

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

Civil Division

SAINT LUCIA

Claim No. SLUHCv2017/0635

BETWEEN

GEORGIA KOUDA

Claimant

-and-

DIMITRIOS ADAMOPOULOS

Defendant

Appearances:

Shervon Pierre for the Claimant; and
No appearance for the Defendant.

2022: May 11 – via email

DECISION

Claimant's assessment of damages

- [1] **PARIAGSINGH, M:** - This is an assessment of damages in a defamation claim made by a former wife against her former husband during the pendency of divorce proceedings. Default judgment was entered against the Defendant on January 22, 2018.
- [2] Liability is not in issue. The facts are taken as pleaded in the Claimant's Statement of Claim. The Defendant has taken no part in this assessment despite him being served.
- [3] At the trial the Claimant gave evidence as well as Dunia Lopez Lobaina- Collymore her former colleague. I accept both their testimonies. I find them both to be witnesses of the truth.

THE EVIDENCE:

[4] The parties to this claim had been married and the parents of two children, both of whom were minors at the time the defamatory statements were made. In or about April 2013 the Claimant petitioned the Court for a dissolution of the marriage of the parties and a series of ancillary relief in relation to the children of the family. The Claimant contends that since the filing of the divorce proceedings the Defendant has made highly defamatory statements about her.

[5] The Claimant has particularized thirteen (13) instances of defamatory statements being made for which she seeks compensation. They are:

- (1) In late 2016 when the Defendant shouted at her in the presence of teachers, parents, staff and students at their son's school "you have no rights to our children, you are just the mother, I have custody."
- (2) During February to April 2017 when the parties lived in close proximity the Defendant shouted to her on multiple occasions in the presence of passers-by and in the presence of the children " You are a whore! A slut !...".
- (3) On June 30, 2017, the Defendant caused the children of the family to go to the Claimant's workplace where they were made to explain to the Claimant's colleague that they had come to inform the Claimant's boss that she is an abusive mother of bad character and should not have been hired by the Embassy.
- (4) On the same day, June 30, 2017, the Defendant also sent an email to the Claimants co-worker the contents of which are too embarrassing to reproduce in this decision the essence of which are that the Claimant is abusive, irresponsible towards the children and that she has molested the children many times in the past.

- (5) By letter dated July 10, 2017, a doctor who the Defendant allegedly treated the children on many occasions on account of the Claimant's abuse. In this letter the doctor confirmed that the Defendant had deliberately been dishonest in alleging that she had confirmed that the Claimant had abused, molested or mistreated the children. The doctor also indicated in her letter that the Defendant was maliciously attempting to disparage the Claimant in her office.
- (6) On July 01, 2017, the Claimant attended a fun walk organized by her daughter's school. The Defendant shouted at her in the presence of all the participants "Look! Here is the whore again"
- (7) On July 10, 2017, the Defendant sent an email to the son of the parties, the Director of Human Services, four Attorneys involved in the ongoing divorce proceedings, the principal of their son's school the Media Relations Officer Global Affairs, Canada, the Embassy of Argentina in Saint Lucia, Home Affairs Saint Lucia, the General Manager of Unicef Barbados, the Prime Minister of Saint Lucia and the Principal of their daughter's school. In that email, the Defendant also made statements that the Claimant had physically abused, mistreated, molested and harassed their children for years. The email also raised questions as to why the Claimant was hired by the embassy as she is a non-St Lucian national, with no formal college education, no degree, no qualifications, and no work experience for the past 17 years. In the email the Defendant sought the assistance of these persons, to "being an end to this imprisonment of E and D – they need and must be set free! This ill treatment of my two great children needs to stop now!"
- (8) On July 10, 2017, the Defendant wrote to the Claimant's attorney by email and again referred to the Claimant as "a child abuser and a molester who has hurt our 2 children irreparably"

- (9) On August 16, 2017, the Defendant again visited the Claimant's work with their daughter to speak with the Claimant's boss about her character and alleged misdeeds.
- (10) On August 30, 2017, at Massy Stores in the JQ Mall, the Defendant in full view and hearing of the public shouted at the Claimant "Look at the slut... what a spectacle to see this morning" after which he spat on the floor.
- (11) Sometime in July / August 2017, the Defendant wrote emails to the Godparents of the children indicating that the Claimant was an unfit mother.
- (12) On September 24, 2017, the Claimant received a message from her sister that the Defendant had telephoned her husband to say that the Claimant was sexually involved with an Italian and a Greek man, naming a person.
- (13) On September 27, 2017, at 4:30 pm the Claimant was walking with a work colleague in front of Flow, Rodney Bay when the Defendant stopped his car and yelled in the presence of their daughter as well as the public "Take it, slut! Whore!"

ANALYSIS:

[6] **Gatley on libel and slander 12th Edition, Chapter 9 at page 335** sets out the matters affecting the level of award in defamation claims. It states:

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

and extent of its publication, the absence or refusal of any retraction or apology, and the conduct of the defendant from the time when the libel was published down to the verdict. The conduct of the claimant is relevant not only in respect of matters which go to “partial justification” of the libel but also to his conduct in the course of the litigation, as where he engages in an elaborate and long-lasting attempt to pervert the course of justice involving making and procuring false testimony and making the most damaging allegations of corruption and lying against innocent third parties.’

[7] In **Jones v Pollard [1996] EWCA Civ 1186**, as approved by Buxton L.J. in **Gur v Avrupa Newspaper Ltd [2008] EWCA Civ594** at [31]– [35], Hirst L.J. stated that he found the following list of factors suggested by counsel a helpful checklist to be considered when approaching the assessment of damages in defamation cases:

- (1) The objective features of the libel itself, such as its gravity, its prominence, the circulation of the medium in which it was published, and any repetition.
- (2) The subjective effect on the plaintiff's feelings (usually categorized as aggravating features) not only from the publication itself, but also from the defendant's conduct thereafter both up to and including the trial itself.
- (3) Matters tending to mitigate damages, such as the publication of an apology.
- (4) Matters tending to reduce damages, e.g., evidence of the plaintiff's bad reputation, or evidence given at the trial which the jury are entitled to take into account in accordance with the decision of this court in *Pamplin v Express Newspapers Ltd [1988] 1 W.L.R.116*.
- (5) Special damages.
- (6) Vindication of the plaintiff's reputation past and future.”

[8] The gravity, prominence of the statements made against the Claimant are very grave. The statements cast direct aspersions on the Claimant's motherhood and her lifestyle. The statements painted a picture of an unvirtuous woman who abused, molested and imprisoned her children.

[9] Whilst save for the email instances the circulation was confined to the persons who were present and heard, this in my view is hardly sufficient to negate the impact of what was said about the Claimant given where it was said and to whom it was said. The objective effect of the statements is grossly inflammatory on any account.

[10] The subject effect on the Claimant in this matter was damaging to say the least. At the time of the assessment of damages, some four (4) years later, the Claimant could hardly get through her evidence in chief. It was obvious that any reminder of these statements made caused her great anguish. The effect is pronounced and noticeably affected the Claimant's composure. She simply could not speak about the statements without being brought to tears.

[11] The Defendant's conduct was a calculated malicious attack on the Claimant in what seems to have steamed from their divorce and the then ongoing ancillary proceedings. His conduct when he was served was by far anything apologetic or remorseful. The Defendant fought hard all the way to the Court of Appeal to set aside the default judgment and when he was unsuccessful, he simply ignored the claim. The Defendant was served via email on at least two occasions with notice of the hearing of the assessment of damages. He has not responded or participated in the assessment.

[12] There are no matters I can discern tending to mitigate damages. As far back as his later instance of defamation set out above, the Defendant sought to justify his statements. He never denied them or offered any type of apology. The Defendant's stance was that he was entitled to make the statements about the Claimant.

[13] Conversely, there is the aggravating fact of the conduct of the litigation by the Defendant. Further, the Defendant's attacks on the Claimant did not lessen as time went by, it heightened with a greater reach of persons.

[14] This Court must express its disquiet by the conduct of the Defendant in not only the statements he made about the Claimant but where the statements were made and to whom. It is clear that the Defendant harbored feelings of ill will towards the Claimant for reasons best known to him. The Court cannot condone or countenance parents taking their matrimonial disputes to the corridors of their children's school, their school activities, and public spaces or to persons in high offices including the Prime Minister of Saint Lucia. Similarly, the Defendant's decision to consistently and continuously get the Claimant's employers to buy his narrative must be abhorred. I consider the Defendant's conduct in this claim sufficient to make an award for aggravated damages. Persons must understand that whilst in any democratic State there is freedom of speech that must not be construed as a license to openly defame and damage the reputations of persons. A more civil way to solving disputes must be employed, more so, where the parties share children. That is a relationship that will never change regardless of whatever orders the Court makes.

[15] There are no matters tending to reduce damages in the form of evidence of the Claimant's bad reputation etc. There was also no pleading of special damages. There is also no doubt that the sum awarded must compensate the Claimant to vindicate her reputation both past and future.

[16] In support of her assessment of damages, the Claimant relied on the following cases:

- (1) **Kathleen Huggins v Ulric Smith Civil Suit No 146 of 1992** Decided in 2000. In this case an award of \$20,000.00 was made. In this case, a Dean of a Church uttered defamatory words of and concerning the Claimant in front of his congregation. The words related to the Claimant's abhorrent and immoral acts of a sexual nature. Like the case at bar, malice featured prominently. In this

case, the nature of the defamatory statement was slander only. Further, there were no statements about the Claimant abusing and molesting her children. Of note also, is that this authority is 22 years old.

(2) **Roxane Linton v Louisiana Dubigue DOMHCV2011 /0062** decided in 2013.

An award of \$120,000.00 was made. In this case the statements were libelous. The statements related to the Claimants ability to perform her job. In the case at bar, the statements are far more severe than in this case.

(3) **David Bristol v Richardson St. Rose SLUHCV2002/1145 and David Bristol v Richardson St. Rode Civil Appeal No. 16 of 2005.** In his case an award of

\$40,000.00 was substituted by the Court of Appeal. This case involved a letter written about a medical doctor being copied to the President of the Medical and Dental Association, Minister of Health, Chief Medical Officer and Administrator of St. Jude's. The crux of the allegation surrounded the Claimant's unsuitability for renewal of his employment contract. I consider the gravity and impact of the statements made in the case at bar to be far more serious than in this case.

(4) **Victoria Alcide v HTS- SLUHCV2011 /0398-** decided in 2017 an award of

\$100,000.00 was made for general damages, \$20,000.00 for aggravated damages and \$15,000.00 in exemplary damages. The nature of the statements made in this case surrounding the Claimant, a female deputy director of prisons accused of having a sexual relationship with a popular inmate in prime-time news.

[17] The authorities referred to all fall short of the gravity and impact of the statements made by the Defendant in this claim in my view. The statements surrounded not only the Claimant personally but also, her ability and qualification to hold the office she did. Additionally, the statements also alleged the commission of criminal offences by her of abusing, molesting and imprisoning the children.

[18] Further, whilst in most cases the statements that were made are in the nature of slander, the persons in whose presence it was said and the places they were made lend to a higher award. I am fortified in this view having regard to the frequency of the attacks with no mitigating factors discernable. I am satisfied that the Defendant's conduct so egregious that damages must be on the higher end of the scale.

[19] Having considered the authorities advanced by the Claimant and taking the general nature of damages being at larger in defamation proceedings, I am of the view that an appropriate award of general damages is in the sum of \$100,000.00. Given aggravating factors set out above, I am also order aggravated damages in the sum of \$30,000.00.

INTEREST:

[20] The Defendant shall pay the Claimant interest at the rate of 5% per annum from the date of service (November 02, 2017) of the claim to today's date calculated in the sum of \$29,383.56.

COSTS:

[21] There is no reason to depart from the general rule that costs follow the event. The Defendant shall pay the Claimant's costs on the prescribed scale.

[22] The Claimant's costs are quantified at 60% and are to be calculated on the total value of the awards made, \$159,383.56 calculated in the sum of \$13,453.77.

ORDER:

[23] For the reasons stated above, it is hereby ordered that the Defendant shall pay the Claimant damages, interest and costs quantified as follows:

- (1) General damages in the sum of \$100,000.00;
- (2) Aggravated damages in the sum of \$30,000.00;
- (3) Pre-judgment interest at the rate of 5% from the date of service of the claim to today's date in the sum of \$29,383.56; and
- (4) 60% of prescribed costs on the value of the awards made quantified in the sum of \$13,453.77.

**Alvin Shiva Pariagsingh
High Court Master**

By the Court,

Registrar