

**EASTERN CARIBBEAN SUPREME COURT
SAINT LUCIA**

**IN THE HIGH COURT OF JUSTICE
(CIVIL)**

Claim Number: **SLUHCv2019/0171**

Between

ALBAN FELICIEN

Claimant

and

**(1) CHRISTOPHER HUNTE
(2) CHOICE CHANNEL 39 LIMITED**

Defendants

APPEARANCES:

Mrs. Carol Gedeon-Clovis of Counsel for the Claimant
Mr. Leevie Herelle of Counsel for the Defendant

2020: January, 16th
2020: February, 26th
2020: April, 6th

JUDGMENT

- [1] **SANDCROFT, M [Ag.]**: This is an application for ruling on a preliminary issue in defamation proceedings. The Claimant/Applicant is seeking an order to say that the words spoken by the 1st Defendant, given their natural and ordinary and/or inferential meaning meant, and were understood to mean, that the Claimant was unjustly benefitting from funds of the Government of Saint Lucia; funds which were to be officially used for drainage cleaning.
- [2] Affidavit evidence and submissions were filed in support of and opposition to the application by the Claimant.
- [3] The Claimant stated that on Friday, 13th day of April 2018 at approximately 12:30p.m. the first Defendant, whilst hosting the television programme “Politically Incorrect” which was aired on the Choice television channel, made defamatory statements with respect to the Claimant. The said statements (hereinafter referred to as “the Publication”) are shown in the following:

“Some pictures from Monier. This is in the constituency where Government is doing drainage works, so I’m hoping that you can recognize the area. Works are not being done along the road, right, but they’re being

done on a UWP supporter's private property. Every day Government vehicles SLG 1044 and a blue truck TK6636 drop off about 14 workers with supplies. There's an actual housing development on Jerome Adams' land and the Actie family land. This is a housing project by Jerome Actie and Alban also known as Spider's right hand, right, but it's being done under the guise of a drainage project in Monier. They have had excavators for this project which started in March 1st of 2018. So my question is, if Government resources are being used to facilitate the private development in Monier with 14 workers to do a housing project by Jerome Actie and Alban, right hand man of Spider's, over using also, and I'm mentioning them, SLG1044 and a blue truck-SLG, Saint Lucia Government vehicle-and a blue truck TK 6636, in order to not do the drainage works that is officially announced and instead basically do preparatory works for private housing development. Hmmm. It's a simple question. Say I lie if I lie. I've given as much details as I can and I'm asking the question."

The Applicable Law & Discussion

[4] The defendant's application is made pursuant to the **Civil Procedure Rules, 2002 (CPR) r. 69.4** which reads:

- 69.4 (1)** At any time after the service of the particulars of claim, either party may apply to a judge sitting in private for an order determining whether or not the words complained of are capable of bearing a meaning or meanings attributed to them in the statements of case.
- (2)** If it appears to the judge on the hearing of an application under paragraph (1) that none of the words complained of are capable of bearing the meaning or meanings attributed to them in the statements of case, the judge may dismiss the claim or make such other order or give such judgment in the proceedings as may be just.

- [5] This provision is in the same terms as the **U.K. Rules of the Supreme Court (RSC) Ord. 82 r. 3A** that had been the focus of attention in various reported English decisions. In **Mapp v News Group Newspaper Ltd** [1998] Q.B. 52, it was held that the purpose of the rule was to enable the court in appropriate cases to fix before trial the permissible meaning of the alleged defamatory words so as to ascertain the degree of injury to the claimant's reputation and to evaluate any defences raised. Hirst, L.J., noted that it is for the judge to rule, when asked to do so, whether the words are capable of bearing a particular meaning or meanings alleged in the statement of claim, that is, to lay down the limits of the range of possible defamatory meanings of which the words are capable and it is for the jury to determine the actual meaning of the words within that permissible range. In **Slim v Daily Telegraph Ltd** [1968] 2 Q.B. 157 at 174, Lord Diplock highlighted the rationale behind this division of function between judge and jury in these matters.
- [6] It is, by now, well settled that the test to be applied in determining the meaning of words in a libel action is what the words would convey to the ordinary man. Lord Reid in **Lewis v Daily Telegraph Ltd sub nom Rubber Improvements Limited v Daily Telegraph** [1964] A.C. 234, 258 (HL) explained it clearly when he stated:

“There is no doubt that in actions for libel the question is what the words would convey to the ordinary man: it is not one of construction in the legal sense. The ordinary man does not live in an ivory tower and he is not inhibited by knowledge of the rules of construction. So he can and does read between the lines in the light of his general knowledge and experience in worldly affairs. I leave aside questions of innuendo where the reader has some special knowledge which might lead him to attribute a meaning to the words not apparent to those who do not have the knowledge.”

In relation to the test to be applied when a judge is to determine whether or not words are capable of a particular meaning attributed to them by a claimant in an action for libel, Lord Reid further stated:

“...I think it sufficient to put the test in this way. Ordinary men and women have different temperaments and outlooks. Some are unusually suspicious and some are unusually naïve. One must try to envisage people between these

two extremes and see what is the most damaging meaning they would put on the words in question.”

[7] In **Skuse v Granada Television Limited** [1996] E.M.L.R 276, the English Court of Appeal was given what it viewed as “the unusual task”, to decide on the meaning to be actually attributed to alleged defamatory words contained in a television programme. In deciding on the approach to be adopted in undertaking that task, the court reviewed several authorities and affirmed and applied some useful principles. Although my task is not to determine whether the actual meaning of the words alleged by the claimant is defamatory but rather to determine whether the words are capable of bearing the meanings alleged, I nevertheless find the principles distilled in **Skuse** rather instructive and pertinent. The head notes, which I accept as being reflective of the court’s reasoning, highlighted these major principles:

1. The court should give to the material complained of the natural and ordinary meaning which it would have conveyed to the ordinary reasonable viewer watching the television once [in 1985].

2. The hypothetical reasonable reader or viewer was not naïve but he was not unduly suspicious. He could read between the lines. He could read in an implication more readily than a lawyer and might indulge in a certain amount of loose thinking. But he was to be treated as being a man who was not avid for scandal and someone who did not select one bad meaning where other non- defamatory meanings were available. Hart v Newspaper Publishing plc (Unreported, Court of Appeal, 26 October 1989) applied.

3. While limiting its attention to what the defendant had actually said or written, the court should be cautious of an over-elaborate analysis of the material in issue. In deciding what impression the material would have been likely to have on the hypothetical reasonable viewer, the court was entitled (if not bound) to have regard to the impression made on it. Slim v Daily Telegraph Ltd [1968] 2 QB 157 applied.

4. The court should not be too literal in its approach. The layman reads in an implication much more freely than a lawyer and was especially prone to do so when it was derogatory. Lewis v Daily Telegraph Ltd [1964] AC 234 applied.

5. A statement should be taken to be defamatory if it would tend to lower the plaintiff in the estimation of right-thinking members of society generally or would be likely to affect a person adversely in the estimation of reasonable people generally. . . Slim v Stretch [1936] 2 All ER 1237 applied.

6. In determining the meaning of the material complained of, the court was not limited by the meanings which either the plaintiff or the defendant sought to place on the words. Lucas-Box v News Group Newspapers Ltd [1986] 1 WLR 147 applied.

7. The defamatory meaning pleaded by the plaintiff was to be treated as the most injurious meaning the words were capable of conveying. The questions a judge sitting alone had to ask himself were (1) was the natural and ordinary meaning of the words that which was alleged in the statement of claim, (2) if not, what (if any) less injurious meaning did they bear? derogatory. . Slim v Daily Telegraph Ltd applied.

9. The court was not concerned at this stage with the merits or demerits of any possible defence to the plaintiff's claim.

[8] The question that is reserved for my contemplation is strictly one of law and that is to say whether the words alleged by the claimant, in the statement of case, as being defamatory of them are capable of the meanings attributed to them by the claimant or are capable of any less defamatory meaning whether pleaded or not by either party. The critical question is really this: would an ordinary person viewing the televised programme complain of discover in it matters defamatory of the claimant? It is not the meaning that suspiciously-minded persons would put on the words that is pertinent but rather the most damaging meaning that the ordinary fair-minded person, who is not unusually suspicious or unusually naïve would put on them.

[9] In **Morgan v Odhams Press Ltd.** [1971] 1 W.L.R. 1239, at 1251-1252, Lord Morris of Borth-y-Gest in describing the role of the judge in these matters noted that the principle is the same in defamation cases as in any other case and that is to say that the judge, in his control of the proceedings will not leave a

case to the jury if the jury could not properly find for the claimant. The judge will withdraw the case if he decides that the words complained of are simply not capable of bearing a defamatory meaning. According to his Lordship, the judge is to decide whether a reasonable man could (not would) regard the words as defamatory. If they are capable of being so regarded then it will be for the jury to decide whether or not the words did bear a defamatory meaning.

[10] In considering the appropriate standard that the words should reach in determining whether they are capable of the alleged defamatory meaning, I would commence the analysis with the words of Lord Morris of Borth-y-Gest in giving the decision of the Judicial Committee of the Privy Council in **Jones v Skelton** [1963] 1 W.L.R. 1362. His Lordship instructed that in deciding whether words are capable of conveying a defamatory meaning, the court will reject those meanings which can only emerge as the product of some strained or forced or utterly unreasonable interpretation. He said that the test of reasonableness guides and directs the court in its function of deciding whether it is open to a jury in any particular case to hold that reasonable persons would understand the words complained of in a defamatory sense.

[11] I will act on the basis that the standard of reasonableness should guide the court in these matters since the yardstick is what the words would mean to the ordinary, reasonable, fair - minded person. It is noted that Morgan was decided under rules that predated the RSC Ord. 82 r. 3A which is identical to our CPR, r.69.4. In Mapp, which was decided in 1998 and in which Ord. 82 r. 3A was under consideration, Hirst, L.J pointed out:

“The proper role for the judge when adjudicating a question under Ord. 82 r. 3A is to evaluate the words complained of and to delimit the range of meanings of which the words are reasonably capable...”(emphasis mine).

He continued to say that **“the judge must exercise his judgment without the Ord. 18. R.19 overtones.”** Other authorities have also applied the test of reasonably capable (See for example **Gillick v British Broadcasting Corporation** [1996] E.M.L.R. 267). Following on the guidance afforded by the decisions applying **RSC Ord. 82 r. 3A**, I am duly minded to utter that the words complained of should not merely be arguably capable but reasonably capable of conveying the meaning ascribed to them. In my view, the words alleged should be such as to disclose a reasonable ground for complaint against the defendant since under the new regime, the court may strike out a claim where it fails to disclose a reasonable (not an arguable) ground for bringing the claim. The threshold for the words would, therefore, be higher than contemplated by the parties.

[12] The law recognises the right of every person to the unimpaired possession of his reputation and good name. It also confers on him the right to institute and prosecute an action for defamation against any person who, by publication, has disparaged his reputation.

The Publication

[13] The Claimant stated that on Friday, 13th day of April 2018 at approximately 12:30p.m. the first Defendant, while hosting the television programme “Politically Incorrect” which was aired on the Choice television channel, made defamatory statements with respect to the Claimant. The said statements (hereinafter referred to as “the Publication”) are shown the following:

“Some pictures from Monier. This is in the constituency where Government is doing drainage works, so I’m hoping that you can recognize the area. Works are not being done along the road, right, but they’re being done on a UWP supporter’s private property. Every day Government vehicles SLG 1044 and a blue truck TK6636 drop off about 14 workers with supplies. There’s an actual housing development on Jerome Adams’ land and the Actil family land. This is a housing project by Jerome Actie and Alban also known as Spider’s right hand, right, but it’s being done under the guise of a drainage project in Monier. They have had excavators for this project which started in March 1st of 2018. So my question is, if Government resources are being used to facilitate the private development in Monier with 14 workers to do a housing project by Jerome Actie and Alban, right hand man of Spider’s, over using also, and I’m mentioning them, SLG 1044 and a blue truck-SLG, Saint Lucia Government vehicle-and a blue truck TK 6636, in order to not do the drainage works that is officially announced and instead basically do preparatory works for private housing development. Hmmm. It’s a simple question. Say I lie if I lie. I’ve given as much details as I can and I’m asking the question.”

Pictures shown by the First Defendant during the programme 'Politically Incorrect' whilst making the statements included pictures of the area in which the works were being conducted and pictures of the Claimant's home. The Claimant intended to rely on video footage of the publication.

It can be seen without much scrutiny that paragraph 3 of the particulars of claim has not reproduced, verbatim, the terms of the alleged broadcast. The words are not particularized for one to see the actual words or the context in which they were used in order to independently determine the meaning to be attributed to them. The defendant has not admitted that pleading. It is not for the defendant to supply the alleged defamatory statement but the claimants who are alleging defamation. I am not particularly satisfied with the claimant's omission in this regard.

[14] The **CPR in Part 8** has made provisions for the matters that should be contained in a claim form and in relation to the duty of a claimant to set out its case. R. 69.2 deals specifically with the claimant's particulars of claim in defamation claims. R.69.2 (a) provides that in addition to the matters set out in Part 8, the particulars of claim in a defamation claim must give sufficient particulars of the publications in respect of which the claim is brought to enable them to be identified. R.8 then states the consequences of not setting out the case. It provides that the claimant may not rely on any allegation or factual argument which is not set out in the particulars of claim but which could have been set out there unless the court gives permission.

[15] **Carter-Ruck on Libel and Slander**, 5th edition, p. 39 also points out that the claimant must set out in his particulars of claim, with reasonable clarity and precision, the words of which he complains and that where the subject matter of a libel action is a long article or programme, the claimant must specify the particular passages which are claimed to be defamatory of him (**Collins v Jones** [1955] 2 All ER 145 and **DD SA Pharmaceuticals Ltd. v Times Newspaper Ltd** [1972] 3 All ER 417 cited).

[16] The claimant, having omitted to give the precise terms of the television broadcast, was not asked by the defendant to furnish any particulars about that publication. What the defendant has done instead is to furnish in its defence what it says are the exact terms of the broadcast. In considering the approach to be adopted in dealing with this omission on the part of the claimant, I have duly noted that they have pleaded in paragraph 4 of the particulars of claim that the Claimant intended to rely on video footage of the publication. Similar, to my mind, does not necessarily mean identical but in looking at what the defendant has pleaded, I find that there is not much difference between that publication as contended by the defendant and the publication particularized by the claimant.

[17] So, for the aforesaid reason, I will embark on an analysis of the publications as disclosed in both parties' statements of case to see whether the defamatory meanings attributed to the words by the claimant can stand as being capable of such meanings. In fact, r. 69.4 said the judge may determine whether or not the words complained of are capable of bearing the meanings attributed to them in the statements of case. The meaning the defence is contending, in relation to the television broadcast, cannot be ignored because the rule must be applied subject to the overriding objective to do that which is just between the parties and to save time and expense. If I agree with the meanings attributed to the television broadcast by the defence, in light of the failure of the claimant to plead them strictly, then that will end the claim in respect of that publication. This is a risk that the claimant will have to take given its omission to plead the exact terms of that publication.

[18] In considering this application, I must point out from the very outset that it is not for me to say whether or not I believe the claimant or the defendants on any matter especially in so far as it relates to the exact terms of the publications in question. My task is to determine whether the words alleged by the claimant to have been published by the defendants, and which the claimant is claiming are defamatory of him are capable of the meaning attributed to them in paragraph 6 of the claimant's particulars of claim. It is the claimant's statement of case concerning alleged defamation that is now material and so the merit or demerit of the possible defence to the claim is immaterial.

Defendants' Submissions

[19] The 1st defendant posited and argued that the words broadcasted and published on the said medium were not capable of the defamatory meaning alleged by the claimant in any respects. He also submitted that the statement cited at paragraph 6(1) (as aforementioned) of the Statement of Claim was not defamatory and that he only made a statement of facts and therefore not defamatory with respect to the Claimant.

[20] The 1st defendant further submitted that paragraph 6 (as aforementioned) was denied and that the words taken as a whole and in the context used by him were used in their ordinary meaning and therefore not defamatory of the claimant. Also, that the statement cited at paragraph 6(2) (as aforementioned) was correctly ascribed to the 1st and 2nd defendants and if found to be ascribed to the 1st and 2nd defendants by the Court, were made with justification.

Claimant's submission

[21] Mrs. Gedeon-Clovis, in response, submitted that the first impression the reasonable readers and listeners would have had are the meanings contended for by the claimant. She said that the words were likely to convey the defamatory meanings contended particularly in light of the broadcast on the television station as averred in the statement of claim.

ANALYSIS AND FINDINGS: meaning of the words

[22] The law is clear that words cannot be taken in isolation and their meaning determined. A claimant cannot take words in isolation and complain about them if other parts of the article throw a different light on the article in issue. So, it might well be, as the defendants are arguing, that there are words in the text that could serve to neutralize the otherwise defamatory effect of the broadcast. The fair-minded, ordinary and reasonable man is entitled to take into account the entire publication and the circumstances of the publication and to draw inferences from them.

[23] In **Charleston v News Group Newspaper Ltd.** [1995] 3 All ER 313, the House of Lords confirmed that the whole of a publication must be considered when deciding whether words or images are defamatory. In that case, the plaintiffs sued in relation to headline, caption and photographs. There was no reference made to the plaintiffs in the text. In fact, it was clear that the article was not about the plaintiffs. The action for libel failed. The House held that although the question whether a text of an article was sufficient to neutralize an otherwise defamatory headline is a matter for the jury, a claim for libel could not be founded on headline or photograph in isolation from the related text and the question whether an article was defamatory had to be answered by reference to the response of the ordinary, reasonable reader to the entire publication.

[24] In **English and Scottish Co-operative Property Mortgage and Investment Society v Odham's Press** [1940] 1 K.B. 440, a summons was taken out against the plaintiff for wrongfully making a return of its profit which was false. The defendant newspaper published the report of proceedings against the plaintiffs in a magistrate court under the heading in heavy italic type "***False Profit Return Charge Against Society***". The plaintiff argued in its action for libel that by the words of the report, in the natural and ordinary meaning, the defendants meant that the plaintiffs had deliberately falsified their accounts and had published a return of their profits which they knew to be wrong with a view to deceiving their shareholders and the public. The defendants argued that the words of the report did not bear the meaning

alleged or any defamatory meaning and that in their natural and ordinary meaning they were true. The trial judge left the words to the jury on the basis that it was capable of an innuendo and for them to say what meaning the words of the report would reasonably bear. The jury found that the words of the report bore the meaning attributed to them by the plaintiffs. On appeal by the defendant, the Court of Appeal held that the judge was correct in leaving the meaning of the words to the jury because the jury might have come to the conclusion that the words were defamatory in the ordinary and natural meaning having regard to the place in which they appear in the paper and having regard to the fact that the word “false” is ambiguous, and if not in its primary meaning, that it may, at least, connote something of a fraudulent nature. So the court held that the jury, in considering the meaning to be attached to the words “False Profit”, were entitled to take into account the 23 circumstances of the publication: namely the prominence given to the item, the fact that the heading was in bold type and that the report was in a popular newspaper.

[25] Although the cases demonstrate that the headline is important it is relevant to consider what it may convey to the ordinary man. However, it must always be viewed along with the text in the case and the whole circumstances of the publication. With all things considered, in the end, it is the words used in their context and ultimately the broad impression that they, collectively, would leave on the ordinary man that is material.

[26] It is established on high authority that the ordinary and natural meaning of words may either be the literal meaning or it may be implied or inferred or it may be an indirect meaning. Any meaning that does not require the support of extrinsic facts passing beyond general knowledge but is a meaning which is capable of being detected in the language used can be a part of the ordinary and natural meaning of words. The natural or ordinary meaning may, therefore, include any implication or inference which a reasonable listener, viewer, or reader guided not by special, but only general knowledge and not fettered by any strict legal rules of construction, would draw from the words: **Jones v Skelton** (supra).

[27] In my view, the ordinary and reasonable person of ordinary intelligence, experience and education, without the support of extrinsic facts or particular knowledge of the law, could find in the natural and ordinary meaning of several words as contained in the alleged broadcast (both versions) and throughout the text, the notion that the Claimant was engaged in a corrupt enterprise by which State funds were being used for his own private benefit.

[28] Mr. Herelle on the aforesaid basis has argued that, similar to the arguments in **Lewis**, the defendants have done nothing more than merely report the fact of an allegation being made. But is this really so?

After a close examination of the instant case, against the background of the reported circumstances in **Lewis** and **Mapp**, as well as other authorities, I am moved to hold that the defendants' alleged publication (even on the defendant's own pleaded version) went further than asking questions on a mere fact of an allegation been made.

[29] In **Hayward v Thompson** [1981] 3 W.L.R. 470, the plaintiff in his claim for libel alleged in his statement of claim that the words published by the defendants in two different articles under headings, "Two more in Scott's Affair" and "New Name in Scott's Affair" meant and were understood to mean that he was guilty or reasonably suspected of participating in or condoning a plot to murder. The defence argued that the alleged defamatory words were not capable of the meaning alleged or at all or alternatively, that they were at most only capable of meaning that the plaintiff was suspected of complicity in a plot to murder. They relied on **Lewis**.

[30] Lord Denning, M.R. (as he then was) in giving the opinion of the Court did not find the ruling in **Lewis** to be applicable. He found that the articles did not stop at there being an inquiry. He found the headlines to be significant. He also examined the words of the text, the context in which they were written and how they were written and concluded that they were plainly capable of conveying to an ordinary person on a first reading the imputation of guilt, as well as suspicion of guilt, in a murder plot. He found that the judge had properly directed the jury that it was opened to them to decide what meanings the words bore. He reiterated the words of Lord Reid in **Lewis** which I will quote only in part:

"The meaning of the words - in a libel case - is not a matter of construction as a lawyer construes a contract: see p. 258. It is a matter of impression as an ordinary person gets on a first reading - not on a later analysis..." "...Of course there are cases in which to report a police or other inquiry into accounts and so on is not defamatory of the individual responsible for such accounts. But, as Lord Devlin said in his speech in *Lewis v. Daily Telegraph Ltd.* [1964] A.C. 234, 284-285: "It must depend on whether the impression conveyed by the speaker is one of frankness or one of insinuation.... A man who wants to talk at large about smoke may have to pick his words very carefully if he wants to exclude the suggestion that there is also a fire; but it can be done. One always gets back to the fundamental question: what is the meaning that the words convey to the ordinary man: you cannot make a rule about that. They can convey a

meaning of suspicion short of guilt; but loose talk about suspicion can very easily convey the impression that it is a suspicion that is well founded.”

[31] I believe that it is the broad impression that is conveyed by the publication that is relevant and not the meaning of each word dissected and minutely analysed in isolation. Now the facts of **Hayward v Thompson** are different from this case but the approach of Lord Denning and the principles he employed in arriving at his conclusion do commend themselves to me. Lord Denning upon close analysis of the publications recognized that they had gone further than merely reporting the fact of an enquiry and as such he found that Lewis was not applicable to those facts. Like Lord Denning, I have examined the broadcast as pleaded by both parties in respect of the publications. I have looked at the words in the context and I find too, that the report by the defendants went further than merely saying that questions were asked. The fundamental question must be: what is the broad impression the words could convey to the ordinary man on his first hearing or seeing the publication on April 13, 2018?

[32] In Lewis, Lord Devlin noted that there was no mention in the publication of the company having been suspected of fraud. He recognized that what was simply said was that the affairs of the company were being enquired into by the police. With that in mind, he made this attractive point:

“A man’s reputation may in fact be injured by such a statement even though it is quite consistent with innocence. I dare say that it would not be injured if everybody bore in mind, as they ought to, that no man is guilty until he is proved so, but unfortunately they do not.” (emphasis mine).

[33] I am also of that view that a man’s reputation may be injured even where something is said to be an allegation and he is innocent because, unfortunately, it cannot be taken as given that the ordinary man will start an analysis of an allegation with reference to the presumption of innocence. He would more readily read between the lines and read into the allegation an implication of guilt even though such a person is not avid for scandal or is unduly suspicious. An allegation may be a rumour; it may be false; it may be true. It may be defamatory; it may not be. It is therefore open to scrutiny to see how far it goes and the effect it could, not necessarily would, have on the mind of the ordinary person. So, the fact that somewhere in the text of the publication in issue, it is stated that this is a question cannot, without more, be a basis to automatically dispose of the matter as being non-defamatory. I am guided accordingly.

[34] It is my view therefore, that the publication is reasonably open to the possibility of a positive finding that the defendants went further than merely questioning the use of the state resources to facilitate private development in Monier. The publication is reasonably open to a positive finding that the defendants had repeated someone else's allegation or rumour or account - whatever it may be, imputing the commission of some impropriety. When the words are examined within the entire context of the publication, including the broadcast as pleaded by both parties, I find that they are reasonably capable of conveying the broad impression that the Claimant was misappropriating state resources for his own private benefit. I conclude too that, at minimum, the words are reasonably capable of insinuating and conveying the impression that the allegation or accusation against the Claimant is well founded.

[35] I conclude, in all the circumstances, that the meaning and effect of the terms '**I just want to ask him, it's a legitimate question I think...**' and '**So, my question is.**' are matters to be left for a tribunal of fact to say whether they are sufficient to neutralize the potentially defamatory meaning and nature of other words in the publication. It is accepted on good and persuasive authority that where words are defamatory and some are not, it is for the jury to decide the actual meanings the words do bear and not the judge on a preliminary ruling.

[36] Having said all that, I will at this point refrain from demonstrating any detailed analysis of the content of the publications alleged and from expressing any view I might have formed on any specific aspect of the publication. I heed the words of Neill, L.J. in **Keays v Murdock Magazines (U.K.) Ltd** [1991] 1 W.L.R. 1184, 1193 that:

"In many cases it may be better where the judge rules that words are capable of bearing a particular meaning for him to refrain from giving any reasons for his own conclusions thus it might be thought that these expressed reasons could influence the trial judge when summing up."

So, in adopting the words of the learned Lord Justice, I will state that I will not set out all the passages in the publication which have influenced my decision.

[37] I will simply say this: in taking the alleged publication as pleaded in the claimant's statement of claim which only differ from that as pleaded by the defendant in respect of some sentences (which incidentally would make no difference to my finding), I would conclude that the words of the publication, in their ordinary and natural meaning, are reasonably capable of a meaning that could be defamatory of the claimant. I find that it is capable of conveying to an ordinary man as the most damaging meaning, the

meanings pleaded in paragraph 6 of the claimant's particulars of claim which is tantamount to the imputation of the misappropriation of state funds and or the commission of a criminal offence.

[38] I have also given some attention in particular to the dicta of Lord Guest and Lord Pearson in **Morgan v Odhams Press Ltd.** at pages 1257 and 1268, where they stated that on the hearing of an application to strike out, the question to be determined is not whether the words are capable of bearing a defamatory meaning but whether they are arguably capable of bearing the meaning attributed to them in the statement of case. I have also noted that some have posited that this would bring the threshold even lower for the claimant and would make the defendants' application more difficult to succeed.

[39] There is also authority to say that the judge may state whether the words are capable of a less defamatory meaning whether pleaded or not by the parties. The claimant has not pleaded a less defamatory meaning neither have the defendants. In my view, a ruling on a lesser meaning is not warranted in the circumstances. For while the words, at least, may be capable of conveying a lesser defamatory meaning that there are reasonable grounds to suspect that the Claimant has fraudulently misappropriated state funds, or that the Claimant is reasonably suspected of unjust enrichment through fraud, that is a meaning which I hardly believe would readily occur to the ordinary person upon first hearing or seeing the publication (dicta in **Skuse** as to the distinction between negligence and reasonable grounds to suspect negligence applied). I conclude that in this case, it is for a tribunal of fact to simply decide whether the words actually bear the defamatory meanings attributed to them by the claimant or the non-defamatory meaning attributed to them by the defendant. In any event, it will still be opened to that tribunal, despite my ruling, to say if the words bear any lesser defamatory meaning.

[40] It is by now well established that the second requirement in an action for defamation is that the defamatory words must be shown to have referred to the claimant (See **Kodilyne, Commonwealth Caribbean Tort Law**, 245). Unless it is alleged and proved that the subject matter of the action was 'published of and concerning the claimant', the action is bound to fail (**Carter-Ruck**). There is no requirement that the claimant needs to be referred to by name. In fact, it is not essential that there should be anything in the words complained of to connect them with the claimant. It is sufficient if, by reason of facts and matters known to persons to whom the words were published, such persons would understand the words to refer to the claimant (See **Morgan v Odhams Press Ltd** [1971] 2 All ER 1156).

[41] As can be seen, I have so far found that the words are capable of conveying a meaning defamatory of the Claimant. It is for the judge to rule whether the words complained of are reasonably capable of being understood to refer to the claimant and for the jury to say whether they do in fact refer to him. The

question to be asked and considered, therefore, is whether the words are such as would reasonably lead persons, acquainted with the claimant, to believe that it was being referred to.

[42] Accordingly, I would make the following ruling:

1. The words complained of by the claimants as being published by the defendant are capable of falling within the spectrum of meanings attributed to the words in paragraph 6 of the claimant's statement of case. The words alleged by the defendant as being the publication in the News broadcast have been considered and found to be no less so.
2. The defendant's application to dismiss this application is denied and the case is to proceed to trial.
3. Unless the claimants, within 14 days of the date hereof, file and serve an amended particulars of claim pleading the exact terms of the publication on "Politically Incorrect" which was aired on the Choice Television channel that they contend bear the meaning pleaded in paragraph 4 of the particulars of claim filed herein, they shall be barred from relying on the pleadings concerning the said publication at trial.
4. The defendant is granted leave to amend its defence with respect to paragraph 6 of the claimant's particulars of claim, if necessary, within 14 days of receipt of the claimant's amended particulars of claim.
5. No reference to this judgment should be made in front of any judge who may try this case hereafter. This ruling is only on the question whether the words are capable of bearing the pleaded meaning. It is quite possible that the trial judge may think otherwise and the tribunal of fact will reject the meaning ruled on as the actual meaning: dictum of Neill, L.J. in **Keays v Murdoch Magazines** adopted in part.
6. Costs of this application shall be the claimant's, in any event, to be agreed or taxed.

Ricardo Sandcroft
High Court Master [Ag.]

By the Court

Registrar