander 11th edition, pages 37 – 40 paragraph 2.1, Gita Sakal v Michael Carballo CV.2009-02468**.
31. Liability for the tort of slander having already been admitted, the issue is one of quantum of damages. To that end this court does not agree with the submission of the Defendant that liability having been admitted, it was nevertheless incumbent on the Claimant to prove that the offending words bore the meaning alleged. An acceptance of liability, in the courts view must mean an acceptance that the words complained of bear the meaning complained of in the statement of case and are defamatory in such a manner. At no time was it represented to the court when the admission of liability was made, that that admission was exclusive of the allegation that the words meant that which was claimed in the Statement of Case (see paragraph 22 of the statement of case). It therefore does not lie with the Defendants to raise this issue at this stage as they have attempted to do.
32. The purpose of general damages in this case, is to compensate the Claimant for the effects of the defamatory statement. The sum awarded must serve three functions: to act as a consolation to the Claimant for the distress he suffers from the publication of the statement, to repair the harm to his reputation, and as a vindication of his reputation: **Gatley (supra) page 265 – 266, para 9.2**. In **John v MGN Ltd [1997] QB 586** at 607, Sir Thomas Bingham MR explained:

“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 publication is also very relevant: a libel published to millions has a greater potential to cause damage than a libel published to a handful of people. A successful plaintiff may properly look to an award of damages to vindicate his reputation: but the significance of this is much greater in a case where the defendant asserts the truth of the libel and refuses any retraction or apology than in a case where the defendant acknowledges the falsity of what was published and publicly expresses regret that the libelous publication took place. It is well established that compensatory damages may and should compensate for additional injury caused to the plaintiff's feelings by the defendant's conduct of the action, as when he persists in an unfounded assertion that the publication was true, or refuses to apologize, or cross-examines the plaintiff in a wounding or insulting way."[Emphasis mine]

33. Damages cannot be assessed by reference to any mechanical, arithmetical or objective formula. While damages are awarded on a case by case basis, broadly comparable cases may lead to broadly comparable awards. The court is entitled to take into consideration the conduct of the Claimant, his position and standing, the nature of the defamation, the mode and extent of publication, the absence or refusal of any retraction or apology, and the conduct of the Defendant generally: *Gatley (supra) page 269 – 270, para 9.2.*
34. Bearing this in mind, the court notes firstly that while the defamatory words were not made by the Defendant's employee, as pointed out by attorney for the Defendant, the facts are that the Defendant's employee, Ms. Brathwaite, by her words spurred Dr. Joseph on in her response. Her reaction to the statement was not to stop the talk show's guest from going further, but instead it was to purposely elicit the defamatory statement. The exchange was this:

Ms. Brathwaite asked Dr. Joseph:

“Yeh what I want to find out is you are aware of what is happening it very easy to buy a licence, aren't the people at the licensing offices unaware of what is happening, why are they encouraging a crime?”

Dr. Joseph replied:

“But if they are doing the sale Jenelle why they won't stop it if you buying a licence you ain't going in the market at Macoya to buy a licence, you buying a licence where it is sold and the licence is sold at the licence office”.

Ms. Brathwaite then posed the following question to Dr. Joseph:

“So are you saying that the head person at the licence office is quite aware of what's happening and they quiet with it?”

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“You just spread out the can of worms now, because the head person at the licence office is practicing criminality at the highest level. I am saying these things because I want someone to challenge me on this one. PCK-1, PCK-1, ah say it again, an illegally registered vehicle is driven by the Transport Commissioner of Trinidad and Tobago. Yuh want me to say it again Jenelle...”

Ms. Brathwaite then said:

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Ms. Brathwaite further enquired:

“Do you have proof of this?”

Dr. Joseph replied:

“Well ah saying it because I have proof. I am saying this because it exists and is the truth”.

35. In as much as the statements were not made by the Defendant, the Defendant’s employee did not inadvertently publish them as they would have the court believe. It is Ms. Brathwaite who asked rhetorically asked whether the "people" at the Licensing department were aware of the illegal act and were encouraging crime. The answer of the guest appeared to the court to be somewhat non committal but sufficient for the listener to come to a conclusion on his own. However Ms. Brathwaithe seemingly unsatisfied with the answer went as far as to suggest by way of a question that the Commissioner of Transport was not only aware of that which was transpiring but was also keeping it quiet. It is as a direct result of that suggestive prodding by Ms. Brathwaite (to put it mildly), that the proverbial gloves then came off. In fact it appears that the statement was purposely elicited by Ms. Brathwaite from Dr. Joseph who at first seemed very hesitant to utter the said words. In light of this, the Defendant’s contention that the Claimant chose not to seek redress from the author of the words complained of, is of no consequence.
36. Further, the statement not having been that of the Claimant, the court does not accept that a sufficient reason for not apologising would have been the failure of the Defendant to draft an apology which would have been acceptable to him. While the Defendant did offer to publish the apology the Defendant cannot simply say “I offered and the Claimant did nothing to further it”. That is insufficient when one looks at the purpose of an apology. An apology acknowledges regret for an offensive act and the Defendant’s actions do not reflect that.
37. The extent of the publication is an extremely relevant factor here. Firstly, while the Claimant was not named specifically in the interview, the fact that Dr. Joseph named the Transport Commissioner is sufficient to identify the Claimant. The holder of a public

office is easily verifiable in such a relatively small society such as ours and it makes no difference that his name was not called. Further, the nature of a public office is such that citizens expect honesty, integrity, and transparency. Thus any imputation of a contrary nature on any public officer, more so on an officer who is in charge of a public department that performs such important public functions which touches and concerns a very wide cross section of the national community is a serious allegation.

38. The evidence of Ms. Phillip was not contradicted in any material way. However, the court is unable to ascertain the audience size with exactitude and will not give way to speculation. What is clear on the evidence of the Defendant, however, is that the listening audience for the **station** is not large. Further the fact that the talk show was broadcast during an off-peak period is material. The damage to the Claimant's reputation was comparably less. That is, in comparison to the circumstance where the show was broadcast during the peak period or even on a more widely tuned station.
39. In that regard the court notes that the case of *Nizam Mohammed*, concerned publication in a popular and widely read newspaper. Similarly, the case of *Basdeo Panday* is also capable of being distinguished from the present case. The comments complained of were spoken on a public platform celebrating Indian Arrival day. The Prime Minister's speech was carried live on television and published in the press the following day. Thus the range in *Nizam Mohammed* (\$325,000.00) and *Basdeo Panday* (\$300,000.00) are not here appropriate given the extent of the publication.
40. In *Ashby v Bailey (1973) 21 WIR 20*, a case emanating from Barbados, the plaintiff was a businessman who served on various public boards and organisations. He was Chairman of the Industrial Development Corporation and a member of the Senate. The defendant had been an assistant manager on the staff of the Industrial Development Corporation but his employment with the Corporation ceased in May 1971. On 10 June 1971, and again on 8 July in the same year, the defendant addressed the public at the Fairchild Street Market Place in Bridgetown. The plaintiff's case was that in the course of his speeches the defendant accused him of dishonourable, fraudulent and dishonest conduct in the

exercise of his office, business and occupation, of the criminal offences of bribery, fraud and corruption, and of lack of ability and integrity in the execution of his office, business and occupation. The Court held that that the defendant had made against the plaintiff imputations of bribery and corruption in the execution of a public office. His actions constituted a deliberate and calculated attempt to destroy the plaintiff as Chairman of the Industrial Development Corporation and proof of special damage was unnecessary because the law presumed it. The court awarded the sum of \$12,000.00 BBD. This is just about \$36,000.00 TTD and the court notes the year of judgment was 1973.

41. In *Gita Sakal v Michael Carballo* (*supra*), the court awarded general damages in the sum of \$50,000.00. In this case, the claimant sought damages, including aggravated and exemplary damages, for libel and slander contained in the statements attributed to the defendant in an article written by Ms. Marajh and published in the Sunday Express of 24th May 2009. The article concerned the payment of US\$5,000,000.00 to the claimant. The claimant and the defendant were both senior officers in CL Financial Limited. The crux of the matter was that the article represented that a cheque had been made to the Claimant and that the Defendant's signature appeared on the authorising letter to release the sum to the Claimant. When the Defendant was contacted by the reporter for a comment on the allegations he asserted that the signature authorising the release of the cheque to the Claimant was a fraud. The court found that this statement insinuated that the Claimant was responsible for the forgery and that the words were therefore defamatory. In awarding the sum, the court considered that the case, given all the circumstances, would not attract the level of compensation that some of the cited cases have. The court drew reference to the cases of *Panday v Gordon* (*supra*) and *TnT News Centre v Rahael* Civil Appeal No. 166 of 2006 and distinguished the fact that the claimant was not at the time of the publication of the prominence of these other persons in public life.

42. In both *Nizam Mohammed* and *Basdeo Panday* the publications were more extensive in comparison to the instant case. And thus an award as high would not be appropriate. On the other hand in *Gita Sakal* the Claimant was not a public figure and so the award would

not sufficiently represent the position and standing of the Claimant in the present case. In this case, the nature of the office held is such as to expect a high level of integrity in relation to the performance of a public function by a public officer whose duties are widely known by the public at large because of their frequent interaction with the licensing department. Allegations of this nature made against persons such as the Commissioner of Transport will inevitably attract a high level of public scrutiny.

43. It therefore means that the Commissioner of Transport would have suffered substantial harm in his reputation in this instance and is entitled to an award which adequately repairs the damage and vindicates him. In relation to the stress suffered as a consequence of the publication the court is of the view that the evidence of this is somewhat unsatisfactory. Firstly, there appears to be no medical evidence tending to support a high level of stress or otherwise. The only evidence upon which the Claimant could rely was that which came from him and his wife and even this evidence seems somewhat unreliable. This court is always cognizant of the danger of relying on this type of evidence which is almost always self serving in substance.
44. This court must also consider that not only was the Claimant defamed in his personal capacity but also in his professional capacity having regard to his duties. It appears that this has been accepted by the Defendant by its admission of liability. Indeed this is the essence of the claim at paragraphs 22(g) and 22(i) of the statement of case to which no challenge was made by the Defendant in its admission of liability. It follows therefore that in relation to the act of slander to the Claimant in his professional capacity and in so far as it is alleged that he would have committed criminal offences same is actionable per se: *Ratcliffe v Evans [1892] 2 Q.B. 524; Jones v Jones [1916] 2 AC 481.*
45. Having regard to the circumstances of this case and the comparative circumstances of the cases cited, the court is of the view that an award of \$125,000.00 is appropriate in this case.

Aggravated and Exemplary Damages

46. The Claimant not only claimed compensatory damages, but also aggravated and exemplary damages.
47. The conduct of the Defendant, his conduct of the case, and his state of mind (for instance malice) are all matters which the Claimant may rely on as aggravating the damages in so far as they bear on the injury to him: *Gatley (supra) page 282, para 9.14*.
48. Exemplary damages are intended to punish the defendant for the wilful commission of a tort or to teach him that tort does not pay. The guidelines contained in *Rookes v Barnard [1964] AC 1129* are material for such a claim in a defamation case. An award of exemplary damages are restricted to three situations:
- a. Where they are recognised by statute;
 - b. Where the wrong involves oppressive, arbitrary, or unconstitutional action by servants of the government;
 - c. Where the defendant's tortious act has been done with guilty knowledge, for the motive that the chances of economic advantage outweigh the chances of economic or perhaps physical penalty. Here the publisher must have acted in the hope or expectation of material gain.

Gatley (supra) pages 286 – 291, paras 9.16 – 9.18

49. This court finds that the aggravating circumstances of this case are that while the Defendant offered an apology, the offer appeared to be an insincere one, offered at a time so long after the publication of the offending words that the value of the apology would have in any event greatly diminished. Further, the apparent insincerity is acutely reflected in the approach adopted by the Defendant in sitting back and waiting on the Claimant to draft a suitable apology.

50. Further, the court considers the manner in which the employee of the Defendant conducted herself at the interview. It is clear to this court that the employee was the one who all but put words into the mouth of a somewhat reluctant guest by way of the questions posed. It therefore appears that the employee set out to purposely elicit the defamatory words.

51. With this the court must balance the fact that the Defendant came to court and admitted liability thereby saving both trial time and the need for the Claimant to prove the allegations. In those circumstances, the court is of the view that while these factors entitle the Claimant to an uplift for aggravated damages, the level of aggravation is not substantial so as to warrant a very high award. The award for aggravated damages will therefore be the sum of \$25,000.00

52. There shall be no award of exemplary damages as the criteria for such an award has not been met.

Disposition

53. There shall therefore be Judgment for the Claimant against the Defendant for defamation of character. The Defendant is to pay to the Claimant, damages inclusive of an uplift for aggravated damages in the sum of \$150,000.00.

54. The parties shall be heard on the issue of costs.

Dated this 21st day of January, 2014.

Ricky Rahim

Judge