

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

**FEDERATION OF SAINT CHRISTOPHER AND NEVIS
SAINT CHRISTOPHER CIRCUIT**

CLAIM NO. SKBHCV2016/0008

BETWEEN:

NIGEL CARTY

Claimant

and

SHAWN K. RICHARDS

Defendant

Appearances:

Mrs. Angelina Gracy Sookoo-Bobb for the Claimant
Mr. Terrence Byron and Ms. Indira Butler for the Defendant

2019: November 28
2020: June 15

JUDGMENT

Introduction

- [1] **VENTOSE, J.:** In **R v Franklyn Huggins** (BVIHCR 2009/0001 dated 13 July 2010), Hariprashad-Charles J. stated (at [17]) that:

Short of homicide, it [rape] is the 'ultimate violation of self'. It is a violent crime because it normally involves force, or the threat of force or intimidation to overcome the will and the capacity of the victim to resist. Along with other forms of sexual assault, it belongs to that class of indignities against the person that cannot ever be fully righted and that diminishes all humanity.

- [2] Rape is perhaps one of the most violent crimes that can be inflicted a woman. It is the violation of her person by another in a way that can only be described as barbaric. This case is about the use by a sitting member of the National Assembly of Saint Christopher and Nevis of a public forum on a campaign platform to state, without any evidence or justification whatsoever, that another sitting member of the National Assembly and a Minister of Government had raped a young woman in his office.

- [3] In **Jagan v Burnham** (1973) 20 WIR 96, the Court of Appeal of Guyana stated (at 110) that:

It can hardly be disputed that the public conduct of a public man might be discussed with the fullest freedom. It might be made the subject of hostile criticism and of hostile animadversions provided the language of the writer is kept within the limits of an honest intention to discharge a public duty and not as a means of promulgating defamatory and malicious accusations. ... Whoever fills a public position renders himself open to public reference, and if any part of what he does is wrong, he must accept the attack as a necessary, though unpleasant, circumstance attaching to his position. ...

But by the same token, if a false and unwarranted attack is maliciously levelled at an individual who holds high office, designed not only to discredit him, but to encourage disrespect for his office through allegations of disreputable conduct in that capacity, damages must be suitably assessed to be a sufficient demonstrative mark in the vindication of his reputation, clothed as it may be with the garb of that office.

- [4] The right to freedom of expression must be exercised reasonably and is subject to the protection of the reputations of others. There is no right to tell untruths on a political platform simply to score political points. It goes without saying that there

must be full discussion of the conduct of anyone who enters the public political domain. The public is entitled to know everything about that person who aspires to become, or is, a member of the National Assembly. However hostile the criticism of the public political figure, it must be kept within “limits of an honest intention to discharge a public duty and not as a means of promulgating defamatory and malicious accusations”.

[5] The award of damages in defamation cases is a matter of impression and common sense. Any award granted by the court must seek to vindicate the reputation of the person defamed. Too often some politicians in the Commonwealth Caribbean, comprising many small-island states, use the political platform not to provide the electorate with an articulation of their plans, economic or social, to develop the State or Territory if they are elected into office as the government but to make defamatory statements about the persons against whom they are running in any particular constituency or otherwise. This is not what our nascent democracies are about and the use of the political platform as a tool to make defamatory statements against political opponents must cease. If it does not, the law of defamation stands as the sentinel to guard against those who use the freedom to speak one’s mind as means to communicate false statements defamatory of others.

[6] Commonwealth Caribbean societies as just mentioned comprise many small island nations, including the Federation of Saint Christopher and Nevis with a population of approximately 55,000 inhabitants. When scandalous, heinous and false statements are made against persons, in particular, to those who put themselves up for political office, the damage to reputation is sometimes complete. It lingers on for years, even decades. It is, therefore, no surprise that many law-abiding citizens do not wish to seek political office to serve their country. The Court of Appeal in **Gonsalves** stated (at [60]) that:

... A politician depends very much on the popular perception of his or her reputation. Damage to it can lead to diminished political advancement within support groups. It can lead to political demise. ... Damages must be presumed, since the slanderous [defamatory] allegation involved the

commission of a criminal offence punishable with imprisonment. Those who have high and distinguished profiles as Dr. Gonsalves should receive a higher award than a person similarly defamed with a lesser public profile. These are well settled principles. ...

- [7] To borrow the language of **Jagan**, the Defendant in the instant case made a false and unwarranted attack that was maliciously levelled at the Claimant who held high office, designed not only to discredit him, but to encourage disrespect for his office through allegations of disreputable conduct (including rape) in that capacity. This means that damages must be suitably assessed to be a sufficient demonstrative mark in the vindication of the Claimant's reputation.

Background

- [8] In 2010, the Claimant was Senator in the National Assembly of Saint Christopher and Nevis and a Junior Minister in the Ministry of Finance, Sustainable Development, Information and Technology. At that time, the Saint Kitts and Nevis Labour Party (the "**Labour Party**") formed the government. The Claimant also subsequently held the posts of Minister with responsibility for Education and Information, Agriculture, Marine Resources and Cooperatives.
- [9] The Claimant gave evidence that he enjoyed a sterling reputation of integrity and respect from colleagues, associates and subordinates in the various Ministries in which he served and the general public. The Claimant avers that he has always been a law-abiding citizen with an unblemished character that enabled him to be eligible for the various senatorial and ministerial appointments he held; and that his character also allowed him to retain the trust and confidence of the then Prime Minister of Saint Christopher and Nevis.
- [10] The Defendant, Mr. Shawn K. Richards, is currently the Deputy Prime Minister of Saint Christopher and Nevis and an elected Member of Government in the National Assembly of Saint Christopher and Nevis. He is a member of the Cabinet and the Leader of the political party named the People's Action Movement (the "**PAM**"). However, on the 13 and 16 January 2010, the Defendant was an elected Opposition Member for PAM in the National Assembly. In January 2010, the Labour Party and PAM were engaged in political campaigning for general

Elections soon to be held in Saint Christopher and Nevis. On the 13 January 2010 at a public meeting of PAM held at Trafalgar, Basseterre, Saint Christopher, the Defendant stated the following:

"Members and friends I am not surprised that Labour doesn't care about the crime situation in this country and they mustn't care because they themselves are a bunch of criminals – they are a bunch of criminals. Chesley refer to the fact that we have something here coming out of the red briefcase. Well the last file that I had had named Marcella Liburd. This file name Nigel Carty. That's the name ah this file. And after tonight allyo better watch me back enuh because you know right now they desperate. But tell them they say when dey coming must come good because I hear they done planning to pull it and to kill PAM candidates but tell them that how when they coming come good.

I turn to the file and the file here say affidavit of truth affidavit of truth and I won't call the name of the young lady but I will read to you what the affidavit says and tell Nigel Carty is not me say so is an affidavit that the young lady swore took an oath to in this country not me a tell no lie pon him. It says 'I' and it gives the name of the young lady and it says where she live in the island of St. Christopher in the Federation of St. Christopher and Nevis 'make oath and say as follows. I am a citizen of Saint Christopher and Nevis of full age having been born in February of 1987. I was sexually assaulted and it gives the date which would be in June of 2008 at the office of minister Nigel Carty a Junior Minister in the government of Saint Christopher and Nevis. I did not give Nigel Carty permission to have sex with me. During the month of April 2008 I spoke to Minister Nigel Carty about helping me get a job because I did not like my present job. He also said to me that he would help me. At present I work and she gives where she is working. 'During the morning of the incident I called Minister Nigel Carty. He told me to come to his office during my lunch. I went to his officewith my friend' and she gives the name of the friend. 'She had to stay downstairs and I went up to his office. When I got to his office I sat in a chair and he was behind his desk. He did not welcome me. He just said to me "Girl when was the last time you had sex?" I was shocked and I did not answer him. He got up from his desk and went to sit on the said of the desk next to me. He started to watch me full in my face and I said to him "Why you watching me that way?" He then started to touch me up on my hands and then he pulled me up from out of the chair. I said to him "What are you doing?" He said to me "I am Nigel". Well I don't know that if the name Nigel gives you the right to feel up assault and do all kinda thing to young ladies. Anybody in the crowd name Nigel? Eh? Because I want to know if the name Nigel gives you that right. 'He put his hand around my waist and I tried to pull away. He started to fondle my breasts. I was afraid and I did not want to scream out because I know that he is stronger than me and I was too ashamed to make any

noise and not only that his secretary was next door so I was afraid to speak loudly. He then put me on his desk to lie down. Then he then put his hand in his pocket and took out a lot of condoms', so he must be a sell condoms. 'He was wearing a blue shirt and a black pant. I cannot remember what colour under he was wearing. I was wearing a black skirt and I had on a boy short. The colour of it was bluish and brown. When he put a condom on I said to him "I did not give him any consent. This is rape".

'He said to me "I am Nigel Carty and no police could lock me up". He pull down my panty and entered me. All he said was "Aaaah". 'When he was finished, he went into his bathroom to clean up. When he came back he gave me a cheque in my name for a hundred and fifty dollars'.

"Allyo see how indecent they be and that is why the crime in this country must be where it is, because if you have ministers of government who don't have any respect for young ladies in this country, what else can you expect in regards to law and order when they themselves have no respect for law and order and young women in this country? A hundred and fifty dollars when you done rape and assault the young woman. 'I did not ask him for any money. He just gave it to me and I changed the cheque the next day at Benjax. When I reach downstairs my friend said to me' 'What happen to you?', 'Why you look so?' 'You ain't get the job?' I told it was worse than that. I then told her "Thus man raped me out up there and me ain't give him any consent to rape me" and she was very upset. I told my boyfriend about it and he was mad and he made me call a minister Nigel Carty and asked why he raped his woman. I make this affidavit honestly knowing the same to be true and correct'.

"And maybe allyu believe some ah de young girl dem. But there is also a medical certificate here from a doctor because the young lady went to a doctor and the doctor says here: "On 10th June the young lady visited my office with complaints of being sexually molested. She complained of bruises to her inner aspects of her thighs as well as her forearms. One examination, she was found to have minor abrasions to both forearms and several abrasions to the medical aspects of both thighs. She was also very emotionally distressed'.

'And the third affidavit is an affidavit by the very same friend who went with the young lady the day to visit Nigel Carty and I will not go through her affidavit but in terms of what she has in this affidavit she supports what the young lady says in her affidavit. It is consistent and that is why you need to get rid of them because to you the mothers in this Federation it could have been you who went to Nigel Carty office to look a job and he did that to. It could have been your daughter who he did that to. To the young men in this country, it could have been your sister who he did it to, it could have been your mother, your aunt, your niece, some relative of yours.

And so you must not allow the likes of Nigel Carty and Denzil Douglas to return to government headquarters. You must send them a message that we will not tolerate any minister of government sexually assaulting any woman in this country and telling them that 'I am a minister of government and no police could do me anything'. No respect for young ladies no respect for law and you must send them a very, very strong message. Tonight as you leave this meeting think about it and think of how you would have felt if you were in that situation. Think about it being your mother, your sister, your niece, your grandmother think about it and I am certain that if you think seriously about that situation if you think about it seriously about the situation with crime in this country the only conclusion that you can come to is that change is needed in this country. If you can't do it for yourself then do it for all the young women for all the woman of this country Members and friends, people of West Basseterre you need to come on board and be part of that change. Come on board and on the 25th of January I expect you come go out and give your vote to none other than Bernard Welsh in this constituency. What time is it? What time is it? Thank you and good evening."

- [11] On the 16 January 2010 at a public political meeting of PAM held at Halfway Tree, Saint Christopher, the Defendant also stated:

Then he [Dr. Douglas] talk bout Carty. He say I on the platform talking nastiness bout Carty. Well, the affidavit that I read ain't got Shawn name in it. Ain't Shawn say so. Its the young girl say that bout Nigel Carty. And so if he want to call anybody nasty, tell him that Nigel Carty is the one he must call nasty.

Tell him call Nigel Carty in his office and ask Nigel Carty if what was said in the affidavit is true. And if what was said in the affidavit is true then he need to tell Nigel Carty that he nasty. He ain't just nasty. He out a place. Tell him must talk about that when he want to talk about nastiness because if those two documents weren't there, Shawn would not have been able to speak about them. I couldn't speak about them if they weren't there.

- [12] The statements made at the meeting were also heard by those listening on a radio station, trading as WINNFM 98.9 ("**WINNFM**"). The Claimant avers that WINNFM enjoys a wide listenership in Saint Christopher and Nevis and beyond via the worldwide web, and it regularly broadcasted political meetings of PAM during the 2010 Federal Elections campaign period.
- [13] The Claimant states that the words uttered by the Defendant on 13 and 16 January 2010 meant and/or were understood to mean to any ordinary man or

woman including that in their natural and/or ordinary and/or inferential meaning that the Claimant: (a) committed the criminal act of rape, and the penalty for rape is imprisonment; (b) committed the criminal act of sexual and indecent assault which also carries the penalties of fines and imprisonment; (c) abused his position as a Minister of Government as for corrupt purposes; (d) is unfit to hold public office as a Minister of Government or at all and should therefore not be put back in power; (e) is guilty of malfeasance; (f) lacks integrity and respect for law and order; (g) lacks respect for women and for people in general; (h) causes or encourages crime; (i) used his position as a Junior Minister to lure, sexual assault, rape and bribe young women in my office; and (j) has no respect for the law or consequence of the acts of rape and assault on women.

- [14] The Defendant in his defence admitted that the words complained of have the meanings stated in the claim form, namely, that the Claimant: (a) committed the criminal act of rape for which the penalty is imprisonment; (b) abused his position as a Minister of Government and is corrupt; (c) is unfit to hold public office as a Minister of Government or at all; (d) is guilty of malfeasance; and (e) lacks integrity and respect for law and order. In addition, the Defendant specifically states in his defence that the defamatory words **“are true in substance and in fact”**. In the particulars of justification, the Defendant also states that the words complained of mean that the Claimant: (a) committed the criminal act of rape for which the penalty is imprisonment; (b) abused his position as a Minister of Government and is corrupt; (c) is unfit to hold public office as a Minister of Government or at all; (d) is guilty of malfeasance; and (e) lacks integrity and respect for law and order.

Procedural History

- [15] Trial directions were given by the court on 18 October 2017. The Defendant failed to file any evidence by way of witness statements for the trial of the matter. There was no application by the Defendant for an extension of time to file witness statements. Consequently, at trial, no evidence was adduced by the Defendant to support its defence of justification. Based on the evidence of only the Claimant presented at trial on 15 April 2019, the court was satisfied that the Claimant had

established his claim for defamation in that he had proven that: (1) the statements made by the Defendant are negative false statements of fact, the defendant having not adduced any evidence at trial to support his defence of truth; (2) the statements made by the Defendant identify or refer to the Claimant; and (3) the statements made by the Defendant were published by WINNFM. Judgment was, therefore, entered in favour of the Claimant with damages to be assessed for which directions were given for the hearing to take place on 28 November 2019.

[16] The hearing on the assessment of damages took place on 28 November 2019. The Claimant filed witness statements, and submissions and authorities by the deadline date of 30 August 2019. The Defendant did not file any evidence or submissions or authorities by the date ordered by the court. Again, there was no application by the Defendant for an extension of time to file witness statements as ordered by the court. The Defendant then filed at 3:20 p.m. on 27 November 2019, the day before the hearing on the assessment of damages, a two-and-a-half-page document purporting to be submissions filed in accordance with the order of the court of 15 April 2019.

[17] The Defendant did not file an application to extend the time for filing submissions and to deem the submissions filed late properly filed. The court has not relied on anything contained in that document but permitted Counsel for the Defendant to make oral submissions at the hearing which were substantially the same as those contained in the document filed out of time without the permission of the court.

Damages for Defamation

[18] Damages for defamation serve the following functions: first, to act as a consolation to the Claimant for the distress he suffers from the publication; second, to repair the harm to his reputation; and, third, as vindication of his reputation. In **Broome v Cassell & Co Ltd** [1972] AC 1027, Lord Hailsham L.C. stated (at p. 1071) that damages:

... may put the plaintiff in a purely financial sense in a much stronger position than he was before the wrong. Not merely can he recover the estimated sum of his past and future losses, but, in case the libel, driven

underground, emerges from its lurking place at some future date, he must be able to point to a sum awarded by a jury sufficient to convince a bystander of the baselessness of the charge ...

- [19] Any award granted by the court must be such that it achieves, as much as a monetary sum can, one or more of those functions. Damages awarded in defamation cases fall under three headings, general damages, aggravated damages and exemplary damages. Special damage, that is, pecuniary loss caused by the publication, may be recovered in addition, but must be specially pleaded and proved. In **John v MGN Ltd** [1997] Q.B. 586, the Court of Appeal of England and Wales stated (at pp. 607-608) that:

Compensatory damages

The successful plaintiff in a defamation action is entitled to recover, as general compensatory damages, such sum as will compensate him for the wrong he has suffered. That sum must compensate him for the damage to his reputation; vindicate his good name; and take account of the distress, hurt and humiliation which the defamatory publication has caused. In assessing the appropriate damages for injury to reputation the most important factor is the gravity of the libel; the more closely it touches the plaintiff's personal integrity, professional reputation, honour, courage, loyalty and the core attributes of his personality, the more serious it is likely to be. The extent of publication is also very relevant: a libel published to millions has a greater potential to cause damage than a libel published to a handful of people. A successful plaintiff may properly look to an award of damages to vindicate his reputation: but the significance of this is much greater in a case where the defendant asserts the truth of the libel and refuses any retraction or apology than in a case where the defendant acknowledges the falsity of what was published and publicly expresses regret that the libellous publication took place. It is well established that compensatory damages may and should compensate for additional injury caused to the plaintiff's feelings by the defendant's conduct of the action, as when he persists in an unfounded assertion that the publication was true, or refuses to apologise, or cross-examines the plaintiff in a wounding or insulting way. Although the plaintiff has been referred to as "he" all this of course applies to women just as much as men.

There could never be any precise, arithmetical formula to govern the assessment of general damages in defamation, but if such cases were routinely tried by judges sitting alone there would no doubt emerge a more or less coherent framework of awards which would, while recognising the particular features of particular cases, ensure that broadly comparable cases led to broadly comparable awards.

[20] In **Bristol v St. Rose** (Civil Appeal No.16 of 2005 dated 20 February 2006), the Court of Appeal accepted that the award of general damages for libel is not based on a precise methodology. However, the Court of Appeal stated (at [37]) that the following factors are considered are “fairly settled”, namely: (a) the gravity of the libel; (b) the extent and manner of its publication; (c) the relationship between the claimant and the persons who received the libel; (d) the presence of express or actual malice; (e) the defendant’s refusal to apologize; (f) the defendant’s persistence with the libel or with the defence of justification which he fails to prove; (g) the conduct of the defence; and (h) the probability of loss of earnings by the claimant.

[21] In **Jagan**, the respondent, the Prime Minister of Guyana and a senior counsel at the Guyana Bar, sued the appellant, the editor of a daily newspaper called, “The Mirror”, and the printers and publishers for libel contained in an issue of that newspaper, and was awarded damages in the sum of \$25,000.00 by the trial judge. In dismissing the appeal, the Court of Appeal of Guyana stated (at p. 106) that:

It would, therefore, be quite wrong to think that damages could be categorised within the confined of levels of awards previously made in other cases as if those constituted precedents to be followed. No such limitation in law exists, for each case must be considered in the light of all its relevant factors and prevailing circumstances, and without the impediments of inapplicable restraints. That is why in recognition of this freedom the law says that damages are to be “at large” – judged on the merits and the impression and commonsense of the particular case, which would take into account its special features, that is, the heinous nature of the defamation, the position and standing of the person defamed, the resulting harm and hurt caused, the motivation behind the publication, the extent of its falsity and circumstances of aggravation, and the conduct of the defamers before action, after action, and in court during the trial, etc.

[22] The court agrees with the Court of Appeal in **Jagan** that each case must be decided in accordance with all relevant factors and circumstances and that damages in defamation cases are at large. This means each case must be determined in accordance with common sense and the factors outlined in both the **Jagan** case as “special features” and in **Bristol** as “well-settled factors”.

[23] The award of damages must convince a person walking on Bay Street in Basseterre, the capital of Saint Christopher and Nevis, of the baselessness of the defamatory words. In **Gleaner Co Ltd v Abrahams** (2003) 63 WIR 197, the Privy Council stated (at [55]) that:

One [of the aims of an award in defamation cases] is that the damages must be sufficient to demonstrate to the public that the plaintiff's reputation has been vindicated. Particularly if the defendant has not apologised and withdrawn the defamatory allegations, the award must show that they have been publicly proclaimed to have inflicted a serious injury.

[24] In determining the amount of damages to award, the Court of Appeal in **Bristol** noted (at [37]) that the court often considers comparable awards within the jurisdiction. However, this is not a substitute for the exercise by a trial judge of the exercise of his or her discretion to award damages to repair the damage to the reputation of the Claimant caused by the defamatory words of the Defendant.

[25] In the consolidated appeals of **Lynch v Gonsalves** (HCVAP 2009/002) and **BDS v Gonsalves** HCVAP 2009/004) (dated 21 June 2011), the Court of Appeal considered an appeal in respect of damages awarded to the respondent in the sum of \$160,000.00. The Court of Appeal substituted an award of \$140,000.00.

General Damages

[26] The evidence of the Claimant indicated that WINNFM broadcasts locally, and regionally and internationally on the internet. The court has no doubt that the Claimant was harmed because of the Defendant's defamatory statements based on: (i) the scale of the publications; (ii) the fact that the statements complained of had come to the attention of at least one identifiable person in Saint Christopher and Nevis who knew the Claimant; (iii) that they were likely to have come to the attention of others who either knew him or would come to know him in the future; and (iv) the gravity of the statements themselves, according to the meaning attributed to them by the Claimant that was accepted by the Defendant in his defence.

[27] There is no question that the defamatory statements are indeed grave and heinous. The court accepts the submission of Counsel for the Claimant the words

complained of were serious attacks on the Claimant and damaged perhaps irreparably the core of the Claimant's credibility and his reputation as a person and politician in a small island State such as Saint Christopher and Nevis. As mentioned earlier, the published words were not only uttered at the meeting but were published on WINNFM which is broadcast in Saint Christopher and Nevis, and regionally and internationally on the internet. In addition, the evidence before the court is that there have been additional publications by third parties including by those on social media repeating similar allegations after the words complained of were published by the Defendant.

[28] The court accepts the evidence of the Claimant that the words have affected him personally and his family and that as a result of the published words he became subject and exposed to scandal and public ridicule by the public. There cannot be any doubt that the Claimant suffered irreparable harm to his reputation after the words complained of were published by the Defendant.

[29] The court accepts the evidence of Ms. Armel Tweed, the Claimant's sister, that on many occasions she had to defend the Claimant, his character and reputation against the allegations of rape and sexual assault. The court also accepts her evidence that she witnessed that the allegations caused the Claimant pain and that he became very quiet as a result.

[30] Major Leroy Percival gave evidence that he heard the live broadcast on WINNFM on 13 January 2010 as part of his job in intelligence at the Royal Saint Christopher and Nevis Police Force. He stated that he was familiar with the voice of the Defendant who stated in the broadcast that the Claimant had raped a young woman and that the Defendant had an affidavit and medical evidence of the rape in a red briefcase. Major Percival also stated that the statements shocked him as they did not reflect the character of the Claimant. He gave evidence that it was only after he called the Claimant on 14 January 2010 about the allegations of rape made by the Defendant that his concerns were addressed. The court accepts the evidence of Major Percival who seemed to the court to be a witness to the truth.

[31] The evidence of Lieutenant Colonel Patrick Wallace was that on 14 January 2010 Major Percival brought to his attention the statements made by the Defendant which statements he considered to be very serious and damaging. Lieutenant Colonel Wallace stated that, although the Claimant denied the allegation, he did not initially believe the Claimant, given that the Defendant stated that he had “sworn affidavits and medical evidence”. Lieutenant Colonel Wallace stated that he thought the Claimant was hiding something from the general public and that this information affected how he viewed the Claimant. Lieutenant Colonel Wallace also stated that it was only after the judgment in this matter that the Claimant was exonerated in his eyes. The court accepts the evidence of Lieutenant Colonel Wallace who also seemed to the court to be a witness to the truth.

[32] The words published by the Defendant caused irreparable harm to the Claimant and this must sound in damages in so far as money can compensate him for that injury to his reputation. The Claimant’s integrity, character and reputation have been seriously negatively impacted by the defamatory statements made by the Defendant and the court accepts the Claimant’s evidence that he is now exposed to public scandal, contempt, name calling, especially “rapist” and embarrassment. The impact of those words lingered well into 2013 and 2016 as the evidence was that the allegations were being repeated by Mr. Chesley Hamilton on 6 June 2013 when introducing the Defendant on a political platform as follows:

... But tell the cart before the horse, tell the cart before the horse, tell the cart before the horse, do not let me go in my vault for the affidavit I have in there. Tell him do not let me go in my vault for the affidavit for the girl who come down from up government headquarters and say he did all manner of things to her. Tell him don't let me go for the affidavit for the young lady who she spoke to when she reach down. Tell him do not let me go for the doctor certificate that is signed by one of his now doctors that his that is now on the same platform with him about what happened to the young lady in government headquarters. ...

[33] Six years after the defamatory statements were made by the Defendant they were being repeated on social media.

[34] The Defendant filed an amended defence in which he agreed with the Claimant that the words complained of bear the meanings attributed to them by the

Claimant and stated specifically further that the defamatory words “**are true in substance and in fact**”. However, the Defendant failed to file any evidence in support of the defence of truth at trial. The Defendant did not disclose the contents of the so-called “affidavit of truth” of the “young lady”, the subject of the defamatory statements made by the Defendant concerning the Claimant. The Defendant has failed to apologize to the Claimant at any time in 2010 or any time thereafter, and even now, ten (10) years later. To date, there has been no retraction by the Defendant of the defamatory statements.

[35] The Claimant is entitled to recover, as general compensatory damages, such sum as will compensate him for the wrong he has suffered – that sum must compensate him for the damage to his reputation; vindicate his good name; and take account of the distress, hurt and humiliation which the defamatory publication has caused (**John v MGN Ltd** [1997] Q.B. 586). In this regard, based on the above, the court notes in particular: (1) the extent of the publication at the meeting, locally on WINFM, regionally and internationally on the Internet; (2) the effect of the publication of the defamatory words had on the Claimant and his family, the Claimant’s injured feelings, damage to his reputation based on the evidence of the witnesses who gave evidence at the hearing; (3) the nature of the publication was such that the Defendant claimed that the Claimant had committed the most heinous of acts, including rape, corruption, abuse of position, malfeasance, and sexual and indecent assault; and (4) the Defendant took no steps to verify any of the statements that he made, and intended specifically to disparage the Claimant politically, professionally and personally.

[36] In considering the amount of damages to be awarded, the court has taken into account all the circumstances of this case but the court is mindful that any award, to borrow the words of the Privy Council in **Abrahams**, must be sufficient to demonstrate to the public that the Claimant’s reputation has been vindicated. This is particularly so since the Defendant has not apologized to the Claimant and or withdrawn the defamatory allegations. The award must show the public that the

defamatory allegations have been publicly proclaimed to have inflicted a serious injury. In **Abrahams**, the Privy Council stated (at [42]) that:

.. The monetary value which a society places upon reputation and freedom from unjustified shame and humiliation is bound to be a conventional figure. The higher it is set, the greater the deterrence.

- [37] It must be noted, and this is an important consideration, that there are no mitigating circumstances in favour of the Defendant (for example, an apology and or retraction) that might tend to reduce any award of compensation by way of general damages to be paid by the Defendant to the Claimant.

Aggravated Damages

- [38] In determining whether to make an award for aggravated damages, the court has considered the conduct of the Defendant who offered the Claimant no apology for the Defamatory statements made over ten (10) years ago. The Defendant has made no attempt during that period to retract the defamatory statements of the Claimant. In addition, the Defendant filed a defence in which he categorically stated that the defamatory words “**are true in substance and in fact**”. Moreover, having defended the matter on the basis of truth, the Defendant failed to file any evidence to justify making the defamatory statements concerning the Claimant. The court also accepts the evidence of the Claimant that the Defendant was activated by malice for the following reasons as outlined by the Claimant, because the Defendant:

- a) used the occasion of a public political meeting to publish the words complained of specifically to injure and disparage the Claimant politically, professionally and personally;
- b) used the occasion of a public meeting to publish the said words complained of with the expressed intent and effect of removing and replacing the Claimant and the Labour Party from public office;
- c) published the said defamatory words with the intent of gaining a political advantage over the Claimant and the Labour Party at any cost without giving the Claimant an opportunity to provide his version of the events that were subject matter of the false accusations;
- d) adopted the alleged contents of alleged affidavits containing the words complained of as his own without any regard to the truthfulness of the

statements or without giving the Claimant an opportunity to respond to same before he publicized it or to name the persons allegedly making the accusation;

- e) waited some two (2) years after to publish these false statements about the Claimant and at a time when Federal Elections were called. It was therefore not a timely publication which required immediate publication without conducting responsible research on the matter.
- f) when condemned for making the first set of defamatory comments doubled down and referred to the words complained of in a second public political meeting 3 days later without any regard to the truthfulness of the statements and after being condemned publicly for making the said false comments about the Claimant;
- g) repeated the said accusations in his defence and amended defence with the same arrogance and in the same vague manner as he did in January 2010. He has also failed to provide any particulars so that the Claimant can properly and specifically respond to these gross allegations.

[39] The court also accepts the following acts of the Defendant, as outlined by the Claimant, as aggravating circumstances, namely, the Defendant:

- i. published a reference to the words complained of at a second public political meeting on the 16 January 2010 and after being publicly condemned by the then Prime Minister Dr. Douglas.
- ii. in his defence and amended defence published other reference to the words complained of and insisted that they are true even though he has failed to provide any particulars to prove the alleged truthfulness of his words;
- iii. knew or ought to have known that the allegations contained in the affidavit referenced, and concerning the Claimant were untrue;
- iv. knew or ought to have known that the gravity of the allegations impute that the Claimant was engaged in the criminal and socially reprehensible acts of rape and sexual assault on women. In fact, the Defendant in his defence insists that the words complained of are true;
- v. knew or ought to have known that the Claimant was never charged with, accused of, investigated for or convicted of rape and or assault on a woman in any court of law in the Federation or at all, and that there were no criminal (or other) investigations ongoing at the material time or at all when he published the defamatory statements;
- vi. published the words complained of without making any attempt to verify the facts with the Claimant or to afford the Claimant any

opportunity to comment on the allegations in the affidavit or affidavits;

- vii. knew or ought to have known that the words complained of would be broadcast by media outlets, which would give the publication permanency and cause irreparable injury and damage to the Claimant's reputation and a greater listenership and by extension damage to the Claimant's character;
- viii. referred to a report by a medical doctor in an attempt to establish that the defamatory statements were true and corroborated;
- ix. made reference to a second affidavit by a third party in an attempt to establish that the defamatory statements were true and corroborated;
- x. referred to the words "I make this affidavit honestly, knowing the same to be true and correct" in the affidavit to clothe the false and defamatory statements in an appearance of truth.

[40] These actions by the Defendant, in the opinion of the court, are all aggravating circumstances of the most serious kind justifying an award of aggravated damages. Consequently, the sum of \$50,000.00 is hereby awarded for the aggravating circumstances recognized in this case.

Exemplary Damages

[41] In **Rookes v Barnard** [1964] AC 1129, the House of Lords in explaining the categories where exemplary damages may be awarded stated that:

Cases in the second category are those in which the defendant's conduct has been calculated by him to make a profit for himself which may well exceed the compensation payable to the plaintiff. I have quoted the dictum of Erle CJ in *Bell v Midland Ry Co* ((1861), 10 C B N S at p 304). Maule J in *Williams v Currie* ((1845), 1 C B at p 848), suggests the same thing; and so does Martin, B, in an obiter dictum in *Crouch v Great Northern Ry Co* ((1856), 11 Exch 742 at p 759). It is a factor also that is taken into account in damages for libel; one man should not be allowed to sell another man's reputation for profit. Where a defendant with a cynical disregard for a plaintiff's rights has calculated that the money to be made out of his wrongdoing will probably exceed the damages at risk, it is necessary for the law to show that it cannot be broken with impunity. This category is not confined to moneymaking in the strict sense. It extends to cases in which the defendant is seeking to gain at the expense of the plaintiff some object,—perhaps some property which he covets,—which either he could not obtain at all or not obtain except at a price greater than

he wants to put down. Exemplary damages can properly be awarded whenever it is necessary to teach a wrongdoer that tort does not pay.

- [42] In **John v MGN Ltd**, the Court of Appeal of England and Wales stated (at 616-617) that:

Exemplary damages

A summary of the existing English law on exemplary damages in actions for defamation, accepted by the Court of Appeal in *Riches v. News Group Newspapers Ltd*. [1986] Q.B. 256, 269-270 as concise, correct and comprehensive, appears in *Duncan & Neill on Defamation*, 2nd ed. (1983), p. 136, paragraph 18.27. The passage remains a correct summary of the relevant law. So far as relevant to this case, and omitting footnotes and references, the passage reads:

"(a) Exemplary damages can only be awarded if the plaintiff proves that the defendant when he made the publication knew that he was committing a tort or was reckless whether his action was tortious or not, and decided to publish because the prospects of material advantage outweighed the prospects of material loss. 'What is necessary is that the tortious act must be done with guilty knowledge for the motive that the chances of economic advantage outweigh the chances of economic, or perhaps physical, penalty.' (b) The mere fact that a libel is committed in the course of a business carried on for profit, for example the business of a newspaper publisher, is not by itself sufficient to justify an award of exemplary damages. (c) If the case is one where exemplary damages can be awarded the court or jury should consider whether the sum which it proposes to award by way of compensatory damages is sufficient not only for the purpose of compensating the plaintiff but also for the purpose of punishing the defendant. It is only if the sum proposed by way of compensatory damages (which may include an element of aggravated damages) is insufficient that the court or jury should add to it enough 'to bring it up to a sum sufficient as punishment.' (d) The sum awarded as damages should be a single sum which will include, where appropriate, any elements of aggravated or exemplary damages. (e) The plaintiff can only recover exemplary damages if he is the victim of the punishable behaviour. (f) A jury should be warned of the danger of an excessive award. (g) The means of the parties, though irrelevant to the issue of compensatory damages, can be taken into account in awarding exemplary damages."

- [43] In **A v Bottrill** [2002] UKPC 44; [2003] 1 AC 449, the Privy Council, on an appeal from the Court of Appeal of New Zealand, considered the following issues: first,

whether the court's power to award exemplary damages is bounded only by the need for the defendant's conduct to be so outrageous as to call for condemnation and punishment. Second, whether this the demarcation of the court's jurisdiction in cases of negligence. Third, whether the jurisdiction more specifically, and more narrowly, confined. In answering those questions, the Privy Council explained that:

Principle

[20]. The starting point for any discussion of the limits of the court's jurisdiction to award exemplary damages is to identify the rationale of the jurisdiction. This is not in doubt, although different forms of words have been used, each with its own shades of meaning. For present purposes the essence of the rationale can be sufficiently encapsulated as follows. In the ordinary course the appropriate response of a court to the commission of a tort is to require the wrongdoer to make good the wronged person's loss, so far as a payment of money can achieve this. In appropriate circumstances this may include aggravated damages. Exceptionally, a defendant's conduct in committing a civil wrong is so outrageous that an order for payment of compensation is not an adequate response. Something more is needed from the court, to demonstrate that such conduct is altogether unacceptable to society. Then the wrongdoer may be ordered to make a further payment, by way of condemnation and punishment.

[21]. Thus, in distinguishing the essentially different roles of compensatory damages and exemplary damages Lord Devlin said a jury should be directed that if, but only if, the amount they have in mind to award as compensation is 'inadequate to punish [the defendant] for his outrageous conduct, to mark their disapproval of such conduct and to deter him from repeating it', then they might award exemplary damages: see *Rookes v Barnard* [1964] AC 1129, 1228. In *Broome v Cassell & Co Ltd* [1972] AC 1027, 1060, Lord Hailsham of St Marylebone LC approved this passage as a most valuable and important contribution to the law of exemplary damages.

[22]. In principle the limits of the court's jurisdiction to award exemplary damages can be expected to be co-extensive with this broad-based rationale. The court's discretionary jurisdiction may be expected to extend to all cases of tortious wrongdoing where the defendant's conduct satisfies this criterion of outrageousness. Any departure from this principle needs to be justified. Otherwise the law lacks coherence. It could not be right that certain types of outrageous conduct as described above should attract the court's jurisdiction to award exemplary damages and other types of conduct, satisfying the same test of outrageousness, should not, unless there exists between these types a rational distinction sufficient to justify such a significant difference in treatment.

[23]. The next point to note is that, in the nature of things, cases satisfying the test of outrageousness will usually involve intentional wrongdoing with, additionally, an element of flagrancy or cynicism or oppression or the like: something additional, rendering the wrongdoing or the manner or circumstances in which it was committed particularly appalling. It is these features which make the defendant's conduct outrageous. Either that or at the very least, in cases of negligence, the defendant was aware of the risks involved but he proceeded with a reckless indifference such that this conduct, too, evokes a sense of outrage. Such conscious recklessness approaches very closely to intentional wrongdoing.

[24]. Overwhelmingly, in the exceptional cases where questions of exemplary damages fall to be considered at all, the defendant's misconduct will be of a subjectively advertent nature as just described. Overwhelmingly, in cases of negligence, whose essential ingredients are objective in character ("ought to have known"), an award of exemplary damages will be appropriate only where the defendant's wrongdoing was intentional or consciously reckless.

[25]. It is not surprising, therefore, that when describing conduct meet for an award of exemplary damages judges have often used adjectives or phrases primarily, or even solely, aimed at advertent conduct. These include: malicious, vindictive, high-handed, wanton, wilful, arrogant, cynical, oppressive, and contumelious disregard of the plaintiff's rights.

...

[37]. ... If, having heard all the evidence, a judge firmly believes the case is so truly exceptional and outrageous that an award of exemplary damages is called for, his power to make an award is not dependent upon his being able conscientiously to find that the defendant was subjectively reckless. The absence of intentional wrongdoing and conscious recklessness will always point strongly away from the case being apt for an award of exemplary damages. That is a very important factor to be taken into account by the judge. But if the judge decides that, although the case is not one of intentional wrongdoing or conscious recklessness, the defendant's conduct satisfies the outrageous test and condemnation is called for, in principle the judge has the same power to award exemplary damages as in any other case satisfying this test.

...

[43]. ... Rightly, exemplary damages are associated primarily with intentional wrongdoing. But the ultimate touchstone constantly mentioned is that of outrageous conduct by the defendant which calls for punishment.

[44] The essential point being made in **Rookes v Barnard** in the second category is that the defendant in defaming the claimant was calculated to derive a benefit (monetary or otherwise). The court accepts the evidence of the Claimant that:

- a. [the Defendant] who was at the material time the constituency representative for Saint Christopher 5, published the words complained of which he knew would be broadcast live on WINNFM with a view to securing an unfair political advantage for the PAM party over me and by extension the Labour Party, in an intense election campaign;
- b. [the Defendant] knew or ought to have known that the Claimant was at the material time, a sitting Minister of Government for which the words complained of would not only caused the Claimant political damage, but also irreparable hurt and injury to the Claimant personally;
- c. [The Defendant] published the words complained of with the knowledge that they were false and/or with reckless disregard as to whether or not they were defamatory;
- d. Since the making and broadcast of the defamatory statements, said comments have been referred to, and been the subject of comments by members of the public on social media causing the Claimant injury and hurt to his character professionally, politically and personally; and
- e. The Defendant:
 - 1) referred to a report by a medical doctor in an attempt to establish that the defamatory statements were true and corroborated;
 - 2) made reference to a second affidavit by a third party in an attempt to establish that the defamatory statements were true and corroborated; and
 - 3) referred to the words, "I make this affidavit honestly, knowing the same to be true and correct" in the affidavit to close the false and defamatory statements in the appearance of truth.

[45] The court also accepts the evidence of the Claimant that the actions of the Defendant were calculated to secure an electoral victory to the Defendant and the political party of which he was a member, namely, PAM. The Defendant was not concerned with the reputation of the Claimant first to verify the contents of whatever information he allegedly had in his possession. The Defendant's actions

were deliberate and calculated to serve only one purpose, namely, the complete destruction of the reputation of the Claimant. The court is satisfied that the wrongful actions of the Defendant were not only intentional but that they also amounted to outrageous conduct that calls for punishment. The actions of the Defendant were intentional and outrageous. The court agrees with Counsel for the Claimant that the Defendant's conduct was so outrageous to merit an award of damages beyond the usual compensatory function to include a punitive element. The Defendant's actions compel the award of exemplary damages.

- [46] Counsel for the Claimant suggested that the sum of \$50,000.00 should be awarded for exemplary damages. The court agrees. In all the circumstances, the sum of \$50,000.00 should be awarded for exemplary damages to mark the court's disapproval of the Defendant's conduct and deter him from repeating it in the future.

Comparative Awards in Saint Christopher and Nevis

- [47] Awards in defamation cases in Saint Christopher and Nevis have been comparatively high. In 2004, the court in **Martin v The Democrat Printing Co. Ltd** (Claim No. SKBHCV2004/0136) awarded the claimant the sum of \$170,000.00 for the Defendant's defamatory statement that the Claimant was involved in the drug trade. The court found there was malice and a failure by the defendant to apologize for the defamatory statement. In 2012, the court in **Perkins v Leewards Media Group Ltd** (Claim No. NEVHCV 2010/0184 dated 22 April 2012) awarded the claimant the sum of \$250,000.00 for the Defendants defamatory statement that implied that the claimant was involved in a fraudulent expenditure and was involved in a fraud. This, the court noted, was a very serious and malicious attack on the professional reputation of the claimant. The court stated that the defamatory statement was worse than the one made in **Martin**.
- [48] In **Douglas v The Democrat Printing Company Limited** (Claim No. SKBHCV 2012/0076 dated 8 October 2013), the court awarded the sum of \$300,000.00 as general damages and \$50,000.00 as aggravated damages to the claimant, the former Prime Minister of Saint Christopher and Nevis, for the publication by the

Defendant of the defamatory statement alleging that the claimant was corrupt, murdered people for political gain and associated with international criminals. On appeal, the Court of Appeal upheld the award of \$350,000.00 to the Claimant (SKBHCVAP 2013/0026 dated 12 October 2016).

[49] The court in **Martin**, decided in 2004, awarded the sum of \$170,000.00 for defamatory statements that are less egregious than the ones at issue here. The court in **Perkins**, decided in 2012, awarded the sum of \$250,000.00 for defamatory statement that it accepted was worse. The court would have thought that the time period of eight (8) years coupled with the defamatory statements that were “worse” should have sounded in general damages in a sum greater than \$250,000.00. In addition, a year later, in **Douglas** the court awarded \$350,000.00 for defamatory statements that the court considers to be significantly worse than **Perkins**.

[50] But for the decisions of **Martin**, **Perkins**, **Douglas**, although not binding on this court, the court would have awarded the Claimant a sum greater than the sum awarded in **Douglas** as general damages. However, taking into account the inflation and the level of awards made in Saint Christopher and Nevis, the court is of the view that there should be some consistency in these awards is to ensure that there is some parity in the awards taking into account the nature and gravity of the libel at issue and the circumstances of each case.

[51] Consequently, the Claimant is entitled to an award of general damages in the sum of \$275,000.00 to compensate him for the wrong he has suffered and the damage to his reputation; to vindicate his good name; and for the distress, hurt and humiliation which the defamatory publication by the Defendant has caused the Claimant.

Disposition

[52] For the reasons explained above, I make the following orders:

- (1) Damages are awarded to the Claimant in the sum of \$375,000.00 to be paid by the Defendant within 28 days of today's date.

- (2) Prescribed costs pursuant to CPR 65.5(2)(a) to be paid by the Defendant to the Claimant within 28 days of today's date.

Eddy D. Ventose
High Court Judge

By the Court

Registrar