

**EASTERN CARIBBEAN SUPREME COURT
SAINT VINCENT AND THE GRENADINES**

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

**CLAIM NUMBER: SVGHCV2014/0240
 SVGHCV2014/0242**

BETWEEN: RISHATHA NICHOLLS

CLAIMANT

AND

ARNHIM EUSTACE

DEFENDANT

BEFORE: MASTER ERMIN MOISE

APPEARANCES:

Mrs. Patricia Marks-Minors with Mr. Ronald Marks of counsel for the Claimant

Ms. Maia Eustace with Mr. Bertram Commissiong Q.C. and Ms. Vynette Frederick of counsel for the Defendant.

2019: July 2
 September 30

JUDGMENT

[1] **MOISE, M.:** These are consolidated proceedings in which the claimant asserts that she was defamed by the defendant. She was successful in her claim and Judgment was entered in her favour on 12th July, 2018, with damages to be assessed by the Master. She has now presented her application for an assessment of the damages to which she is entitled.

[2] The words which Mrs. Nicholls have complained of were spoken by the defendant on two subsequent radio broadcasts. They are as follows:

23rd April, 2014

Host: Mr. Eustace, this thing, with this, what is the real deal with this thing?

The Defendant: Well let me just, you know, I have refused from making any statement on this matter all the time you know, I want to simply say this; there's a lot of things that's been said. I've kept quiet all the time and I have not made any real statement to the press on the matter and today is the first time I am going to say something. First of all, I want to point out that by registered letter on the 14th of April, I sent the severance pay to Mrs. Nicholls.

Host: 2014

The Defendant: 14th of April

Host: Ok

*The Defendant: By registered mail. I am surprised that I am hearing that she has not gotten it but that was done on the 14th of April, that is the first thing I have to say, so I am hearing a lot of talks on this matter secondly **I want to point out that I have and the New Democratic Party when we get into office we'll have zero tolerance for corruption and petty theft, you hear me?***

Host: I hear you, I hear you.

The Defendant: I never expected to win at the Tribunal. The Tribunal is a legal process but I know how it works. All I am saying, the payment was made and the New Democratic Party Administration will have no tolerance for corruption and petty theft.' (bold added)

24th April 2014

'Host: Is it that you are....

*The Defendant: **To what I was saying yesterday, we are going to take in a strong stand on theft and corruption and so on once we get into office.***

Host: Ok.

The Defendant: Because there is too much of that going on in the country.

Host: Ok. So you were in no way hinting that your former Secretary was pinching little bit off the edges and not nice

*The Defendant: **Look, what happened is that she took money that she should not have taken.***

Host: Oh, ok.

*The Defendant: **Many times.***

Host: Oh.

The Defendant: **Ok, and that is what she was in fact paying it back.**

Host: Oooh.... So any of this was reported to anyone, this was like you know...

The Defendant: It was brought to my attention after a while.

Host: Right, and did you report it to anyone to say well you know...

The Defendant: **Yes man but in my dismissing her I raised that as one of the issues in her dismissal not the only issue one of the issues.** (bold added)

[3] The trial judge found that these words were in fact defamatory of the claimant and rejected the defendant's reliance on the defences of fair comment and justification. I highlight the following statements from the trial judge's decision which, in my view, are relevant to the assessment of damages:

(a) The trial judge noted the following at paragraph 41 of her judgment:

"Two words were used in the 23rd April broadcast which impute criminal behavior – 'corruption' and 'theft'. 'Corruption' is defined in the Merriam Webster dictionary as 'dishonest or fraudulent conduct by those in power, typically involving bribery'. 'Theft' is defined as 'a criminal taking of the property or services of another without consent'. These meanings are generally accepted and applied to those words by the notional reasonable man. They were spoken of and about Mrs. Nicholls. I am assured that on hearing the broadcast that such a listener would have associated those meanings with the use of those words.

(b) She also went on to conclude at paragraph 44 that the words spoken on 23rd April, 2014 **"meant (in their natural, ordinary and inferential meanings) and were understood by the reasonable listener to mean that Mrs. Nicholls had committed the criminal act of theft and was involved in corrupt practices."**

(c) In her conclusions on the broadcast of 24th April, 2014 the trial judge stated that **"Mr. Eustace openly accused Mrs. Nicholls of stealing money which she was in the process of paying back."**

(d) As it relates to the issue of damages, the trial judge noted that she was ***“satisfied that the accusations made about Mrs. Nicholls would likely have been widely circulated in the State of Saint Vincent and the Grenadines and maybe even outside, via the internet. The amount of general damages awarded to her must be significant enough to assuage any future attempt to resurrect the defamation or appease the sting associated with such resurrection.***

[4] With these specific findings in mind, I come now to consider the measure of damages which ought to be awarded to Mrs. Nicholls. The authors of ***Gatly on Libel and Slander*** noted the following as it relates to the purpose of general damages in defamation cases:

“The purpose of general damages is to compensate the claimant for the effects of the defamatory statement, but compensation ... is a more complex idea than it is in the case of injury to person or property by negligence... General damages serve three functions: to act as a consolation to the claimant for the distress he suffers from the publication of the statement; to repair the harm to his reputation (including where relevant, his business reputation); and as a vindication of his reputation.”

[5] The factors to be taken into account when considering damages for libel were also outlined in the case of ***Charles Hunte v. Loretta Phillip et al***¹ where Master Eddy Ventose (Ag.) (as he then was) states the following at paragraphs 18 and 19 of his judgment:

18. What is clear from this exposition is that many factors are to be taken into account including: (1) position and standing of a claimant and (2) the gravity of the allegation, especially insofar as it closely touches a claimant's personal integrity (Hunt v Times Newspaper Ltd [2013] EWHC 1868 (QB) (at [263])). In Sealy v First Caribbean International Bank (2010) 75 WIR 102, Chief Justice Sir David Simmons stated the following in relation to the quantum of damages to be paid for defamation (at [60]):

¹ANUHCv2014/0449

A court is entitled to have regard to the position and standing of the plaintiff in the nature, mode and extent of the publication; the presence or absence of an apology; the conduct of the defendant before, during and after commencement of the action; and the plaintiff's injured feelings, distress, embarrassment and humiliation.

19. It must be remembered that the main purpose of an award of damages for libel is to compensate the Claimant for the damage done to his/her reputation. The compensation paid must take into account the damage to the reputation and the other factors mentioned above in the judgment of Sir Thomas Bingham MR in John v MGN. According to the authors of Gatley on Libel and Slander, damages for defamation serve three purposes: (1) to act as a consolation to the claimant for the distress he suffered from the publication; (2) to repair harm to his reputation; and (3) as a vindication of his reputation (at para. 9.2)

THE GRAVITY OF THE ALLEGATION

[6] In considering the gravity of the allegation, I take into account the findings of the trial judge. These are accusations of significant criminal misconduct on the part of the claimant. This is made all the more stinging due to the fact that the defendant was the leader of the opposition who was in fact the claimant's employer. In his own words, the defendant highlighted the allegations as something of national interest to the extent that it is an example of the type of corruption he intended to stamp out were he to have succeeded in leading the country's government. These are grave allegations made against the claimant and the measure of damages awarded must reflect this.

THE EXTENT OF THE PUBLICATION

[7] I need not say more than to merely highlight the fact that the trial judge had already found that the words complained of ***"would likely have been widely circulated in the State of Saint Vincent and the Grenadines and maybe even outside, via the internet."*** This is a significantly broad circulation, sufficient to have caused considerable damage to the claimant's reputation, especially given the context of the job which she held prior to her termination.

THE EFFECT OF THE PUBLICATION ON THE CLAIMANT

- [8] In her witness statement, the claimant states that she was employed as the defendant's secretary for 12 years prior to her termination. This effectively led to proceedings before the labour tribunal. Such defamatory statements from a former employer must carry a particular sting and have a negative impact on the claimant emotionally and otherwise. She states that this has led to broken relationships with family and friends. She states that she indicated publicly, her intentions to take legal action as a result of what was said about her. She described her family as a respectable Christian family but did not feel comfortable returning to church after the allegations were made. Her husband corroborates this in his own witness statements and speaks to the emotional state that she was in.
- [9] The claimant states that she was unable to find employment and this has significantly impacted her finances. She was contacted by the banks due to the delinquent status of her loans and she claims to have had one of her accounts frozen. For my part, whilst I do appreciate that the public degrading of the claimant in this way would have had a negative impact on her future employment, I do consider that, to some extent, the financial burden she now faces is as a result of her being unlawfully dismissed. She has been successful in seeking an order for compensation for this dismissal and this is a factor which ought to be taken into account.

THE ASSESSMENT

- [10] As Lord Bingham noted in the case of *John v. MGN Ltd.*² in assessing damages for libel the court is to ensure that "***broadly comparable cases led to broadly comparable awards.***" In that regard, I am to consider the award of damages granted in similar cases to determine a fair award to be made to the claimant. There is no precise calculation as no two cases are entirely similar. However, an assessment of awards granted in this jurisdiction will assist the court in coming to a just result.
- [11] The claimant refers to the case of *Victoria Alcide v. Helen Television Systems Ltd*³. In that case, the claimant was a deputy director of the island's correctional facility. She was slandered

²[1995] 2 All ER 35

³SLUHCV2011/0398

when insinuations of her engaging in intimate relationships with an inmate were made on air. She was awarded the sum of \$100,000.00 in general damages.

- [12] Counsel for the defendant argues that the range of damages in the **Victoria Alcide** case is out of proportion to the circumstances of the present case. Counsel refers to the case of **Edwardo Lynch v. Ralph Gonsalves**⁴, where it was stated that those who have high and distinguished profiles should receive a higher award than some with a lesser public profile. That case related to the defamation of character of a sitting Prime Minister, as opposed to Mrs. Nicholls. However, whilst Mrs. Nicholls was a secretary, I note that she was the secretary to the leader of the opposition; whose profile is in itself somewhat higher than as submitted by the defendant.
- [13] Counsel for the defendant refers the court to the case of **Charles Hunte v. Loretta Phillip et al**⁵ where the sum of \$25,000.00 was awarded for what was a very broad publication. The defendant refused to apologize for what were imputations of professional misconduct on the part of the claimant. However I am of the view that the words complained of in the **Charles Hunte** case, are significantly milder than those spoken by the defendant in the broadcasts of 23rd and 24th April, 2014. Mr. Eustace's comments were more than mere imputations but direct allegations of theft and criminal conduct which he continued to justify during the course of the proceedings. I am satisfied that the claimant is entitled to a higher award in the present case than that which was awarded in **Charles Hunte v. Loretta Phillip et al**.
- [14] In my view, the only distinguishing element between the gravity of the libel in the case of **Victoria Alcide** and **Edwardo Lynch** is that the claimants would have had a higher public profile. What was alleged against the claimant were damaging and the trial judge was careful to express her own view that Mrs. Nicholls was entitled to a sufficient award to adequately compensate her for this damage to her reputation. However, I note that counsel for the claimant seeks a separate award for each of the cases which were consolidated. However, given that the radio broadcasts were a day apart and the allegations were substantively similar in nature I am of the view that the award must be one award in keeping with the judge's own consolidation of the two cases. I would therefore

⁴CIVIL APPEAL NO.18 OF2005

⁵ANUHCv2014/0449

award Mrs. Nicholls the sum of \$120,000.00 in general damages for the words spoken on the radio program on 23rd and 24th April, 2014.

- [15] Regarding the claim for aggravated and exemplary damages I have expressed the view in other cases that where there is no such award made by the trial judge then it would not be for the master to do so. It must always be observed that the role of the master is to assess the damages which have been awarded by the trial judge. In this case Henry J made a specific finding as it relates to aggravated damages where she stated that the claimant ***“contended that Mr. Eustace has also aggravated the damages by his actions and conduct after he had slandered her. There is no evidence that Mr. Eustace repeated the defamatory words after 24th April 2014. I find that he did not.”*** Her Ladyship goes on to state the following:

Mrs. Nicholls submitted that Mr. Eustace's conduct has been one of defiance and showed a 'wrong but strong attitude'. She argued that he attempted to use his office as Leader of the Opposition to bully and pressure her into silence and is unrepentant for the damage he caused her. No evidence was led which demonstrated any attempt by Mr. Eustace to use his office to bully or pressure Mrs. Nicholls. I reject that assertion.

- [16] In light of those specific findings I would decline to make an award for aggravated and exemplary damages. In the circumstances I make the following orders:

- (a) The defendant will pay the sum of \$120,000.00 in general damages to the claimant;
- (b) The Defendant will pay prescribed costs in the cause in the sum of \$17,500.00;
- (c) The defendant will also pay costs in the sum of \$1,500.00 on the assessment of damages;

Ermin Moise
Master

By the Court

Registrar