

REPUBLIC OF TRINIDAD AND TOBAGO
IN THE HIGH COURT OF JUSTICE

Claim No. CV2024-02546

BETWEEN
SHANE MAHABIRSINGH

Claimant

AND

ISSA JONES

Defendant

Date of Delivery: 29 January, 2025.

Before the Honourable Mr Justice Frank Seepersad

Appearances:

1. The Claimant appearing in person.
2. Mr. F. Hove Masaisai instructed by Ms. C. Edwards, Attorneys-at-law for the Defendant.

DECISION

1. Before the Court for its determination is the Defendant's Notice of Application filed on 23 September 2024 which seeks, *inter alia*, an order for the Claimant's Statement of Case filed on 16 July 2024 to be struck out as it fails to disclose any reasonable or sustainable ground for bringing a claim.
2. On the 23rd day of October, 2024, this Court issued directions for the filing of submissions and the Defendant complied but the Claimant did not.
3. The Claimant's cause of action arose out of a procedural affidavit (the affidavit) made by the Defendant in CV2024-00508 Robelto Mohammed trading as Pets Professionals and another v Builda Boyz Construction Services Ltd and Shane Mahabirsingh (the previous action).
4. In the previous action, the claimants, Mr Mohammed and Ms Harkoo-Mohammed, claimed against the first defendant, Builda Boyz Construction Services Ltd (the company),

and the second defendant, Mr Mahabirsingh as a director of the first defendant and the operator of the company's Facebook page, damages for defamation of character by Libel which they allege occurred on a social media platform, namely, Facebook.

5. The claimants filed a notice of application for default judgment on 20 March 2024 and this was supported by the affidavit of Mr Jones wherein he deposed, *inter alia*, that Mr Mahabirsingh was served with the Amended Claim Form and Amended Statement of Case on 8 March 2024. The Court thereafter ordered that the claim was to proceed as undefended. Subsequently an application to set aside the order was made and granted.
6. The Claimant has now alleged in his Statement of Case before this Court that the Defendant submitted an affidavit with false information regarding the service of documents in the previous action. The Claimant disputes that he was served and said that this led to him missing the court hearing on 20 March 2024. As a consequence, he says that he has suffered significant distress and reputational harm.
7. This Court must consider the issue as to whether the words used in the affidavit were defamatory.
8. **Duncan and Neill on Defamation Fourth Edition** outlines the elements which must be established for a cause of action in defamation and these are as follows:
 - i. That the statements complained of referred to the Claimant;
 - ii. That the statements were defamatory of the Claimant;
 - iii. That the statement was published by the Defendant.
9. **Gatley on Libel and Slander (12th Ed.)**, paragraph 3.6 defines libel as the publication of defamatory matter in a "permanent" or deemed permanent form.

10. The law has clearly established that an unjustified statement may be considered to be defamatory if it tends to lower the reputation in the eyes of right-thinking members of society or would likely have a negative impact upon the manner in which the Claimant is held in the estimation of reasonable people.
11. The crux of the Claimant's claim is therefore hinged upon the words as outlined in the affidavit.
12. Given that the affidavit was filed in court proceedings, the Court must consider whether the content of the affidavit is covered by the concept of privilege.
13. In the case of **Trapp v Mackie [1979] 1 All ER 489** Lord Diplock considered the issue of absolute privilege in defamation litigation and stated as follows:

“That absolute privilege attaches to words spoken or written in the course of giving evidence in proceedings in a court of justice is a rule of law, based on public policy, that has been established since earliest times. That the like privilege extends to evidence given before tribunals which, although not courts of justice, nevertheless act in a manner similar to that in which courts of justice act, was established . . . by the decision in . . . Dawkins.”

14. In the case of **Munster v Lamb (1883) 11 Q.B.D. 588**; Brett M.R. at pp 603-604 stated that:

“If upon the grounds of public policy and free administration of the law the privilege be extended to Judges and Witnesses, although they speak maliciously and without reasonable and probable cause, is it not for the benefit of the administration of the law that Counsel also should have an entirely free mind? Of the three classes – judge, witness, and counsel – it seems to me that a counsel has

a special need to have his mind clear of all anxiety ... what he has to do, is to argue as best he can, without degrading himself, in order to maintain the proposition which will carry with it either the protection or the remedy which he desires for his client... For, more than a judge, infinitely more than a witness, he wants protection on the ground of benefit to the public...”

15. In the case of Bretherton v Kaye [1971] VR 111, Gillard J stated that:

“The basic principle of absolute privilege is that on certain occasions it is in the public interest and to the public benefit that the publication of words either oral, in writing of and concerning a person are not defamatory even though they should hold such person up to hatred, ridicule and contempt. ... The inconvenience and injury to the victim, however grave, is sacrificed to the overriding demands of public convenience and public benefit. The privilege should, therefore be carefully applied and not unnecessarily extended. The privilege is not intended to protect libelous detractors, but rather as a matter of public policy to encourage persons on such occasions to speak in the interest of the community freely and without any inhibitions or fear of consequences. The most notorious example of this is the privilege granted to everybody participating in proceedings before any court of competent jurisdiction. It is in the public interest that a person who is taking part in any litigation should be independent and encouraged to speak freely so that the true facts may be ascertained, so that the credibility of witnesses may be accurately assessed and so that the evidence and the law may be frankly and candidly discussed to ensure that a correct and just result is obtained... ”

16. This Court endorses the logic and rationale as outlined in Trapp, Munster, and Bretherton (supra) and the expressed trend of thought should be applied to the instant case.

17. Lawyers have an obligation to ensure that their client's or their witnesses' reasoned, reasonable and rational instructions are placed before the Court. If in doing so they can be subjected to a defamatory claim, such a circumstance can undermine the rule of law and adversely affect the administration of justice. Simply put, documents put before the Court or statements made by lawyers during the course of court proceedings are covered by absolute privilege and cannot be relied upon to found a claim in defamation.
18. Even if the doctrine of absolute privilege does not apply, it is evident that the words complained of in the affidavit are not defamatory as the affidavit merely recited the circumstances relative to service as was told to the Attorney by the process server.
19. The Court respects the fact that the Claimant exercised his right to access the Court, in person, but it must be remembered that the Court is constrained to determine matters based on the law as it is applied to the operative facts and must do so in a proportionate manner which accords with the overriding objective as outlined in the Civil Proceedings Rules.
20. It is obvious that the Claimant instituted this claim, without the benefit of proper legal advice. Serious thought should always be given before one decides to approach the Court in person as lawyers play a critical role and their value and advice should not be disregarded. Just as one would not typically operate upon one's self if there was a medical issue, so too citizens should exercise caution and avoid as best as possible from approaching the courts without the benefit of legal guidance.
21. The Claimant also has a duty to ensure that his case outlined a valid cause of action and that it is structured in accordance with the requirements outlined at Part 73.2 of the CPR.
22. This claim however has obvious pleading deficiencies and the Claimant has failed to establish that he has a justifiable claim.

23. For the reasons outlined, the Claimant's Statement of Case is hereby struck out and the Claimant shall pay costs to the Defendant assessed in the sum of \$10,650.00.

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FRANK SEEPERSAD

JUDGE