

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE COURT OF APPEAL**

SAINT CHRISTOPHER & NEVIS

SKBHCVAP2019/0026

BETWEEN:

DR. THE HONOURABLE TIMOTHY HARRIS

Appellant

and

DR. THE RIGHT HONOURABLE DENZIL DOUGLAS

Respondent

Before:

The Hon. Mr. Davidson Kelvin Baptiste
The Hon. Mde. Louise Esther Blenman
The Hon. Mr. Paul Webster

Justice of Appeal
Justice of Appeal
Justice of Appeal [Ag.]

Appearances:

Mr. Dane Hamilton, QC, with him, Mr. Victor Dane Hamilton for the Appellant
Mr. Sylvester Anthony and Mrs. Angelina Gracy Sookoo-Bobb for the Respondent

2019: November 12;
2021: December 9.

Interlocutory appeal — Order for specific disclosure of documents — Part 28 of the Civil Procedure Rules 2000 — Whether the learned judge erred in law in holding that the documents were in the possession and control of Dr. Harris within the meaning of CPR 28.2 — Sections 60 and 119 of the Constitution of Saint Christopher and Nevis — Whether the learned judge erred in law in holding that the documents were not subject protected from disclosure by virtue of the duty of confidentiality set out in oath of secrecy taken by Dr. Harris pursuant to section 60 of the Constitution — Whether the learned judge erred in law in holding that the documents were directly relevant within the meaning of CPR 28.1(4)

Dr. Timothy Harris (“Dr. Harris”), the Prime Minister of the Federation of Saint Christopher and Nevis, instituted a libel claim against Dr. Denzil Douglas (“Dr. Douglas”), Leader of the Opposition and former Prime Minister, emanating from statements made by the latter on a local radio station on 22nd June 2016 in which he imputed the acceptance of bribes and other criminal conduct on the part of Dr. Harris. The statements also related to the operation and management of a stem cell research and medicine facility and regenerative project at the local hospital, the St. Kitts Institute for Regenerative Medicine Limited (“the Institute”), for which the Royal St. Kitts Medical Centre was granted a business licence by the Government.

In the proceedings below, Dr. Douglas applied for an order of specific disclosure of documents which were in relation to the Institute. The learned judge considered the issues falling for determination to be – (i) whether any of the documents in respect of which specific disclosure was sought are or have been in the control of Dr. Harris; (ii) if so, whether any of them are directly relevant to Dr. Douglas’ case; and, (iii) whether Dr. Harris can exercise a claim to a right to withhold disclosure or inspection of any of them. The learned judge held that the statements made were critical of Dr. Harris as Prime Minister and Head of Cabinet and the various ministerial portfolios he held and were not in relation to him in his personal capacity. He consequently held that Dr. Harris must disclose the documents, which documents he has or has had a right to inspect or take copies of and or possess; the documents are directly relevant to Dr. Douglas’ defence; specific disclosure is necessary in order to dispose fairly of the claim; and Dr. Harris did not have a right to withhold disclosure.

Being dissatisfied with the decision of the learned judge, Dr. Harris appealed to this Court. He advanced three grounds of appeal, that the judge erred in law in holding that: (i) the documents were in the possession and control of Dr. Harris within the meaning of CPR 28.2; (ii) the documents were not subject protected from disclosure by virtue of the duty of confidentiality set out in oath of secrecy taken by Dr. Harris pursuant to section 60 of the Constitution of Saint Christopher and Nevis (“the Constitution”); and, (iii) the documents were directly relevant within the meaning of rule 28.1(4) of the Civil Procedure Rules 2000 (“CPR”).

Held: dismissing the appeal and ordering the appellant to pay costs of the appeal to the respondent in the sum of \$1,000.00, that:

1. While cognising that the claim was brought against Dr. Harris in his personal capacity, the judge concluded that the statements related to him as Prime Minister and Head of Cabinet and the various ministerial portfolios held by him. He further reasoned that it was unrealistic to suggest that as Prime Minister, Dr. Harris is not entitled to the documents, pointing out that ministers report to him for matters falling under their ministerial portfolios. Accordingly, the judge’s analysis and finding with respect to CPR 28.2, that the appellant must disclose the documents which he has

or has had a right to inspect or take copies of or has had a right to possession of them, cannot be faulted, having been properly reasoned.

Rule 28.2 of the **Civil Procedure Rules** 2000 applied.

2. In addressing the issue of whether the documents are privileged and cannot be disclosed, the learned judge referred to section 60 of the Constitution which bars a minister or Parliamentary Secretary from entering upon the duties of his office until he has taken and subscribed to the oaths of allegiance, office and secrecy. He further referenced section 119 of the Constitution which defines 'oath of secrecy' as oath of secrecy as set out in Schedule 4 of the Constitution; it bars disclosure of any counsel, advice, opinion, or vote given by any minister as a member of Cabinet except with the authority of the Cabinet and also prohibits the minister, except with the authority and to such extent as may be required for the proper conduct of the government, from revealing directly or indirectly the business or proceedings of the Cabinet or any matter coming to his knowledge as a member of Cabinet. Accordingly, the judge's decision disallowing the disclosure of the minutes of Cabinet but allowing disclosure of the decisions of Cabinet made in relation to the 'Stem Cell Research Centre' of the Institute on the respective dates and the associated documents so tabled were also properly reasoned and similarly cannot be faulted.

Sections 60 and 119 of the **Constitution of Saint Christopher and Nevis**, Schedule 1 to the Saint Christopher and Nevis Constitution Order 1983 SI No. 881 applied; Barnett, Lloyd G, **Constitutional law of Jamaica**, Oxford [Eng.]; New York: Published for the School of Economics and Political Science by Oxford University Press, 1977 considered.

3. In setting out the test relating to disclosure of documents, the CPR specifically disappplied the Peruvian Guano rule, which is significant, in that it has changed the definition of 'relevance'. The test for relevance is now more issue-oriented, thus avoiding the 'train of inquiry' cases that served to expand discovery under the Peruvian Guano rule. For the purpose of disclosure, the relevance of the documents is analysed by reference to the pleadings and the factual issues that would arise for decision at the trial. The critical question is whether the documents are directly relevant to those issues, and if they are, the court is enjoined to consider whether the order is necessary to dispose of the case fairly or to save costs. It is necessary to pay regard to the overriding objective of the CPR which is to enable the court to deal with cases justly; this also engages the issue of proportionality. The court has a discretion as to whether to make an order for specific disclosure and will need to be satisfied that the documents are directly relevant within the parameters of the

rule. However, the test for relevance is not a matter for the exercise of discretion. What documents parties are entitled to is a matter of law, not discretion.

Rules 28.1(4) and 28.6 of the **Civil Procedure Rules** 2000 applied; **Harrods Ltd v Times Newspaper Ltd** [2006] EWCA Civ 294 considered; **Flood v Times Newspaper Ltd**. [2009] EWHC 411 QB considered; **The Compagnie Financiere et Commercial du Pacifique v The Peruvian Guano Co** (1882) 11 QBD 55 disapproved.

4. The learned judge considered the application before him, the pleadings and submissions of the parties. He was cognisant of and applied the correct legal principles relating to specific disclosure. He also recognised the importance of identifying the factual issues which would arise for decision at the trial and that specific disclosure must be limited to documents relevant to these issues. The learned judge's finding that the documents requested were directly relevant is not one this Court should interfere with.

JUDGMENT

- [1] **BAPTISTE JA:** In this interlocutory appeal, Dr. Timothy Harris, the Prime Minister of the Federation of Saint Christopher and Nevis, challenges an order of specific disclosure of documents granted to Dr. Denzil Douglas, Leader of the Opposition and former Prime Minister. The order has its genesis in a libel claim Dr. Harris instituted against Dr. Douglas emanating from statements made by the latter on a local radio station on 22nd June 2016 in which he imputed the acceptance of bribes and other criminal conduct on the part of Dr. Harris. The statement also related to the operation and management of a stem cell research and medicine facility and regenerative project at the local hospital, the St. Kitts Institute for Regenerative Medicine Limited ("the Institute"), for which Royal St. Kitts Medical Centre was granted a business licence by the government. The disclosed documents were in relation to the Institute.

The Proceedings Below

- [2] The learned judge considered the issues falling for determination to be – (i) whether any of the documents in respect of which specific disclosure was sought are or have been in the control of Dr. Harris; (ii) if so, whether any of them are directly relevant to Dr. Douglas’ case; and, (iii) whether Dr. Harris can exercise a claim to a right to withhold disclosure or inspection of any of them.
- [3] The judge considered Part 28 of the **Civil Procedure Rules 2000** (the “CPR”) (which deals with disclosure and inspection of documents), as well as the submissions of the parties, and held that the statements made were critical of Dr. Harris as Prime Minister and Head of Cabinet and the various ministerial portfolios he held and were not in relation to him in his personal capacity. The judge held further that, consequently, Dr. Harris must disclose the documents, which documents he has or has had a right to inspect or take copies of and or possess; the documents are directly relevant to Dr. Douglas’ defence; specific disclosure is necessary in order to dispose fairly of the claim; and Dr. Harris did not have a right to withhold disclosure.
- [4] Specific disclosure was accordingly ordered of the following documents:
- (a) The letter regarding the authorisation of business activity for the Institute issued prior to 16th May 2016 and to which reference is made in the letter to the Director of the Institute dated 16th May 2016.
 - (b) a certified true copy of any decisions taken by the Cabinet at its meeting dated 4th May 2016 in relation to the Institute.
 - (c) the public relations campaign package provided to the Cabinet and or Ministry of Health and or Government ‘re: the launch and press conference for the ‘new venture as per the commitment given by Mr. Kevin Klein and or the Institute’

- (d) proof that the said public relations campaign package of the Institute was executed prior to the commencement of the regenerative project;
- (e) a copy of the submission of the Institute's comprehensive business and financial plan as requested by letter of 16th May 2017;
- (f) a certified true copy of any decisions taken by the Cabinet at any meeting held in respect of the confirmation that the Institute complied with all of the requirements listed in the letter of 16th May 2017 ;
- (g) a list of all medical personnel that worked on the regenerative project and certified copies of their registration with the Medical Board at the time they worked on the regenerative project;
- (h) a copy of the Custom and Excise declaration forms to confirm that the material used in the regenerative project consisted of umbilical cord blood or cord blood plasma samples which were procured from reputable international cord blood banks located in countries like Brazil;
- (i) the documentary proof provided by the Institute to confirm that the raw materials to be used in the regenerative project were procured from reputable international cord blood banks; and
- (j) proof that the patients used in the regenerative project were granted access to the hospital using the normal admission protocols of the hospital and that the company and its employees or patients were not entering or accessing the premises of the hospital via private access. The names of the patients to be redacted from the documents provided.

The Appeal

- [5] Three grounds of appeal were advanced: The judge erred in law in holding that:
- (i) the documents were in the possession and control of Dr. Harris within the meaning of CPR 28.2;

(ii) the documents were not subject protected from disclosure by virtue of the duty of confidentiality set out in oath of secrecy taken by Dr. Harris pursuant to section 60 of the **Constitution of Saint Christopher and Nevis** (“the Constitution”);¹ and

(iii) the documents were directly relevant within the meaning of CPR 28.1(4).

[6] Mr. Hamilton QC, Dr. Harris’ counsel, contended that in the premises the judge erred in law in granting the order for specific disclosure and the appeal should be allowed. Mrs. Sooko-Bobb, Dr. Douglas’ counsel, essentially enunciated that the appeal represented an attempt to assail the exercise of the judge’s discretion in ordering specific disclosure, in circumstances devoid of a proper basis for appellate intervention. Accordingly, she invited this Court to dismiss the appeal and uphold the judge’s orders.

Discussion

[7] Before delving further into the matter, it is useful to discuss the principles governing specific disclosure. The starting point is Part 28 of the CPR 2000 which deals with disclosure and inspection of documents. Rule 28.2(1) states that ‘a party’s duty to disclose documents is limited to documents which are or have been in control of that party’. Rule 28.2(2) stipulates three circumstances in which a party has or has had control of a document: (a) if the document is or was in the physical possession of the party; (b) the party has or has had a right to inspect or take copies of it; or (c) the party has or has had a right to possession of it.

[8] An order for specific disclosure may require disclosure only of documents which are directly relevant to one or more matters in issue in the proceedings.² CPR 28.1(4) provides that a document is directly relevant if:

¹ Schedule 1 to the Saint Christopher and Nevis Constitution Order 1983 SI No. 881.

² See CPR 28.5 (5).

- “(a) the party in control of the document intends to rely on it;
- (b) it tends to adversely affect that party’s case; or
- (c) it tends to support another party’s case; but the rule of law known as “the rule in *Peruvian Guano*” does not apply.”

[9] The *Peruvian Guano* rule was of a long standing authority in which Brett LJ defined the test to identify which documents are relevant for disclosure in civil proceedings. The rule encapsulated a broad test of relevance for disclosure purposes. It provided disclosure of documents which might fairly lead to a line of inquiry which may either directly or indirectly enable the party to advance his own case or damage that of his adversary.

[10] The rule took its name from **The Compagnie Financiere et Commercial du Pacifique v The Peruvian Guano Co.**³ There, the plaintiff had produced a corporate minute book and the defendant sought production of certain draft agreements, letters and telegrams that were specifically referred to in the minutes. The plaintiff defended on its plea that it had no further documents in its possession ‘relating to any matter in question in the action’.

[11] In deciding what may relate to a matter in issue, Brett LJ set out the following test at page 63:

“... the documents to be produced are not confined to those, which would be evidence either to prove or to disprove any matter in question in the action; and the practice with regard to insurances cases shews, that the Court never thought that the person making the affidavit would satisfy the duty imposed upon him by merely setting out such documents, as would be evidence to support or defeat any issue in the cause. The doctrine seems to me to go farther than that and to go as far as the principle which I am about to lay down. It seems to me that every document relates to the matters in question in the action, which not only would be evidence upon any issue, but also which, it is reasonable to suppose, contains information which *may* - not which *must* - either directly or indirectly enable the party ... either to advance his own case or to damage the case of his adversary. I have put in the words ‘either directly or indirectly,’ because, as it seems to me, a document can properly be said to contain information which may enable the party ... either to advance his own case or to damage the case

³ (1882) 11 QBD 55.

of his adversary, if it is a document which may fairly lead him to a train of inquiry, which may have either of these tw[o] consequences...”

- [12] The Peruvian Guano rule was severely criticised by Lord Wolf in his Interim Report **“Access to Justice”: Final Report to the Lord Chancellor on the Civil Justice System in England and Wales**,⁴ at paragraph 17 of Chapter 21. It was stated that the result of the Peruvian Guano test was to make virtually unlimited the range of potentially relevant (and therefore discoverable) documents, which parties and their lawyers are obliged to review and list, and which the other side is obliged to read, against the knowledge that only a handful of such documents will affect the outcome of the case. In that sense, it is a monumentally inefficient process, especially in larger cases. The CPR has changed the definition of ‘relevance’ in respect of documents for disclosure purposes. The rule is intended to bring to bear a more issue-oriented test of relevance and avoid the ‘train of inquiry’ cases that have served to expand discovery.
- [13] In setting out the test relating to disclosure of documents, the CPR specifically disapplied the Peruvian Guano rule. The disapplication of the Peruvian Guano rule is significant. The CPR has changed the definition of ‘relevance’ in respect of documents for disclosure purposes. The test for relevance is now more issue-oriented, thus avoiding the ‘train of inquiry’ cases that served to expand discovery under the Peruvian Guano rule.
- [14] When deciding whether to make an order for specific disclosure, the court must consider whether specific disclosure is necessary in order to dispose fairly of the claim or to save costs. The court must have regard to the likely benefits of specific disclosure; the likely costs of specific disclosure; and whether the financial resources of the party against whom the order would be made are likely to be sufficient to enable that party to comply with any such order.⁵

⁴ Sir Harry Wolf: “Access to Justice”: Final Report to the Lord Chancellor on the Civil Justice System in England and Wales. H.M Stationery Office 1996.

⁵ See CPR 28.6 (1) and (2).

- [15] For the purpose of disclosure, the relevance of the documents is analysed by reference to the pleadings and the factual issues that would arise for decision at the trial.⁶ Disclosure must be limited to documents directly relevant to those issues. In seeking to identify the factual issues which would arise for decision at the trial, the judge is obliged to analyse the pleadings. The critical question is whether the documents are directly relevant, and if they are, the court is enjoined to consider whether the order is necessary to dispose of the case fairly. It is necessary to pay regard to the overriding objective of the CPR which is to enable the court to deal with cases justly; this also engages the issue of proportionality.
- [16] The rationale for the discretion to order specific disclosure is that the overriding objective obliges the parties to give access to those documents which will assist the other's case. The court has discretion as to whether to make an order for specific disclosure and will need to be satisfied that the documents are directly relevant within the parameters of the rule. However, the test for relevance is not a matter for the exercise of discretion. What documents parties are entitled to is a matter of law, not discretion.

Grounds 1 and 2

- [17] In respect to the first ground, Mr. Hamilton QC argued that the judge erred in failing to consider that the Crown was not a party to the claim; that the claim was a private claim for defamation imputing that Dr. Harris accepts bribes, and it is not a review of government policy which Dr. Douglas is entitled to challenge with an appropriate action against the Attorney General. Mr. Hamilton asserted that the right of access to inspect documents is a personal right Dr. Harris enjoyed as a function of his office. This right is subject to a duty of confidence not to disclose without the consent of the Cabinet. Further, the judge failed to take into account the nature of the right to inspect as being a presently enforceable right in the capacity that the claim was brought, that is privately, to inspect the documents without the consent of the Crown and other third parties. Mr. Hamilton posited that that the critical question is whether

⁶ See *Harrods Ltd v Times Newspaper Ltd* [2006] EWCA Civ 294.

Dr. Douglas has a right to inspect the documents without the consent of the Crown, through Cabinet.

[18] The learned judge recognised that the duty of disclosure relates solely to documents that are or have been in a party's control and stated that it was accepted on the evidence that Dr. Harris is not or was not in physical possession of any of the documents. He then considered whether Dr. Harris has or has had the right to inspect or take copies of the documents. While cognising that the claim was brought against Dr. Harris in his personal capacity, the judge concluded that the statements related to him as Prime Minister and Head of Cabinet and the various ministerial portfolios held by him. In the circumstances, he held that Dr. Harris must disclose the documents which he has or has had a right to inspect or take copies of them; or has had a right to possession of them. Further, it was unrealistic to suggest that as Prime Minister, Dr. Harris is not entitled to the documents, pointing out that ministers report to him for matters falling under their ministerial portfolios. The learned judge opined that it would have been strange if the Prime Minister did not have a right to inspect a document falling within the line ministry of a minister ultimately answerable to him.

[19] Were the documents protected from disclosure by virtue of the duty of confidentiality set out in the oath of secrecy pursuant to section 60 of the Constitution? Mr. Hamilton QC contended that the principal question is whether Dr. Harris has a right to inspect the documents without the consent of the Crown. Mr. Hamilton QC submitted that the judge erred in failing to consider that the Crown was not a party to the claim. It was a private claim or a private wrong, namely the defamatory imputation that Dr. Harris accepted bribes. The documents came to his knowledge by virtue of being a member of the Cabinet. There is a duty of confidence not to disclose without the consent of the Cabinet and other third parties. Mr. Hamilton submitted that the judge erred in law in holding that the documents were not subject protected from disclosure by virtue of the duty of confidentiality in sections 60 and 119 of the Constitution.

[20] In addressing the issue of confidentiality, the judge considered the submission that the documents are privileged and cannot be disclosed. He referred to section 60 of the Constitution which bars a minister or Parliamentary Secretary from entering upon the duties of his office until he has taken and subscribed to the oaths of allegiance, office and secrecy. Section 119 of the Constitution defines 'oath of secrecy' as oath of secrecy as set out in Schedule 4 of the Constitution; it bars disclosure of any counsel, advice, opinion, or vote given by any minister as a member of Cabinet except with the authority of the Cabinet and also prohibits the minister, except with the authority and to such extent as may be required for the proper conduct of the government, from revealing directly or indirectly the business or proceedings of the Cabinet or any matter coming to his knowledge as a member of Cabinet.

[21] The learned judge reasoned that the rationale for ensuring that every minister as a member of Cabinet takes the prescribed oath is to ensure the confidentiality of the proceedings of Cabinet. It seeks to protect the deliberations of members of Cabinet to ensure full and frank discussions of matters arising during Cabinet meetings. He then referred to Lloyd Barnett's **Constitutional law of Jamaica**,⁷ at pages 77-78 that:

"The rule of Cabinet secrecy is a corollary to the principle of collective Cabinet responsibility and serves to prevent decisions of the Cabinet being attributed to single ministers. The oath for the due execution of office, which section 74 requires all Ministers to take, binds them to preserve the principle of Cabinet secrecy and to refrain from disclosing individual ministerial opinion and votes. Accordingly, Cabinet decisions do not usually mention the names of Ministers apart from the name of the Minister who made the related submission. When arguments are recorded in the minutes the impersonal form is normally employed. This rule is desirable in the interest of ensuring that Ministers feel perfectly free in the course of Cabinet discussions to express their views. It is undesirable that they should deliberate under the inhibition which would be produced by the apprehension that they may be quoted in some future political controversy."

⁷ Barnett, Lloyd G. *Constitutional law of Jamaica*. Oxford [Eng.] ; New York : Published for the School of Economics and Political Science by Oxford University Press, 1977.

- [22] The learned judge disallowed disclosure of the minutes of meetings of the Cabinet. However, the decisions of the Cabinet made in relation to the 'Stem Cell Research Centre' of the St. Kitts Institute for Regenerative Medicine Limited, on the respective dates and the associated documents so tabled, were allowed.
- [23] In my view the judge's analysis and finding with respect to CPR 28.2 that the appellant has or has had a right to inspect or take copies of the documents or has had a right to possession of them cannot be faulted. The learned judge properly reasoned as to how he arrived at that finding. So also is the judge's decision disallowing the disclosure of the minutes of Cabinet but allowing disclosure of the decisions of Cabinet made in relation to the 'Stem Cell Research Centre' of the St. Kitts Institute for Regenerative Medicine Limited, on the respective dates and the associated documents so tabled. In the circumstances, grounds 1 and 2 of the appeal are dismissed.

Ground 3

- [24] This brings me to what I consider to be the most important questions in this appeal. Did the learned judge err in finding that the documents, in respect of which specific disclosure was given, were directly relevant within the meaning of CPR 28.1 (4)? And, was specific disclosure necessary in order to dispose fairly of the claim?
- [25] It is trite that for the purposes of disclosure, relevance must be judged exclusively by reference to the pleadings as they stand in order to see how the issues have been defined up to that point.⁸ It is important to identify the factual issues as those that would arise for decision at the trial. Disclosure must be limited to documents relevant to the issues. One has to analyse the pleadings.⁹
- [26] Paragraph 3 of the statement of claim states that during the talk show Dr. Douglas made the following statements:

⁸ Per Eady J in *Flood v Times Newspaper Ltd.* [2009] EWHC 411 QB at para 36.

⁹ See *Harrods Ltd v Times Newspaper Ltd. and others* [2006] EWCA Civ 294.

- a. "... But one of the patients was eventually identified to the medical staff only after he was arrested by the police on his way out at our airport because he was found with a high powered rifle and when he was arrested and take down to the police stated he was not allowed to sleep in the police station overnight. You know where his prison cell was? In the Marriot! That's where Harris ordered that he be placed in the Marriott!..."
- b. "... And who do you think tried his case later in the week? Donna Harris Magistrate, sister of Prime Minister Dr. Harris and what do you think was the sentence or fine imposed? \$10,000.00 You understand a little slap on the wrist, whereas if it was some little boy from McKnight or St. Pauls or Newton Ground or even me. I would have been lost in the prison but \$10,000.000 is what a billionaire was made to pay after he was found at our airport traveling with a high powered rifle, illegal firearm not even declared to customs and he got a little slap on the wrist and paid \$10,000.00 this cannot be right..."
- c. "are the placentas umbilical cords and those who may have had clinical abortions are the remains going to be used for Stem Cell Research here in St. Kitts and Nevis without consent of the mothers, without any compensation whatever to the mothers? Is this what is happening at our own Health facility and the people of St. Kitts and Nevis are only finding out about Stem Cell Research after Dr. Martin create a stink at the hospital and as a result was fired. I want to submit finally before my time is up that money seems to be at the centre of all of this. And so, we ask a number of questions was any money paid to the Government to establish a proper Stem Cell Research in Saint Kitts. Was any money paid or not?"
- d. "...As also to ensure that if there was any mistake, any error, any accident during the application clinically of these stem cells. Let us say for example one of the needles with Stem Cells puncturing a member of the female staff at the hospital that they would have been adequate treatment provided to ensure that they are not permanently affected. And you know why I say that because there is great fear and concern and debate that stem cells can cause Cancer. Were all these checks and balances and safe guards put in place? Why is Dr. Harris having our hard working professionally trained nurses at risk in order to collect some money in his hands from those who are receiving clinical application of stem cells? Why? Why Harris? Why are you doing this to our people? And so I stand on the side of what is right and not what is wrong. And so I want to say that it is because the Government must have taken money for the users of this facility that Dr. Martin was removed although he stood on sound legal ethical moral and public health grounds..."

- e. "...And this is part of the problem Harris thinks he can take all kinds of things from people. Harris believes and I am saying it very clearly and loudly for everybody to hear me. Harris believes that he can take bribes and keep himself in office. That will not work in this country! Harris must go! Harris must resign! The Minister of health must resign!
- f. "...Up to this point we've heard nothing at all of the Kapland scandal absolutely nothing. How much money did Kapland pay the Government Ministers? How much did he pay? How come after Harris indicated he was going to improve the checks and balances in the system the Citizenship by Investment Programme that we have two (2) crooks still entering the programme, signed into citizenship and given passports by Dr. Harris himself? How come is this happening? Harris should resign not only over this matter but over the Kapland scandal as well..."

[27] Paragraph 4 of the statement of claim sets out what the words meant and were understood to mean in their ordinary and natural meaning:

- (i) In his official capacity, Dr. Harris interfered with the execution of the duties of the police in relation to the investigation and arrest of one of the patients/patrons of the Stem Cell Research Centre;
- (ii) Dr. Harris directed that a patient/patron of the Stem Cell Research Centre not to be detained at the Police Station but detained at the Marriott Hotel after being arrested for possession of an illegal firearm;
- (iii) Dr. Harris exerted unlawful and undue influence on police officers in the execution of their duties;
- (iv) Dr. Harris arranged or was instrumental in having the said patient tried in the Magistrate's Court for possession of an illegal firearm before his sister Donna Harris;
- (v) Dr. Harris corruptly arranged for, or unduly influenced the imposition of a fine of \$10,000.00 on the said patient of the Stem Cell Research Centre;

- (vi) Dr. Harris accepts bribes and monetary payments and otherwise operates in his capacity as Prime Minister in a corrupt matter;
- (vii) Dr. Harris, as Prime Minister, allowed the Stem Cell Research Centre to operate without adequate safeguards and safety protocols in exchange for personal monetary gain;
- (viii) Dr. Harris orchestrated the establishment of the Stem Cell Research Centre in exchange for receiving bribes and monetary gain;
- (ix) Dr. Harris received bribe payments from one Kapland in exchange for approving his Citizenship by Investment application; and
- (x) Dr. Harris has committed criminal offences under the laws of the Federation of St. Kitts and Nevis.

[28] Dr. Douglas pled in his defence that by letter of 5th March 2013 Royal St. Kitts Medical Centre [St. Kitts Institute of Regenerative Medicine] was granted a business authorisation to conduct stem cell research and regenerative medicine by the then administration. The facility was set up without the knowledge of the Chief Medical Officer, without proper notification and was a radical departure from the policy and grant of the previous administration.

[29] At paragraph 7 of the amended defence, Dr Douglas pled the entire speech made by him. He denied the words complained of in context were defamatory and also denied that the words in their natural ordinary and or inferential meaning meant or were understood to mean or have the meaning averred in paragraph 4 of the statement of claim. In the alternative, the words complained of are protected by fair comment on a matter of public interest and qualified privilege.

[30] At paragraph 29 of his judgment, the learned judge stated that having regard to the learning in **Joseph and others v Spiller and another (Associated Newspapers Ltd and others intervening)**¹⁰ and the contents of the paragraphs he had quoted, the documents requested are directly relevant to the defence of fair comment. He also noted that Dr. Harris specifically pled that in their natural and ordinary meaning the words in Dr. Douglas' statements were understood to mean, among others, that he (Dr. Harris) 'in his capacity as Prime Minister allowed the Stem Cell Research Centre to operate without safeguards and safety protocols **in exchange for personal monetary gain.**' (emphasis by the learned judge)

[31] The learned judge stated that the respondent focuses on the bold part of the quote to emphasise that this is the sting of the defamatory statement, and further remarked that that may be so, and it was not necessary for him to decide this point. He went on to state:

"However, the defamatory statements have two aspects, the first focusses on the operation of the 'Stem Cell Research Centre' or the St. Kitts Institute for Regenerative Medicine Ltd. and the second relates to the alleged motive for doing so. There is nothing wrong with the Claimant seeking documents that are 'directly relevant' to the former and not the latter. An application for specific disclosure need not be necessary in relation to all the defamatory meanings of the words about which the Respondent complains. It is sufficient if they are 'directly relevant' to the Applicant's case, since they are documents that relate to the operation of the 'Stem Cell Research Centre' or St. Kitts Institute for Regenerative Medicine Ltd. It is not necessary for these documents to also relate to the second part of the ordinary meaning of the words. The Applicant must at trial adduce evidence that support such a meaning, and this is a matter for determination at trial."

[32] Mr. Hamilton QC argued that the judge erred in law at paragraph 29 by attempting to separate a pleading into two parts as it is illogical and not in accordance with the law of defamation. He asserted that the meaning as pled by Dr. Harris complains of allegations of a disreputable motive and the meaning can only be taken as a whole. He submitted that if the respondent sought to challenge the meaning he should have pled alternative meanings. Dr. Douglas at no point has advanced any contrary

¹⁰ [2011] 1 AC 852.

pleading as to the meaning of the words and instead has pled a bare denial as to the meaning.

- [33] Mr. Hamilton QC reasoned that even if the reasoning of the judge is to be accepted, the documents relating to the public relation package and proof that it was executed are hardly relevant to an assessment as to whether the regenerative project operated without proper safeguards or safety protocols. Further, he stated that the business or finance plan of a private company is hardly relevant to an assessment as to whether the regenerative project operated with appropriate safeguards or safety protocols without any averment in the affidavit showing its relevance.
- [34] Mr. Hamilton QC referred to CPR 28.6, which requires specific disclosure to be ordered only where it is fairly required to dispose of a case, and submitted that this requires the judge to assess the probable value of the benefits of disclosing the documents in question. He argued that the judge must look at each document requested and determine whether or not it is capable of justifying comments pled by the respondent which refer explicitly to Dr. Harris receiving bribes, and if it is not, then disclosure should not be ordered. He insisted that the judge must carefully consider the defence raised by the respondent in order to arrive at a decision with respect to the application.
- [35] In Mr. Hamilton's view, Dr. Douglas has chosen to plead and rely on matters solely in relation to his criticism of a government policy. These, he asserted, are irrelevant to the consideration as to whether the respondent had set out facts from which the inference could be drawn that Dr. Harris was in receipt of bribes. He stated the meanings complained of by Dr. Harris are not in relation to the criticism of government policy that Dr. Douglas engaged in his address. He insisted that it concerned a direct allegation that Dr. Harris accepted bribes from a patient in the facility; that Dr. Harris is of the belief that he can accept bribes and keep himself in office; and that Dr. Harris interfered with the administration of justice with respect to

a patient participating in the health project. Therefore, Mr. Hamilton urged that the court should not order disclosure on the basis of these irrelevant matters.

[36] Mr. Hamilton argued further that to order disclosure would lower the standard to that which was previously observed under Peruvian Guano. He submitted that the documents are irrelevant to determining the issue of fair comment, as they fail to show or are unlikely to show that Dr. Harris accepted bribes in relation to the regenerative project, nor would they support any fact from which such an inference can be drawn. He also argued that they do not affect the just disposal of the claim as they do not answer as to whether Dr. Harris had committed any act from which the inference of bribes could be drawn.

[37] Learned counsel submitted that the defence has largely focused on criticising government policy, seemingly ignoring in large part the entire substance of the claim brought. Dr. Harris' claim is for libel, alleging that Dr. Douglas published statements indicating that he accepted bribes and committed other criminal conduct. Dr. Douglas has admitted publishing the words. Therefore, Mr. Hamilton submitted that it is irrelevant that his speech also referred to other matters as those matters do not form the substance of the complaint made by him.

[38] Mr. Hamilton QC further submitted that the ordering of disclosure of documents on the basis of matters pleaded which are irrelevant to the disposal of the claim can hardly be considered necessary and would otherwise be inconsistent with the overriding objective. Further, CPR 28.1(4) defines directly relevant as being a document which tends to adversely affect that party's case or tends to support another party's case. He argued that if a defendant were to plead an irrelevant matter which neither supports his case nor adversely affects a claimant's case, documents sought on the basis of those pleadings could not be seen to be directly relevant within the meaning of CPR 28.1(4).

- [39] Mr. Hamilton QC posited that CPR 28.6 which requires disclosure to be ordered only where it is fairly required to dispose of a case, requires a judge to assess the probable value of the benefits of disclosure. He stated that the judge must consider whether the documents are relevant for the purpose of providing evidence which seeks to justify the alleged defamatory comments. He insisted that the judge must look at each of the documents requested and determine whether or not it is capable of justifying comments pled by Dr. Douglas which refer to Dr. Harris receiving bribes.
- [40] In sum, this is a claim for libel where Dr. Harris alleges that Dr. Douglas defamed him by virtue of accusing him of accepting bribes and committing other criminal conduct. Dr. Douglas admits publication, gives a bare denial as to the meaning and pleads fair comment on a matter of public interest and qualified privilege. The defence also referred to the lack of checks and balances and safeguards, in the operation of the Stem Cell Research Centre. The documents requested are said to relate to the question as to the operation and management of the regenerative medicine project at the local hospital.
- [41] The learned judge cited the relevant law with respect to specific disclosure and assessed the pleaded case. In so doing, he placed emphasis on the fact that Dr. Harris specifically pled what the words in Dr. Douglas' statement were understood to mean in their ordinary and natural meaning: that Dr. Harris as Prime Minister allowed the Stem Cell Research Centre to operate without safeguards and safety protocols for monetary gain. The learned judge buttressed this emphasis by divining that the defamatory statements had two aspects. I note Mrs. Sookoo-Bobb's submissions that the pleadings, witness statements and the learning the judge cited compelled the logical and reasonable conclusion that the documents were necessary to address the issue of whether or not the proper procedure was set up, followed or carried out by Dr. Harris' administration in relation to the stem cell project.

- [42] I recognise that the learned judge paid regard to CPR 28.6, which enjoins the court when making an order for specific disclosure to consider whether specific disclosure is necessary in order to dispose fairly of the case or to save costs. The court also has to give effect to the overriding objective of dealing with cases justly and to the need to limit disclosure to what is necessary to deal with the case justly. One has to determine whether the orders sought are proportionate and necessary for the fair disposal of the litigation.
- [43] The learned judge considered the application before him, the pleadings and submissions of the parties. He was cognisant of and applied the correct legal principles relating to specific disclosure. He also recognised the importance of identifying the factual issues which would arise for decision at the trial and that specific disclosure must be limited to documents relevant to these issues. The learned judge's finding that the documents requested were directly relevant is not one this Court should interfere with.
- [44] I am not of the view that the judge misdirected himself in law or otherwise erred in arriving at his decision. There is no basis for appellate interference with the learned judge's discretionary evaluation.

Conclusion

- [45] For all the reasons given, it is ordered that the appeal is dismissed. In circumstances where the respondent has successfully defended the appeal, the appellant shall pay costs of the appeal to the respondent in the sum of \$1,000.00.

I concur.

Louise Esther Blenman
Justice of Appeal

I concur.

Paul Webster
Justice of Appeal [Ag.]

By the Court

Chief Registrar