

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE**

SAINT CHRISTOPHER AND NEVIS

**SKBHCV 2021/0107
(formerly SKBHCV2017/0002)**

BETWEEN:-

KELVIN DALY	Claimant
and	
SHAWN RICHARDS	1 st Defendant
and	
VANCE AMORY	2nd Defendant
and	
ZIZ BROADCASTING CORPORATION	3 rd Defendant

Appearances:

Mrs. M. Angela Cozier for the Claimant
Mr. Terence V. Byron for the 1st Defendant
Mr. D. Victor C. Elliott-Hamilton for the 3rd Defendant

2024: October 23;
December 11;
2025: January 22.

- [1] **GILL, J:** A career civil servant seeks relief in defamation for words spoken by a politician at a town hall meeting and broadcast live on a local radio station.
- [2] On 4th December 2017, the claimant Dr. Kelvin Daly ("Dr. Daly") filed a further amended claim form and statement of claim alleging defamatory words uttered on 25th July 2016 by the 1st defendant Shawn Richards ("Mr. Richards") and the former 2nd defendant Vance Amory ("Mr. Amory") at a public town hall meeting, which words were allegedly contemporaneously published and republished by the 3rd defendant ZIZ Broadcasting Corporation ("ZIZ") on and through its radio station. Dr. Daly claims damages for libel, including aggravated damages, interest, an injunction to restrain further publishing of the

- words complained of or any similar words defamatory of him, costs on an indemnity basis and/or wasted costs.
- [3] Dr. Daly served from 1998 to September 2013 as a teacher and assistant principal of a secondary school, Director and then Permanent Secretary in the Ministry of Agriculture in the Nevis Island Administration.
- [4] By an employment contract dated 2nd September 2013, he was employed as President of the Clarence Fitzroy Bryant College (CFBC), a tertiary level educational institution. Under the employment contract, Dr. Daly was required, among other things, to undertake the development of policies and procedures regarding the handling of funds collected and disbursed by CFBC, and the development of a plan for the audit of CFBC. The contract also set out that the Board of Governors of CFBC had the right to suspend or dismiss Dr. Daly at any time with or without cause. In a case of dismissal without cause, it was agreed that he would be paid any unpaid salary.
- [5] By letter dated 15th July 2016 from the Chairman of the Board of Governors of CFBC, Dr. Daly was summarily dismissed. Dr. Daly was paid \$35,243.27 in accordance with the employment contract.
- [6] At the material time, Mr. Richards was the Deputy Prime Minister of the Federation of St. Christopher and Nevis, and the Minister of Education, Youth, Sports and Culture in the government of Saint Christopher and Nevis. He was the substantive Minister with control of CFBC and the CFBC Board of Governors
- [7] Mr. Amory was the Premier of the island of Nevis and the Minister of Nevis Affairs, Labour, Social Security and Ecclesiastic Affairs. During the course of these proceedings, Mr. Amory passed away on 2nd April 2022 and he was removed as a party to the claim.
- [8] ZIZ is a news broadcaster covering matters of public interest through a radio and television station and on the world wide web, including Facebook.
- [9] Subsequent to Dr. Daly's dismissal, on 20th July 2016, an interview conducted with him on video by the THG Network concerning his receipt of the termination letter as President of

the CFBC. On the issue of his termination being a case of political victimization, Dr. Daly said that he had been labelled as an NRP (Nevis Reformation Party) supporter and therefore the Minister (Mr. Richards) “thinks he needs a purge of anyone who resembles in any fashion, NRP supporters”.

- [10] On Monday 25th July 2016 during a political town hall meeting at Newtown, Basseterre, St. Kitts, carried live on ZIZ, Mr. Richards uttered the following words:

“Sometimes when you hear them talking you got to take it with a grain of salt. When you hear people arguing about how they have been victimized - they have been sent home...”

“Dr. Daly is saying that he has been victimized. Dr. Daly must give persons the full facts. Let them determine why the Board decide they don’t want to renew his contract.

“Dr. Daly must tell persons that in 2014, the first full year that he was at CFBC, you had 800 and something Thousand Dollars collected and only 500 and something Thousand Dollars ended up in the bank account for CFBC. That was under his watch as President of CFBC, and the report speaks to it right here: - total \$819,276.11 collected at CFBC in the year 2014; actual bank deposits \$395,840.54; amount unaccounted for \$423,435.47

“Ask Dr. Daly under his watch how much money is owed to Social Security. Ask him about the Hundreds of Thousands of Dollars owed to Social Security; taken out of teachers’ money and the money ain’t reach to Social Security up to now. Ask him about the money owed to CXC by CFBC. Ask him about the Hundreds of Thousands of Dollars owed to the electricity department by CFBC. Heyliger there asking me what about his pension money - monies being taken out for people pension and ask him where the pension money is!

“I hear the man doing an interview say how this minister victimize him because he is NRP. I have worked with Labour people, I have worked with PAM people, CCM, NRP people. Nobody could accuse me of victimization. I allow the Board to function and that is the decision that the Board has made. Amen to that!” (Emphasis added in the claim)

- [11] Shortly after the above statements were uttered by Mr. Richards, Mr. Amory stated:

“When you come to government and you work in whatever capacity, if you is cleaner, you have to do the job well, so when my cousin [Dr. Daly] from the CFBC say that I was part of having him removed, I was not directly part

of it but because we have collective responsibility we have to make sure that we protect our institutions and our revenue in this country and do it well."

- [12] Dr. Daly avers that the publication of these words caused harm to his reputation, lowered him in the minds of right-thinking members of society, and negatively affected the respect, regard, and confidence in which he was held, and induced disparaging, hostile, and disagreeable opinions and feelings against him in the society.
- [13] Dr. Daly contends that the words complained of were untrue in that no money 'disappeared' from the CFBC 'under his watch', and caused harm to his reputation and character. He also contends that as a result of the words complained of, he suffered loss, damage and aggravated damage. I note here that the word 'disappeared' is not part of the words complained of in the claim.
- [14] In the original claim filed on 11th January 2017, Dr. Daly contended that the words in their natural meaning were understood to mean that:
- (a) the claimant's employment was terminated by the CFBC because he misappropriated or stole monies from the CFBC during his employment in that public office;
 - (b) as President of the CFBC the claimant stole the sum of \$423,435.47 from the CFBC that was intended for payment to the bank account of the CFBC in the year 2014;
 - (c) as President of the CFBC the claimant deducted monies from CFBC teachers' salaries that were intended for payment to the Director of Social Security but stole or otherwise misappropriated the deductions intended to pay to the Social Security Fund, leaving the CFBC in debt to the Director of Social Security;
 - (d) as President of the CFBC the claimant stole or otherwise misappropriated monies owed by CFBC to the Caribbean Examinations Council (CXC) leaving the CFBC in debt to the CXC;
 - (e) as President of the CFBC the claimant stole or otherwise misappropriated monies owed to the St. Kitts Electricity Company (SKELEC), leaving the CFBC in debt to the SKELEC;

- (f) the claimant stole an unspecified sum of pension monies which were missing that were deducted from the salaries of employees at the CFBC during his presidency at the CFBC;
- (g) the claimant is therefore guilty of abuse in public office;
- (h) the claimant cannot be trusted;
- (i) the claimant is guilty of theft of large sums of monies;
- (j) the claimant is guilty of corruption in public office;
- (k) the claimant has misused public office for financial gain;
- (l) the claimant is unfit to hold public office;
- (m) the claimant has committed a criminal offence;
- (n) the claimant has a reputation for being of a corrupt character and/or engaging in corrupt practices and the defendants' admitted action of terminating his employment was taken to protect government institutions and government revenue from the claimant.

[15] Dr. Daly asserts that the defendants knew or ought to have known that the words were untrue, and therefore could not honestly believe them, especially as he was never contacted by either of the defendants before the defamatory words were uttered by Mr. Richards and published by ZIZ.

[16] On 17th November 2017, on an application by ZIZ, Master Actie (as she then was) held that the words complained of were capable of bearing the meanings attributed to them, save where the words referred to a public office, that is, to exclude (g), (j), (k) and (l) above.¹ The learned master further ordered that the statement of claim be amended to add (a meaning) that "the claimant acted negligently as it relates to the management of the accounting practices and finances of the CFBC".² The claim was amended accordingly.

[17] Therefore, Dr. Daly correctly contends that the court having determined that the words complained of are capable of bearing the meanings attributed to them, and that the ruling not having been appealed or set aside, the only issue for consideration by this court is

¹ SKBHCv2017/0002, delivered November 17, 2017, at para. 19.1.

² Ibid at para. 19.2.

whether the words were defamatory of him in the circumstances, that is, whether the words would reasonably in fact be understood to be defamatory of him.

Mr. Richards' defence/position

[18] Mr. Richards avers the following:

- i. The statement of claim does not allege publication by Mr. Richards to a third person and accordingly discloses no cause of action against him, so that the claim against him should be dismissed with costs.
- ii. In relation to Mr. Richards, the offending words do not in law constitute libel.
- iii. The words complained of are not defamatory of Dr. Daly.

[19] In his defence, Mr. Richards pleaded that “the alleged words are true in substance and in fact”, thereby raising the defence of justification. However, at the trial, learned counsel for Mr. Richards, Mr. Byron, abandoned that plea, recognising and conceding that the defence did not contain particulars of justification.

[20] In addition, Mr. Richards asks the court to find that Dr. Daly failed to honour his duty under the rules to disclose documents directly relevant, including documents tending to adversely affect his case (CPR 28.1(3)(b)) or tending to support his opponents' case (CPR 28.1(3)(c)). In particular, Mr. Richards accuses Dr. Daly of not disclosing a CFBC Internal Audit Report from which Mr. Richards quoted figures in his utterances, the subject of the alleged defamatory statements, and central to this case. It was left to Mr. Richards to disclose several documents that Dr. Daly did not. Mr. Richards submits that this shows Dr. Daly's lack of frankness and that this entire case is a grievance that has been manufactured.

ZIZ's defence/position

[21] I note here that at trial, ZIZ did not produce its representative who made a witness statement on its behalf for cross-examination. Therefore, ZIZ cannot rely on that filed witness statement. Further, learned counsel for Dr. Daly, Mrs. Cozier, submits that the expert witness commissioned by ZIZ, Melissa Wigley, was not present for cross-examination and that as a result, her evidence cannot be relied upon. In these

circumstances, Mrs. Cozier submits that summary judgment should be entered against ZIZ.

- [22] On an application by ZIZ, on 16th December 2020, the court gave leave for the appointment of Melissa Wigley as an expert witness. The expert submitted her written report before trial. Rule 32.7 of the Civil Procedure Rules (Revised Edition) 2023 (CPR 2023) provides that expert evidence is to be given in a written report unless the court directs otherwise. The court did not direct otherwise. In accordance with CPR 32.8, Dr. Daly put questions in writing to the expert, which questions were duly answered. The expert was not required to be present at trial.
- [23] The absence of ZIZ's representative meant that the witness statement is not in evidence. However, learned counsel for ZIZ, Mr. Elliott-Hamilton, was permitted to cross-examine Dr. Daly, albeit in a limited way.
- [24] Based on the foregoing, I find no merit in Dr. Daly's submission to enter summary judgment against ZIZ and accordingly, that request is refused.
- [25] ZIZ admits that it broadcast the words complained of live. However, it disputes that the broadcast amounts to libel as Dr. Daly provided no evidence to prove that the words were published on the internet or that the words were available to persons in some permanent form. ZIZ submits that Dr. Daly's case should be confined to slander as he has not made out a claim in libel.
- [26] ZIZ submits that the court must determine the single meaning of the words and contends that the words are not in fact defamatory of Dr. Daly.
- [27] ZIZ further relies on the defence of justification.
- [28] In the event the court finds ZIZ liable, it contends that the damages claimed are not maintainable.

Issues

- [29] The court must determine:
- i. whether the words complained of are defamatory of Dr. Daly;
 - ii. whether the words complained of amount to libel (as pleaded) or slander;
 - iii. whether the words complained of were published to a third party;
 - iv. if the court finds that the words are defamatory of Dr. Daly, whether the defence of justification is proved; and
 - v. if not, what is the quantum of damages to be awarded to Dr. Daly.

Whether the words complained of are defamatory of Dr. Daly

[30] On November 17, 2017, at paragraph 17 of her ruling, the then learned master determined that the words complained of were capable of bearing certain defamatory meanings. It is now left to this court to determine whether the words are in fact defamatory of Dr. Daly.

[31] In determining the natural and ordinary meaning, the court takes into account not only the literal meaning of the words but also the inferences which a reasonable person would draw from them in their context.³

[32] In **Ramsahoye v Peter Taylor Co. Ltd.**⁴ Bollers J stated:

“On this aspect of the case, the single duty which devolves on this Court in its dual role is to determine whether the words are capable of a defamatory meaning and given such capability whether the words are in fact libellous of the Plaintiff. If the Court determines the first question in favour of the Plaintiff, the Court must then determine whether an ordinary, intelligent and unbiased person reading the words would understand them as terms of disparagement and an allegation of dishonest and dishonourable conduct. The Court will not be astute to find subtle interpretations for plain words of obvious and invidious import. Where words are clearly defamatory on their face, a finding that they are capable of being defamatory will almost inevitably lead to the conclusion that they are defamatory in the circumstances.”

³ *Rubber Improvement Ltd v Daily Telegraph Ltd, Rubber Improvement Ltd v Associated Newspapers Ltd* [1964] AC 234 at 258, sub nom *Lewis v Daily Telegraph Ltd, Lewis v Associated Newspapers Ltd* [1963] 2 All ER 151 at 171, HL, per Lord Devlin

⁴ [1964] LRBG 29

[33] In the case of **Beulah Mills v Michael Perkins and Nevis Broadcasting Limited**⁵ which is a local authority, Williams J (Ag.), as she then was, stated:

“[84] The Court must examine the words and decide what ordinary reader or listener of average intelligence would understand by the words.

See Ramsahoye vs. Peter Taylor and Co. Ltd.

[85] It is established Law that for a statement to be defamatory, it must contain either expressly or by implication statements of fact which would tend to lower the Claimant in the estimation of right thinking members of society generally, or it exposes her to contempt, public hatred and ridicule. It is trite law that a statement is defamatory if it imputes dishonesty to a person in the context of his **Trade, business or profession**. Again, in determining whether the statement so imputes any such lack of quality, the test is that, of how the ordinary reasonable man who is fair minded, to whom the words are published, is likely to understand them.

[86] In applying the test, this Court is of the considered opinion that the ordinary reasonable man would come to the conclusion and understand that the words used by Mr. Perkins impute that Ms. Mills was a corrupt, unfit and indecent person, who had committed gross irregularities at the Electoral Office and abused her position in order to illegally and fraudulently register persons on the electoral list. I am also therefore of the considered view that the statements made by Mr. Perkins would likely be understood by the right thinking members of society as defamatory of Ms. Mills.”

[34] In submitting that the words complained of (as amended in accordance with the ruling of the learned master), Dr. Daly highlights admissions of the defendants.

[35] Both Mr. Richards and ZIZ admit the following: -

- (a) the educational credentials and the public positions held by Dr. Daly as Assistant Principal of the Charlestown Secondary School and the Director and then Permanent Secretary in the Ministry of Agriculture in the Nevis Island Administration;
- (b) that at all material times Dr. Daly was employed as President at Clarence Fitzroy Bryant College;
- (c) that Mr. Richards was at all material times the Deputy Prime Minister of the Federation of St. Kitts and Nevis, and the Minister of Education, Youth, Sports and Culture in the Government of St. Kitts and Nevis;
- (d) that at all material times Mr. Amory was the Premier of the Island of Nevis and was the Minister of Education on the Island of Nevis, as well as the Minister of Nevis

⁵ NEVHCV2009/0098, delivered July 23, 2014, at paras. 84 - 86

Affairs, Labour, Social Security and Ecclesiastical Affairs in the Government of St. Kitts and Nevis.

- [36] Mr. Richards also admits that he spoke the words complained of by Dr. Daly in a public forum which words were broadcast by ZIZ's broadcasting corporation.
- [37] ZIZ admits that it broadcast the words complained of, uttered by Mr. Richards.
- [38] Dr. Daly submits that an ordinary, intelligent and unbiased person would find that the words set out in paragraph 9 of the further amended statement of claim are in fact defamatory of him and do bear each of the natural and ordinary meanings ascribed to them therein.
- [39] Mr. Richards' submissions on the meaning of the words, while admitting that the ruling of the learned master was not appealed, addressed the fact that the ruling was largely based on the ruling of another master, which ruling was overturned on appeal. I note the detailed submissions by learned counsel for Mr. Richards, but respectfully confine my conclusion on meaning to the function of the court at this stage, that is, to determine whether the words, which have been held to be capable of bearing the defamatory meanings set out in the claim, are in fact defamatory of Dr. Daly. This is indeed Mr. Richards' position as to the jury function of the court as presented in learned counsel's written submissions.⁶
- [40] Mr. Richards maintains the denial in his pleaded defence that the words complained of bore any defamatory meaning. He submits that his words merely reflected what was in the CFBC Internal Audit Report and in Dr. Daly's own letter to Mr. Richards' Permanent Secretary at the material time. He contends that what Dr. Daly said cannot be defamatory of him. Likewise, the facts set out in the Report cannot be defamatory of him.
- [41] On the issue of meaning, ZIZ submits as follows:
- i. The words complained of do not expressly state that Dr. Daly is guilty of the offences pleaded, nor do any of the statements expressly state that Dr. Daly misappropriated funds. The meaning to be ascribed to Mr. Richards' words must be determined in accordance with the context in which the statements were made.

Mr. Richards' statements themselves preface the context. He indicated that he was responding to statements made by Dr. Daly that he was victimized. Victimized, in this context, means that Dr. Daly was wrongfully dismissed, which he alleged in his statement of claim and maintained at trial. Mr. Richards in response indicated that there were grounds for dismissal.

- ii. The reasonable viewer would have understood that there were in fact grounds for dismissal. In assessing the meaning of the words, the court should not allow Dr. Daly to use the worst possible meanings that can be found from the words. Reasonableness is critical. The reasonable viewer is not avid for scandal. In assessing the words used by Mr. Richards, there is no suggestion by Mr. Richards that Dr. Daly committed a crime. There was no charge that Dr. Daly should be investigated or that he should be arrested. There is no suggestion that Dr. Daly benefitted from the unaccounted money, or that he had diverted the sums which were payable to the Director of Social Security, the Caribbean Examinations Council or pensions. Mr. Richards merely indicated that there were instances of financial mismanagement at the CFBC while Dr. Daly was the President of the institution, which justified his dismissal. Mr. Richards in answer is simply stating that Dr. Daly was not victimized, but that his contract was not renewed with good reason.
- iii. In the circumstances, the court should find that the common sting and single meaning that relates to his performance at the CFBC is that Dr. Daly acted negligently as it relates to the management of the accounting practices and finances of the CFBC.

Ruling on meaning

- [42] The parties agree that the court can come to its own conclusion on the meaning of the words outside of what the parties submit. In its jury function, the court is to determine what the words actually mean and whether the words are in fact defamatory of Dr. Daly.

⁶ See *Lewis v Daily Telegraph* (1964) AC

[43] In **Charleston v News Group Newspapers Ltd**,⁷ Lord Bridge stated:

“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.”

[44] In determining meaning, the court notes the useful summary of the principles contained in **Gillick v British Broadcasting Corporation**⁸ made within the context of a television programme:

- 1) The court should give to the material complained of the natural and ordinary meaning which it would have conveyed to the ordinary reasonable viewer watching the programme once;
- 2) The hypothetical reasonable reader (or viewer) is not naïve but he is not unduly suspicious. He can read between the lines. He can read in an implication more readily than a lawyer and may indulge in a certain amount of loose thinking. But he must be treated as being a man who is not avid for scandal and someone who does not, and should not, select one bad meaning where other non-defamatory meanings are available.
- 3) While limiting its attention to what the defendant has actually said or written the court should be cautious of an over-elaborate analysis of the material in issue.
- 4) A television audience would not give the programme the analytical attention of a lawyer to the meaning of a document, an auditor to the interpretation of accounts, or an academic to the content of a learned article.
- 5) In deciding what impression the material complained of would have been likely to have on the hypothetical reasonable viewer the courts are entitled (if not bound) to have regard to the impression it made on them.

⁷ [1995] 2 AC 65 at 71

⁸ [1996] EMLR 267 at 272 per Neill LJ

6) The court should not be too literal in its approach.

7) A statement should be taken to be defamatory if it would tend to lower the plaintiff in the estimation of right-thinking members of society generally or likely to affect a person adversely in the estimation of reasonable people generally.

[45] Mr. Richards was clearly responding to Dr. Daly's statement that he was victimized by the termination of his employment as President of CFBC. It is evident that Mr. Richards' utterances at the town hall meeting were triggered by Dr. Daly's own statements accusing Mr. Richards of victimization. In fact, Mr. Richards avers that if anything, he should be the one suing Dr. Daly for defamation. Instead of victimization, Mr. Richards challenged Dr. Daly to tell of the more amounts collected than deposited in CFBC's bank account for the first year that Dr. Daly was employed at CFBC. He quoted figures from a report showing that \$423,435.47 was unaccounted for while Dr. Daly was President of CFBC. He urged that Dr. Daly should be questioned as to how much money was owed by CFBC to several entities while he was at CFBC. Mr. Richards responded to an allegation by Dr. Daly that Mr. Richards victimized him for political reasons but defended himself as a person who has worked with people from various political organisations so that no one could accuse him of victimization. The decision regarding Dr. Daly was that of the Board.

[46] In my view, the words complained of convey and would be understood by the reasonable ordinary person who is unbiased and not averse to scandal that at the time Dr. Daly was responsible for the affairs of CFBC, a large sum of money was unaccounted for, with the suggestion that this was the reason why the Board terminated his employment. The sting of the words goes to the mismanagement of the finances of the CFBC. In the circumstances of this case, I do not find that the words impute that Dr. Daly stole any monies or that he committed any criminal offence or that he has a reputation for corruption. However, they impute impropriety on Dr. Daly's part in the context of his employment as President of CFBC and, in my view, would tend to lower Dr. Daly in the estimation of right-thinking members of society. In other words, the ordinary person would understand the single meaning to be that Dr. Daly did not properly or competently manage the finances of CFBC, the possible reason for the Board ending his employment. Therefore, although with

a less painful sting than advanced in his claim, I find that the words complained of are in fact defamatory of Dr. Daly.

Whether the words complained of amount to libel or slander

[47] At common law, libel is the publication of defamatory matter in a permanent form whereas there is publication of a slander where a defamatory sense is communicated by spoken words.⁹

[48] In the further amended claim form, Dr. Daly claims “damages for defamation including aggravated damages”. The prayer in the accompanying statement of claim seeks “damages for libel including aggravated damages”. Therefore, on the face of it, Dr. Daly’s claim is in libel.

Mr. Richards’ submissions on libel or slander

[49] The claim alleges, and Dr. Daly’s witness statement spells out, that Mr. Richards uttered, and ZIZ published the words complained of. It concerns words spoken by Mr. Richards at a town hall meeting and broadcast live by ZIZ. Generally, in St. Kitts and Nevis, a live broadcast is considered a slander. Gatley on Libel and Slander¹⁰ states:

*By the Defamation Act 1952, it is provided that, for the purposes of the law of libel and slander, the broadcasting of words for general reception by means of wireless telegraphy shall be treated as publication in permanent form, that is to say, as libel. **Broadcasting otherwise than for general reception is not covered by the statute, and accordingly, remains subject to the relevant rules of the common law.** “In England (though the matter has not been the subject of any formal decision) the view generally held among lawyers and judges is that at common law – and apart from statute – a broadcast which is read from a written script amounts to libel, **while a broadcast spoken extempore amounts only to slander.** (Emphasis added)*

[50] A footnote to the above statement reads, in part:

Semble, the broadcasting of words, otherwise than for general reception by means of wireless telegraphy, will be libel, if from a script, slander, if unscripted.

⁹ See Gatley on Libel and Slander 8th Ed. paras 141 and 142

¹⁰ 8th Ed. para 147

[51] Mr. Byron contends that nothing in the pleadings says Mr. Richards was broadcasting. The pleadings emphasize *ad nauseam* that ZIZ was broadcasting, with Mr. Richards merely uttering/stating the words complained of. Learned counsel argues that if the pleadings did not make it abundantly clear that Mr. Richards was not broadcasting, and that it was ZIZ who was broadcasting, the pleadings would have to show, according to the view generally held in England among lawyers and judges, that Mr. Richards was not only broadcasting, but in doing so, he was reading the words complained of from a written script, in order for the cause of action to be sustainable as libel.

[52] Learned counsel submits that on a balance of probabilities, Mr. Richards was not reading from a written script, but only referred to some figures from the CFBC Internal Audit Report. He reiterates that Dr. Daly pleaded that Mr. Richards merely uttered, and ZIZ published/broadcast the words complained of, and Dr. Daly did not plead that Mr. Richards was reading from a script. Therefore, this cannot be a libel, as distinct from a slander (assuming always that the words complained of were defamatory.) Learned counsel submits that the case fails for this reason and should be dismissed with costs.

ZIZ's submissions on libel or slander

[53] Learned counsel for ZIZ, Mr. Elliott-Hamilton, pointed out that Dr. Daly has not provided any evidence as to the publication of the offending words to any third party beyond himself. As such, the court may only determine publication on the basis of reasonable inferences.

[54] Mr. Richards admits that he uttered the words at a town hall meeting. Mr. Elliott-Hamilton states that the court may reasonably infer that the words were heard by persons present at that meeting but contends that this in and of itself does not amount to libel, but is slander because it is the utterance of words.

[55] In its pleadings, ZIZ admitted that it broadcast the words live. At common law, a broadcast does not amount to a libel. Mr. Elliott-Hamilton urges the court to note that it is not for the defendants to disprove publication but for Dr. Daly to prove where and when the offending words were published. Counsel submits that the mere statement at a public meeting does not carry with it the reasonable inference that the words were published on the internet or

that the words were available to persons in some permanent form. Counsel drives home the point that whereas Dr. Daly alleged that the words were published on the internet, he has submitted no evidence to that effect. Mr. Elliott-Hamilton is adamant that proof of publication must come from a third person, and that admission of the broadcast by ZIZ is not evidence of publication of a libel, only a slander. Therefore, he argues that Dr. Daly has not made out his case in libel, and he has not pleaded slander. In these circumstances, learned counsel submits that the court should find that Dr. Daly's case should be confined to slander.

Dr. Daly's submissions on libel or slander

- [56] Learned counsel Mrs. Cozier maintains that the claim is one in libel. Counsel argued that the words complained of were permanent because persons discussed the matter on social media. Counsel directed the court's attention to the decision of the Court of Appeal in **Lennox Linton and Others v Kieron Pinard-Byrne**¹² where the issue as to whether words complained of constituted libel or slander was addressed. (I note that this decision was overturned by the Privy Council but the principles on this issue remain intact). At paragraph 48 of the judgment, Michel JA explained:

"Over time, the classification of defamatory words into the categories of libel and slander was adjusted, from the starting point of slander referring to defamation by the spoken word, with the category of libel expanding at the expense of its more ephemeral sibling. So that the spoken word captured in some permanent form, like a recording of a speech or song for instance, came to be classified as libel and not slander. In due course, the classification of words into the categories of libel and slander increasingly came to be determined not by the mode of their communication (referring to the spoken or written word) but by their probable life span in the medium through which they were communicated. So that the more enduring are the words in the medium through which they were communicated, the more likely it is that they would be classified as libel, even though they were communicated in the mode of speech rather than text."

- [57] Mrs. Cozier in substance submits that since persons discussed the words on social media they should be classified as libel.

¹² DOMHCVAP2011/0017

Ruling on libel or slander

[58] The publication of defamatory words by radio broadcasts without more constitutes slander and not libel in the Federation of St. Kitts and Nevis. This is in contrast to the position in the United Kingdom and other Commonwealth countries which was changed by statute. However, where a radio broadcast is recorded, it will fall into the category of libel. In **Lennox Linton**, at paragraph 52 of the judgment, Michel JA opined:

“...[T]here is judicial authority for the proposition that if the radio broadcast in which the words complained of were published and recorded, then this will result in a degree of permanence of the publication so as to constitute it as libel and not slander. There is a dearth of English judicial authority on this issue, because the issue has been dealt with by statute in England since 1952, but the proposition has been treated – certainly in the texts on libel and slander – as being settled.”

[59] In that case, the Court went on to rule that “there was uncontroverted evidence that the radio broadcast in issue was recorded, and indeed repeated” so that it could be regarded as libel and not slander.

[60] That is not the case here. There is no evidence before this court that the words uttered by Mr. Richards, complained of by Dr. Daly and broadcast live on ZIZ were recorded or rebroadcast or repeated. I do not accept the submission that because the matter was discussed on social media, the words were given some form of permanency. In these circumstances, I find that the uttering of the words complained of broadcast live on ZIZ constitutes slander and not libel. The claim can be dismissed for this reason.

[61] Generally, libel is actionable per se and slander is actionable only on proof of special damage. An exception to the principle regarding slander is where the words are calculated to disparage a person in his or her office held by him or her at the time of the publication. In Gatley on Libel and Slander,¹³ it is stated:

Words which are calculated to disparage the reputation of the plaintiff in the way of any office held by him, or in the way of any lawful profession, calling, trade or business carried on by him, are actionable without proof of special damage. In such cases, the plaintiff must allege in his statement of claim, and prove at the

¹³ 8th Ed. para. 168

trial, that he held the office, or carried on the profession, trade, or business *at the time* when the words complained of were published. (*Emphasis as in the text*)

- [62] The exception is not applicable here as at the time of the alleged publication, Dr. Daly was no longer President of the CFBC. Therefore, in order to succeed in slander, Dr. Daly must demonstrate proof of special damage. In this regard, Dr. Daly claims that since his termination, because of the words complained of, he has been unable to secure gainful employment and has had to resort to farming. Apart from his own statement, Dr. Daly did not present evidence to show that there has been damage to his professional reputation. Dr. Daly has not proved special damage.

Publication

- [63] Whether libel or slander, in order to succeed a claimant in a defamation action must show that the words complained of were published. Gatley on Libel and Slander sets out that no civil action can be maintained for libel or slander unless the words complained of have been published.¹⁴ “The material part of the cause of action in libel is not the writing, but the publication of the libel.”¹⁵ The act of publishing the libellous matter constitutes the cause of action.¹⁶ “To give a cause of action there must be a publication by the defendant. That is the foundation of the action.”¹⁷ “It is the publication not the composition of the libel which is the actionable wrong.”¹⁸
- [64] Gatley on Libel and Slander further states that the statement of claim must in principle show that the words were published on a stated occasion to a named person or persons other than the claimant.¹⁹ “A statement of claim which does not allege publication to some third person discloses no cause of action.”²⁰
- [65] Learned counsel Mr. Byron advances that nothing can be clearer in this action than that Dr. Daly is stating over and over that Mr. Richards uttered, but ZIZ published, the words

¹⁴ See para 221, 8th Ed.

¹⁵ *Per* Lord Esher MR in *Hebditch v MacIlwaine* (1894) 2 QB at pp. 58, 61 and Davey LJ at 64

¹⁶ *O’Keefe v Walsh* (1903) 2 IR 706

¹⁷ *Per* Bray J in *Powell v Gelston* [1916] 2 KB at p. 609

¹⁸ Dixon J in *Lee v Wilson* 51 CLR at p. 287

¹⁹ See para. 1065, 8th Ed.

²⁰ *Hall v Geiger* (1929) 41 Br. Col. R 481

complained of, which on the authorities means that the case against Mr. Richards does not get off the ground, as disclosing no cause of action.

[66] Mr. Richards submits that the claim never, on the authorities, alleged an actionable wrong against him, because Dr. Daly pleaded in his statement of case that another party, ZIZ, published the words complained of.

[67] In addition, Mr. Richards contends that Dr. Daly, having alleged that Mr. Richards maliciously uttered the words complained of, failed as required by CPR 69.2 (c) [now CPR 58.2(c)] to give particulars in support of that allegation.

[68] Mr. Richards submits that the court should in principle pay no attention to paragraph 14 of the statement of claim which gives no details of a stated occasion (no date) or of publishing to a named person or persons. Paragraph 14 of the statement of claim states as follows:

14. ***The Defendants and all of them, intentionally and being actuated by malice towards the Claimant, posted, or reposted and published and/or republished, or caused to be posted or reposted and published or republished, the words complained of, calculating to injure the Claimant's good reputation, and the Defendants posted or reposted and published and republished, or caused the said words to be posted or reposted and published or republished, and continued the republication, of the words complained of, knowing at all material times that the allegations made against the Claimant are false and not honestly believing them to be true.*** (My emphasis)

[69] Paragraph 30 of Dr. Daly's witness statement alleges that Mr. Richards responded in a letter to Dr. Daly's letter before action, and admitted publication. Mr. Richards does not admit and has been unable to verify this allegation, and Dr. Daly did not produce the purported letter at the trial.

[70] Mr. Richards maintains that the statement of claim in this action does not allege publication by him to some third person and accordingly discloses no cause of action against him, and should be dismissed with costs. He stresses that Dr. Daly called no witness other than himself.

- [71] Whereas ZIZ admitted in its pleadings that it broadcast the words complained of, its issue with this case is the absence of evidence of publication by ZIZ on the internet or to a third party in a permanent form, hence its submission that Dr. Daly has not made out a claim in libel as opposed to slander.
- [72] I note the multiple instances pointed out by learned counsel for Mr. Richards as to Dr. Daly's allegations that Mr. Richards uttered, and ZIZ published the words complained of.
- [73] Whereas there is merit in Mr. Richards' submission that paragraph 14 of the statement of claim does not give particulars to support the allegation that he maliciously uttered the words as required by the Rules governing defamation claims, Dr. Daly makes the allegation of publication against all the defendants. Therefore, in my view, the claim ought not to be dismissed on the basis that Dr. Daly pleaded in the statement of claim that ZIZ published the words complained of. At paragraph 14, he also pleaded that all defendants published the words.
- [74] This point on the deficiency of the pleadings is a preliminary issue which ought to have been pursued by Mr. Richards at the case management stage on an application to strike out the claim as disclosing no reasonable cause of action. Nevertheless, even at this stage, I cannot say that in respect of publication, there is no scintilla of a cause of action against Mr. Richards. Although not at paragraph 14, the claim alleges (at paragraph 6 of the statement of claim) that Mr. Richards uttered the offending words on 25th July 2016 at a town hall meeting in Newtown, Basseterre, St. Kitts.
- [75] The allegation by both defendants as to the requirement for publication to a third party demands more scrutiny. In a defamation action, the claimant must show that the offending words were published, that is, read, seen or heard by a person other than the parties. This is normally proved by a witness or witnesses giving evidence that the witness read, saw or heard the offending words. Therefore, in this case where Dr. Daly called no witness who heard the words, the question arises as to whether this deficiency is fatal to his claim. On

this issue, there is guidance in the text Carter-Ruck on Libel and Privacy²¹ cited by learned counsel Mr. Elliott-Hamilton for ZIZ. The learned authors state:

To establish publication the claimant must bring forward evidence of the communication of the defamatory material to a third party and this may require evidence from those present at the time the communication was heard, seen or read. However, it is not necessary in all cases to prove that the defamatory material was actually heard, seen or read by a third party: 'If it is a matter of reasonable inference that this has actually happened a prima facie case of the publication will be established'. By way of example, if a slanderous imputation is relayed over the public address system at a premier league football match or a libel is contained in a national newspaper it would be a matter of reasonable inference that the slander was heard and the libel had been read.

[76] Dr. Daly is required to prove publication by each defendant to a third party. It is for Dr. Daly to prove publication of the words complained of. Dr. Daly was the sole witness for his case. He produced no evidence that anyone heard the words at the town hall meeting where they were uttered or of anyone who may have listened to the live broadcast on the radio or via the internet. Offending words on a live radio broadcast are published when they are heard by a third person. In the case of the town hall meeting, and given that Mr. Richards admits that he uttered the words complained of, I am of the considered view that it is safe to draw the inference that there were persons at the town hall meeting who heard them. It is reasonable to conclude that the words were published to a third party at the town hall meeting.

[77] I am of a different view when it comes to publication by ZIZ. Whereas ZIZ admitted that it broadcast the town hall meeting live, Dr. Daly must prove that the words complained of were heard by a third party. In order to ground publication in ZIZ, it was incumbent on Dr. Daly to bring a witness to testify as to having heard the words as they were spoken live on radio or Facebook or on the internet as carried on the ZIZ platform. No such evidence was forthcoming. In my view, it is not a given that because the town hall meeting was broadcast live on ZIZ, anyone listened to the broadcast and in particular, heard the offending words. To my mind, in the circumstances of this case, it is not reasonable to infer that a third party heard the words complained of on the ZIZ platform. Therefore, I rule that Dr. Daly has not proved publication by ZIZ.

²¹ 6th Ed. 2010, LexisNexis, at para. 5.13

- [78] Having found that Dr. Daly has not proved an essential ingredient of a claim in defamation against ZIZ, the claim against ZIZ can be dismissed on this basis alone. However, if I am wrong, I will proceed to consider the defence raised by ZIZ.

Whether the defence of justification is proved

- [79] It is a complete defence to an action in libel or slander for a defendant to prove that the defamatory statement is true. It is sufficient if the substance of the defamatory statement is justified.

- [80] At paragraph 6 of his defence, Mr. Richards contends that *“the alleged words are true in substance and in fact”*. In effect, therefore, Mr. Richards raised a plea of justification as a defence to the claim, that is, that the words he spoke were justified. At the trial, learned counsel for Mr. Richards abandoned the plea on the basis that he did not plead particulars of justification. This notwithstanding, Mr. Richards relies on essentially the same facts used by ZIZ in its justification defence in asking the court to find that the words complained of are not defamatory of Dr. Daly.

- [81] At paragraph 7 of its amended defence, ZIZ raised the justification plea in respect of a particular possible meaning of the words. The paragraph reads:

Further or alternatively, if and insofar as the words complained bore or were understood to bear the meaning that the Claimant acted negligently and/or incompetently as it relates to the management of the accounting practices and finances of the CFBC....., they are true in substance and in fact.

- [82] ZIZ then set out “Particulars of Justification”.

- [83] Dr. Daly submits that the defence of justification is not open to the defendants as the plea must go to the truth of the ordinary meanings of the offending words. Learned counsel Mrs. Cozier points out that it was already held by Master Actie (as she then was) in her 2017 judgment that the words complained of were capable of bearing the meanings attributed to them in the claim, that is, *inter alia*, that the claimant was a thief, corrupt and untrustworthy. Confusingly, learned counsel submits that the defendants cannot rely on the contract between Dr. Daly and the CFBC, which, when considered, and at its highest, makes no allegations of corruption or thievery against Dr. Daly so as to qualify as a plea of justification.

- [84] The defendants direct the court's attention to Dr. Daly's three-year contract of employment in relation to his duties in the first year of the contract, which Dr. Daly agreed included "development of policies and procedures regarding the handling of funds collected and disbursed by the College" and "development of a plan for the audit of the College". He also agreed that his duties included "updating and presenting a plan for raising funds for institutional advancement and reducing dependence on federal subsidies".
- [85] The CFBC Internal Audit Report conducted by the Ministry of Finance for January 2012 to December 2014 is relevant. The objectives of the audit were set out in the report - to ensure that the College was complying with the law, which required the College as a statutory body to keep proper books of account, ensure that all money received was promptly brought to account, all payments out of its money were correctly made and properly authorised, and that adequate control was maintained over its property and over the incurring of liabilities by the statutory body.
- [86] In the report, a Table for the year 2014 (the first full year of Dr. Daly's presidency), revealed that the amount of money deposited in CFBC's coffers was \$423,435.47 less than the amount collected. This is the amount quoted by Mr. Richards at the town hall meeting when he stated, "*That was under his watch as President of CFBC, and the report speaks to it right here: - total \$819,276.11 collected at CFBC in the year 2014; actual bank deposits \$395,840.54; amount unaccounted for \$423,435.47.*"
- [87] The Minutes of the meeting of the CFBC Board for 20th May 2016 indicate that Dr. Daly rejected the findings of the audit report. He stated that the audit report was incorrect and until a forensic audit was completed, he would not accept it, especially as to the disappearance of funds.
- [88] A report was done by the expert witness Melissa Wigley, a Chartered Certified Accountant, who was appointed on ZIZ's application to the court. At the trial, Dr. Daly, in cross-examination by learned counsel Mr. Elliott-Hamilton for ZIZ, said he recalled giving an affidavit in opposition to the application to appoint the expert witness, but did not question her impartiality.

[89] In her conclusion, the expert stated that poor management constituted a critical shortcoming in the discrepancies she noted. She stated the following:

“Due to the lack of adequate control systems, such as supervisory reviews, to mitigate the inherent risk of fraud or error, the end result shows significant irregularities or misappropriation of funds collected and deposited to the College bank account during the year ended December 31, 2014. However, from the untimely deposits of funds collected as outlined in point three (3) above and the deficiency of adequate inherent controls employed during that period, we cannot accurately state the financial position and the amounts misappropriated or unaccounted for as at December 31, 2014.

Based on our assessment, factoring in the associated limitations outlined above, the whole amount collected was \$10,417,095.44, the amount deposited was \$10,117,006.47, resulting in a shortfall or unaccounted funds totaling \$300,088.97. See Appendices A and B for the monthly breakdown.” (Emphasis added)

[90] There is a difference of \$123,346.50 between the funds unaccounted for in the Internal Audit Report and the report of the expert. ZIZ submits that a figure of \$300,088.97 unaccounted for, renders the statement by Mr. Richards true in substance.

[91] In relation to the part of Mr. Richards’ utterances about money owed under Dr. Daly’s watch, it is evident that as President of CFBC, Dr. Daly was acutely aware of items to which Mr. Richards referred. By a letter dated 21st March 2016, Dr. Daly wrote to the Permanent Secretary in the Ministry of Education, Mr. Richards being the relevant Minister at that time. In that letter which learned counsel Mr. Byron refers to as “The Bombshell Letter”, Dr. Daly acknowledged that he was seeking budgetary support from the Government. Under the heading “Arrears”, he listed the following:

- | | |
|------------------------------------|-----------|
| 1) Arrears owed to CXC | \$160,000 |
| 2) Arrears owed to Social Security | \$338,407 |
| 3) Arrears owed to SKELEC | \$465,548 |

[92] Therefore, with this information provided to the Minister’s Permanent Secretary by Dr. Daly himself, it is reasonable to conclude that Mr. Richards’ statements regarding same are true. Mr. Richards quoted the figures from the Internal Audit Report and echoed the situation penned by Dr. Daly himself as to arrears owed by CFBC to CXC (Caribbean Examinations Council), Social Security, the electricity department or SKELEC (St. Kitts

Electricity Company), all while he was President of CFBC. By his utterances, Mr. Richards stated well-founded facts upon which he relied to demonstrate the falsity of Dr. Daly's statements concerning the allegation that he was victimized. The words drew attention to the possible real reason for Dr. Daly's termination, by revealing cogent information on the arrears owed by CFBC under his leadership as President of CFBC. The evidence before the court confirms Mr. Richards' words that sums of money were unaccounted for.

- [93] Under cross-examination by Mr. Byron on behalf of Mr. Richards, Dr. Daly explained that the reason for the monies being unaccounted for was that the reconciliation "was not being done properly or on time". When the court sought clarification on this point, Dr. Daly's evidence was that if the reconciliation is done properly, there will be no money unaccounted for. The expert report cited "significant irregularities or misappropriation of funds collected and deposited to the College bank account during the year ended December 31, 2014." This state of affairs existed under Dr. Daly's watch, substantiating Mr. Richards' utterances at the town hall meeting.
- [94] Further, the Board of Governors terminated Dr. Daly's employment contract in accordance with its terms and there is no evidence to suggest that Mr. Richards exerted any political influence in the decision of the Board.
- [95] I am of the view that ZIZ has demonstrated the truth of the substance of the words complained of. In these circumstances, I rule that the defence of justification succeeds. The claim against ZIZ fails.
- [96] Notwithstanding that Mr. Richards is not relying on a justification plea, I have ruled that the words complained of are true. In my view, it would be illogical to uphold the truth defence of ZIZ, and then to rule that it does not apply to Mr. Richards. The defence that what Dr. Daly said and the facts in the CFBC Internal Audit Report cannot be defamatory of him amounts to a submission of the truth of the words uttered by Mr. Richards. The facts pleaded and proved by Mr. Richards in substance constitute a defence of justification. On the whole of the evidence, the words being determined to be true, this finding also benefits Mr. Richards. The claim also fails against Mr. Richards.

Order

[97] Based on the foregoing, it is ordered as follows:

- 1) The claim is dismissed.
- 2) The claimant Kelvin Daly shall pay prescribed costs to the defendants Shawn Richards and ZIZ Broadcasting Corporation in the sum of \$10,000.00 each.

[98] I am grateful to learned counsel for their useful submissions.

Tamara Gill
High Court Judge

By the Court

Registrar