

**EASTERN CARIBBEAN SUPREME COURT
SAINT CHRISTOPHER AND NEVIS
(Nevis Circuit)**

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

Claim Number: **NEVHCV2018/0008**

Between

Kevin Huggins

Claimant

and

Nisha Vanmali

Defendant

BEFORE: Justice Ermin Moise (Ag.)

APPEARANCES:

Ms. Midge Morton with Ms. Maurisha Robinson for the Claimant
Mr. Adrian Daniel with Ms. Michele Slack for the Defendant

2019: January, 21st
March, 5th

Judgment

- [1] **Moise, J (A.g).**: This is an assessment of damages in defamation proceedings. Judgment was entered in default due to the defendant's failure to file an acknowledgement of service. This matter has had a protracted history since the entry of this judgment and it is important to place some matters into context prior to the decision on assessment.
- [2] Affidavit evidence and legal submissions were filed in support of and opposition to the assessment in May, 2018. Prior to that, the defendant filed with the court a notice of intention to be heard on assessment. Despite this, the defendant has failed to appear on numerous occasions on which this matter was set down for assessment despite an initial indication that she would appear via skype due to the fact that she resides abroad. Counsel on record for the defendant applied for and was granted leave to be removed from the record. I also note that on the morning of the hearing on 21st January, 2019 the court was provided an email in which the defendant's father sought to explain her absence and requested an adjournment. The court was not of the view that this is a proper manner in which the defendant is to seek an adjournment and note's further that there has made no proper response to the

application by counsel to be removed from the record. In those circumstances it was determined that there would be no further delays of the assessment and the witness statement of the defendant would be struck out given her continued absence and failure to appear for cross examination; whether via electronic means or otherwise. The matter now comes for assessment on paper with the court giving due consideration to the witness statement of the claimant and the legal submissions filed by both parties.

- [3] The defendant was a medical student pursuing her studies at the Medical University of the Americas (MUA) in Nevis. She was also a tenant in premises leased to her by the claimant. She took possession of the leased premises on 15th April, 2017. Due to complaints made by the defendant concerning the apartment which she occupied, in October, 2017 she was moved to another apartment in the same complex. According to the statement of claim, there remained a dispute between the parties regarding the defendant's complaint about the first unit which she occupied. The parties therefore exchanged a number of emails and in one such email on 16th October, 2017 the defendant stated the following:

"Kevin,

There was absolutely no windows left open which you would have noticed since you claim to have been in my apartment. These were the same areas that flooded from the hurricane. In which you respondent "even my house gets flooded from grout." If it's physically impossible. I'm not sure why you'd make this claim. If you took a second to look at the photographs, you would see areas of flooding that are nowhere near the windows. And the areas near the windows are completely dry.

You have threatened me multiple times over email. You have a history of extortion and fraudulence, that anyone with internet access can see. You will be paid once you send the corrected amount: which excludes laundry facility charges on Sept 8th (since I have the student who was doing my laundry able to prove this) and remove the cleaning fees off 5-3 unit."

- [4] These words were not only sent to the claimant via email but were also emailed to Charlene Huggins who is an employee of the MUA and to Sterling Hyliger, who is stated to be the manager of the serenity apartments. The claimant further asserts that this correspondence was forwarded to the defendant's father who resides abroad. The claimant asserts that he informed the defendant of the offence taken to the words published and demanded an apology. When this was not forthcoming he commenced this action for defamation.

The Assessment

[5] In Gately on Libel and Slander the purpose of general damages in actions for defamation is described as follows:

“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.”

[6] In addition to this, the claimant refers the court to the case of ***Charles Hunte v. Loretta Phillip et al***¹ in which Master Eddy Ventose (A.g) (as he then was) outlined the principles which the court ought to consider in an assessment of damages for defamation. In particular he states the following at paragraphs 18 and 19:

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]):

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 Gately on Libel and Slander, damages for defamation serve three purposes: (1) to act as a consolation to the claimant for the

¹ ANUHCv2014/0449

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)

- [7] As it relates to the position and standing of the claimant he states in his witness statement that he is a businessman who engages in the business of renting apartments, primarily to students of the Medical University of the American in Nevis. He further asserts that at the time of the publication he was a member of the board of directors of the Bank of Nevis Limited and the Bank of Nevis International Ltd and in fact served as the chairman of that organization.
- [8] As it relates to the gravity of the allegation, there can be no doubt that the words published by the defendant are serious. She accuses the claimant of extortion and fraud and further that he has threatened her. It is however unclear as to what the precise allegation of threats relates to. I note further that the defendant has not offered an apology for her actions which have clearly caused distress and harm to the claimant's reputation. Whilst it can be said that the publication was not broad in scope, I accept that it was published to persons directly related to the claimant's business interest at the Medical University of the Americas. These are factors which the court will take into consideration.
- [9] In the case of *John v. MGN Ltd.*² Sir Thomas Bingham encouraged that where the issue of damages for libel is to be determined by a judge sitting without a jury, this would ensure that ***"broadly comparable cases led to broadly comparable awards."*** In that regard, the court is entitled to consider, as much as possible, awards granted in similar cases in order to determine what reasonable compensation ought to be granted to the claimant for the damage caused to his reputation.
- [10] The claimant refers to a number of authorities in which the range of damages is significant. These include the case of *Hubert O'Neal v. Julian Willock D.B.A advanced Marketing and Professional Services Ltd et al*³ where the court awarded \$20,000.00US in aggravated damages to the claimant. In that case the claimant was a medical doctor and politician. The words complained of had very wide circulation as it was published on an online news website which contained blogs onto which certain defamatory comments were also posted.

² [1995] 2 All ER 35

³ BVIHCV2012/0038

[11] Reference was also made to the case of **Roxane Linton v. Louisiana Dubrique and the Attorney General**⁴, where the claimant was awarded in the sum of \$120,000.00EC in damages. In that case, the claimant resigned her job as a result of the publication which had a wide audience, as emails containing the defamatory statement were sent to 100 recipients. In the case of **Dr. Philbert Aaron v. Abel JNO Baptiste**⁵ the words complained of were contained in a song which was sung continuously during the carnival season in Dominica. He was awarded the sum of \$75,000.00 in general damages as well as \$50,000.00 and \$5,000.00 for aggravated and exemplary damages respectively. In reliance on these authorities the claimant states that the sum of \$65,000.00 is reasonable compensation for the damage caused to his reputation.

[12] The defendant argues in response, that nominal damages would adequately compensate the claimant for whatever damage was caused to his reputation. It is argued that the words complained of had a limited publication in that the email was sent to the claimant and copied to only 3 persons. Further, the defendant argues that there is no evidence of reputational damage suffered by the claimant. It is also argued that the claimant does not have a high and distinguished profile, nor is he a person of national repute.

[13] The defendant refers to the case of **Dorset Mitchel v. Keith Gurley**⁶ where the claimant was awarded \$5,000.00 in damages. It is argued that this is a comparable case as the words were published to only a handful of persons. However, the distinguishing element is that these were words spoken in the presence of other persons as opposed to an email which has the potential to be published to a much broader audience than that initially envisaged by the defendant.

[14] In my decision on a preliminary application in the present case, I expressed the view that the damages awarded by acting Master Ventose (as he was at the time) in the case of **Charles Hunte v. Loretta Phillip et al** was along the range of awards the claimant may be entitled to. In that case Master Ventose carefully assessed a number of authorities and determined that an award of \$25,000.00 was sufficient to vindicate the claimant against the damage done to his reputation. My observations then were preliminary. However, after assessing the authorities in more detail I am of same view now that I

⁴ DOMHCV2011/0062

⁵ DOMHCV2013/0015

⁶ GDAHCV2005/0060

was then. The sum of \$28,000.00 is sufficient to vindicate the claimant for whatever damage was done to his reputation.

[15] In the circumstances I make the following orders and declarations:

- (a) The defendant is to pay the sum of \$28,000.00 in damages to the claimant;
- (b) The defendant is to pay interest on the damages awarded at a rate of 6% per annum from the date of judgment until the damages are paid in full;
- (c) The defendant will pay costs in the sum of \$4,000.00 to the claimant.
- (d) The defendant is prohibited, whether by herself, servants or agents, from further publication of the words contained in the email dated 16th October, 2017 or any similar words which may be defamatory of the claimant.

**Ermin Moise
High Court Judge**

By the Court

Registrar