

**THE EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA
IN THE HIGH COURT OF JUSTICE**

CLAIM NO. ANUHCv2019/0546

**In the matter of Sections 2 and 58 (1) of the Constitution of Antigua and Barbuda 1981, Cap.23 of the
Laws of Antigua and Barbuda**

And

In the matter of section 24 (2) (i) of the Defamation Act 2015

BETWEEN:

WILMOTH DANIEL

Claimant

And

THE ATTORNEY GENERAL OF ANTIGUA AND BARBUDA

Defendant

Appearances:

Mr. Charlesworth Tabor for the Claimant

Ms. Carla Brookes-Harris for the Defendant

2020: Nov. 12th

2021: July 7th

JUDGMENT

- [1] **Robertson. J.** This matter addresses whether section 24(2) (i) of the Defamation Act 2015 [the Act] is unconstitutional as being in contravention of section 58(1) of the Constitution Order of Antigua and Barbuda [the Constitution].
- [2] Section 24(2) (i) of the Act treats with the matter of absolute privilege being available to matters published in either House of Parliament by a member of either House. Section 58(1) treats with free speech in Parliament and notes that no civil or criminal proceedings may be instituted against any member of either House of Parliament for words spoken before, or written in, a report to, the House of Parliament.
- [3] The claimant seeks a declaration that section 24(2) (i) of the Act is null and void, and that by implication section 24(2) (i) repealed section 58(1) of the Constitution. The claimant also contends that section 24(2) (i) seeks to amend section 58(1) of the Constitution but any such amendment must comply with section 47(5) of the Constitution. Further, the claimant seeks costs.

[4] This court has considered the provisions in question and for the reasons indicated hereunder this court has determined that section 24(1) of the Act does not contravene the Constitution.

Brief Facts

[5] In 2018, the claimant was a Parliamentary Representative of the Saint Phillips South constituency, in the island of Antigua and Barbuda. On or about 2nd January 2018, the claimant was in a sitting of Parliament. The claimant contends that during a period of suspension of parliamentary proceedings, he was the subject of statements or comments made by another member of Parliament. The Parliamentarian's utterances were in the Parliamentary Chamber; and were thereby published to all persons present in Chamber on the day in question.

[6] Having considered the words uttered to be defamatory, the claimant filed a defamation claim against the defendant. The defendant argues that section 24 (2) (i) of the Act provided a complete or absolute defence to the claim. Sections 24 (1) and 24 (2) (i) of the Act provide that,

“(1) It is a defence to a defamatory matter for the defendant to prove that the matter was published on occasion of absolute privilege.

(2) In this section, a defamatory matter is published on occasion of absolute privilege if the matter is –

(i) published in either House of Parliament by a member of either House.”

[7] The claimant contends that the above section conflicts with section 58 (1) of the Constitution, consequently, section 24 (2) (i) of the Act, to the extent of its inconsistency, ought to be declared null and void.

Submissions for Counsel for the Claimant/Applicant and Defendant/Respondent.

[8] The claimant sets the foundation of his submissions by underscoring section 2 of the Constitution, the supremacy clause of the Constitution. Specifically, section 2 provides that if any other law is inconsistent with the Constitution, the Constitution shall prevail and the other law, to the extent of its

inconsistency, be void. Counsel contrasted the provisions in question and outlined the extent to which section 24 (2)(i)¹ is inconsistent with section 58 (1) of the Constitution.

[9] Counsel for the claimant submits that on the existing construction, section 24 (2) (i) of the Act affords absolute immunity to statements published in either House of Parliament whether or not the Parliament is in session. Conversely, the Constitution treats with free speech and grants immunity for speech in parliamentary proceedings. Counsel contends that section 24(2) (i) of the Act seeks to expand the applicability of the immunity or absolute privilege to speech whether in parliamentary proceedings or not, thereby rendering section 58(1) of the Constitution nugatory. Counsel further indicates that a Legislature seeking to change this provision of the Constitution is required to adopt the procedure outlined in section 47 (5)² of the Constitution.

[10] The counsel for the defendant submitted that the section 58(1) of the Constitution addresses an aspect of Parliamentary privilege, but it does not restrict, limit or preclude Parliament from enacting legislation that concerns other features of rights and immunities that make up parliamentary privileges. Counsel goes on to note that the preface of section 58(1) of the Constitution indicates that “*Without prejudice to any provision made by Parliament relating to the privileges and immunities of Parliament*” means that Parliament is empowered to enact legislation which governs the manner in which parliamentary privileges and immunities ought to be exercised.

[11] Additionally, counsel for the defendant rejects the narrow interpretation of section 58(1) which is being offered by counsel for the claimant. Counsel for the defendant further contends that in the context of section 58(1), Parliament’s powers to legislate on parliamentary privilege and immunities are not restricted to proceedings in Parliament however, the provisions of section 58(1) restrict

¹ Of the Defamation Act, 2015.

² Section 47(5) of the Constitution provides:

(5) A bill to alter this section, schedule 1 to this Constitution or any of the provisions of this Constitution specified in Part I of that schedule or any of the provisions of the Supreme Court Order specified in Part II of that schedule shall not be submitted to the Governor-General for his assent unless-

- (a) there has been an interval of not less than ninety days between the introduction of the bill in the House and the beginning of the proceedings in the House on the second reading of the bill in that House;
- (b) after it has been passed by both Houses of Parliament or, in the case of a bill to which section 55 of this Constitution applies, after its rejection by the Senate for the second time; and
- (c) the bill has been approved on a referendum, held in accordance with such provisions as may be made in that behalf by Parliament, by not less than two-thirds of all the votes validly cast on that referendum.

Parliament from enacting legislation which allows for "...civil and criminal proceedings to be instituted against any member of either House for words spoken before, or written in, a report...". Thus, section 24(2) (i) of the Act does not offend section 58(1) of the Constitution since it does not seek to take away the immunity guaranteed within the provisions of that section. Further counsel for the defendant submits that section 24(2) (i) of the Act is an affirmation and an extension of section 58(1) of the Constitution as it establishes that neither House of Parliament need be in session for a member to rely on the protection given in section 24(2) (i) of the Act.

The Law and Analysis

[12] Section 58 (1) of the Constitution provides:

"FREEDOM OF SPEECH IN PROCEEDINGS OF PARLIAMENT.

"Without prejudice to any provision made by Parliament relating to the powers, privileges and immunities of Parliament and its committees or the privileges and immunities of the members and officers of either House of Parliament and of other persons concerned in the business of Parliament or its committees, no civil or criminal proceedings may be instituted against any member of either House of Parliament for words spoken before, or written in a report to, the House of Parliament of which he is a member or a committee thereof or any joint committee of the Senate and the House or by reason of any matter or thing brought by him therein by petition, bill, resolution, motion or otherwise."

[13] Sections 24 (1) and 24 (2) (i) of the Defamation Act 2015 provides that,

"(1) It is a defence to a defamatory matter for the defendant to prove that the matter was published on occasion of absolute privilege.

(2) In this section, a defamatory matter is published on occasion of absolute privilege if the matter is –

(i) published in either the House of Parliament by a member of either House."

[14] The Court of Appeal in the decision authored by Baptiste, J.A. in the case of **Steadroy C.O. Benjamin v The Commissioner of Police and another**³ notes that:

"The nature of a constitution requires that a broad, generous and purposive approach be adopted to ensure that its interpretation reflects the deeper inspiration and aspiration of the

³ HCVAP 2009/023 at [13]

basic concepts on which the Constitution is founded: per **Byron CJ** in **Attorney General of Grenada v The Grenada Bar Association**⁴. In *Reyes v the Queen*⁵, Lord Bingham stated at paragraph 26:

‘As in the case of any other statutory instrument the court must begin its task of constitutional interpretation by carefully considering the language used in the constitution. But it does not treat the language of the constitution as if it were found in a will or a deed or a charterparty. A generous and purposive interpretation is to be given to constitutional provisions protecting human rights.’

A constitution calls for a generous interpretation, avoiding what has been called the austerity of tabulated legalism⁶. In **Attorney-General of the Gambia v Momodou Jobe**⁷, Lord Diplock said⁸: “A Constitution...is to be given a generous and purposive interpretation.”

[15] In the same decision of **Steadroy C.O. Benjamin v The Commissioner of Police and another**⁹, the Court of Appeal approved the dicta of the Privy Council in the case of **Frederick Alexander James v Commonwealth of Australia and the State of New South Wales and Others**¹⁰ where it was stated that:

“It is true that a Constitution must not be construed in any narrow and pedantic sense. The words used are necessarily general and their full import and true meaning can often only be appreciated when considered, as the years go on, in relation to the vicissitudes of fact which from time to time emerge. It is not that the meaning of the words changes, but the changing circumstances illustrate and illuminate the full import of that meaning”.

[16] It is accepted that section 58(1) is not one of the fundamental rights provisions of the Constitution, however, the requirement for the court to adopt a generous and purpose interpretation to the

⁴ Grenada Civil Appeal No. 8 of 1999 (delivered 21st February 2000) at paragraph 7.

⁵ [2002] UKPC 11.

⁶ Lord Wilberforce in *Minister of Home Affairs and Another v Collins MacDonald Fisher and Another* [1980] A.C. 319 at 328.

⁷ [1984] A.C. 689.

⁸ At page 700.

⁹ HCVAP 2009/023.

¹⁰ [1936] UKPC 52.

provisions obtains. This court also notes the dicta in **Commissioner of Police v Benjamin**¹¹ when the Privy Council noted that:

“...in setting the legal architecture of the entire state for the long term, a Constitution requires a generous interpretation and that changing social circumstances can illumine aspects of its meaning which were previously less obvious; see for example *James v Commonwealth of Australia* [1936] 2 All ER 1449 at 1464, [1936] AC 578 at 614 and *Reyes v R* [2002] UKPC 11, (2002) 60 WIR 42, [2002] 2 AC 235 at [26], “But that”, as the Board said in *Attorney-General of Fiji v Director of Public Prosecutions* [1983] 2 AC 672 at 682, “does not require the courts, when construing a constitution, to reject the plain ordinary meaning of words”.
...”

[17] It is accepted that the institution of Parliament occupies a critical role in the functioning of a representative democracy. The power to make laws for the peace, order and good government of Antigua and Barbuda resides in the power of Parliament¹². It has long been recognised that freedom of speech in proceedings in Parliament is important to the function of Parliament particularly since Parliament is the forum for debate in democratic societies. The elevated protection evidenced by the protection from civil or criminal litigation of matters published in proceedings of Parliament as seen in section 58(1) of the Constitution recognises the importance of free speech in pursuit of the objective of legislating for peace, order and good governance.

[18] This court is of the view that the content of the provision of section 58 is an important element in the operation of the separation of powers doctrine since the section acknowledges Parliament’s self-regulating characteristics. The provisions of section 58 (1) of the Constitution protect the speech of any member in either House of Parliament from any civil or criminal proceedings of any words spoken before, or written in a report to the House of Parliament of which he is a member or a committee thereof or any joint committee of the Senate and the House brought by petition, bill, resolution, motion or otherwise. The introductory words of section 58(1) recognize that Parliament has the capacity to treat with the powers, privileges and immunities of Parliament and its committees, or the privileges and immunities of the members and officers of either House of Parliament and of other persons concerned in the business of Parliament or its committees. This power relates to Parliament generally as well as proceedings in Parliament. This is not contrary to the heading note which states “freedom

¹¹ [2014] UKPC 8, (2014) 84 WIR 207 at paragraph 25.

¹² See Section 46 of the Constitution.

of Speech in Proceedings of Parliament” since the section also specifically addresses the immunity with respect to speeches in proceedings of Parliament.

[19] In this regard it is open to Parliament to regulate the powers, privileges and immunities of members and officers of either House of Parliament and of other persons concerned in the business of Parliament or its committees. Section 24(2) (i) of the Act represents an enactment which treats with privileges and immunities of members and officers of the House of Parliament.

[20] Accordingly, it is determined that section 24(2) (i) of the Act is not unconstitutional, and the claim filed herein ought to be dismissed. There is no order as to costs.

Marissa Robertson
High Court Judge

Registrar

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