

**EASTERN CARIBBEAN SUPREME COURT
SAINT LUCIA**

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

SLUHCv2011/0199

BETWEEN:

RICHARD FREDERICK

Claimant

and

EUGENE GEORGE

Defendant

Appearances:

Mrs. Wauneen Louis-Harris for the Claimant
Mr. Duane Jn Baptiste for the Defendant

2018: July 27.

JUDGMENT

[1] **WILKINSON J.:** Historically, at the end of October 2010, Saint Lucia was one (1) of the Windward Islands which suffered the effects of Hurricane Tomas. 14 persons were recorded as being killed by the hurricane¹. At the passage of Hurricane Tomas, Mr. Richard Frederick (Mr. Frederick) was a Member of Parliament and the Minister for Physical Development, Housing, Urban Renewal, the Environment and Local Government in the Government of Saint Lucia.

[2] Mr. Frederick, an attorney-at-law, is from the Quarter of Micoud and entered the political arena in 2006, when he contested the March 2006, by-election as an independent candidate. He won the by-elections.

¹ Wikipedia

- [3] Mr. Eugene George, a Pastor by profession, is also from the Quarter of Micoud. He is the Public Relations Officer for the main opposition party, the Saint Lucia Labour Party.
- [4] Mr. Frederick and Mr. George have known each other since childhood.
- [5] On 25th February 2011, Mr. Frederick filed his claim form and statement of claim seeking by way of relief: (a) damages for libel, (b) costs, (c) interest and (d) any other relief as the court deems just.
- [6] By his statement of claim, Mr. Frederick alleged that on 23rd November 2010, at the Office of the Political Leader of the Saint Lucia Labour Party in the City of Castries, at a well-attended press conference and which included representatives from Daher Broadcasting Service (DBS), Helen Television Service (HTS), and The Star Publishing Company, Mr. George as the Public Relations Officer of the Saint Lucia Labour Party published and broadcasted of Mr. Frederick the following defamatory statement of:
- “... about a week ago there was a Coast Guard vessel that arrived in St. Lucia ... the vessel had food and water and also several loads of building supplies ... the Minister responsible for housing and the Parliamentary Representative for Castries Central took charge of the situation ... several of his close associates and political operatives ... came along side the vessel, they were involved in the unloading of the container and ... they were securing some of the supplies for their personal use. Reports ...indicate ... that materials and supplies are being assigned to election candidates of the United Workers Party, who are not even elected Parliamentary Representatives. In view of these irregularities the St. Lucia Labour Party would like to call upon Prime Minister King to clarify the situation surrounding the Trinidad and Tobago relief supplies and to bring an end to the partisan distribution of aid that is taking place in the country. The St. Lucia Labour Party is also concerned that the distribution of building materials has been left in the hands of an individual who ... is a total failure as relates to the housing portfolio ... one wonders why the distribution of housing material should be left in the hands of an individual who is an abject failure. The St. Lucia Labour Party is therefore calling on the Prime Minister to furnish the country with a full explanation because the donors who continue to donate relief supplies to St. Lucia ... are very

concerned about what is going on with the aid and how it is being distributed”

- [7] Mr. Frederick alleged that Mr. George well knew and intended that his words, or their gist, would be republished in the press, and/or authorized their repetition.
- [8] Mr. Frederick pleaded that in their natural and ordinary meaning the words complained of meant and were understood to mean that: (a) Mr. Frederick unilaterally assumed control of building supplies from Trinidad and Tobago; (b) Mr. Frederick caused such building supplies to be pilfered by persons over whom he exercised control; (c) Mr. Frederick caused such building supplies to be distributed in such a wrongful manner as to cause concern to the donors of such aid.
- [9] Mr. Frederick pleaded that as a consequence of the publication, his reputation both personally and in his public office had been seriously damaged and he had suffered considerable distress, anxiety and embarrassment.
- [10] Mr. George filed an acknowledgement of service on 10th March 2011, and therein he indicated that he intended to defend the suit.
- [11] On 29th March 2011, Mr. Frederick applied for judgment in default of defence supported by affidavit.
- [12] On 1st April 2011, Mr. George filed his defence. The defence was due on March 28th 2011. It was 4 days late. There was no order granting leave to file the defence out of time.
- [13] On 6th July 2011, the application for judgment came on for hearing. Only Counsel for Mr. Frederick appeared. The Court entered judgment for Mr. Frederick with damages to be assessed, ordered that affidavits in support of assessment, written submissions with authorities be filed by 31st August 2011, and costs was to be

fixed on assessment. The matter was adjourned to 9th November 2011, for assessment.

- [14] On 6th September 2011, Mr. Frederick filed an application supported by affidavit seeking an extension of time to comply with the order to file his submissions and authorities.
- [15] On 21st February 2012, Mr. George filed an application supported by affidavit seeking an order that the default judgment entered on 6th July 2011 be set aside.
- [16] On 12th June 2012, Mr. George filed an amended application supported by his second affidavit seeking an order that the default judgment entered on 6th July 2011, be set aside. There was also exhibited to the application a draft defence.
- [17] In regard to the disclosed draft defence, the Court observes that (i) it did not state that it was an amended defence as the Court recalls that there was a defence filed on 1st April 2011, albeit out of time and without the leave of the Court, and (ii) there was no order sought seeking an extension of time to file the second defence and the second defence was different to that filed at 1st April 2011. That left the Court to wonder what is to be made of the first filed defence?
- [18] On 13th November 2013, when the matter came on for hearing, Carter J (Ag.) stated that the Court would proceed to hear the applications as filed first in time. On that day Carter J. ordered that the application for assessment of damages would be heard first in time and Mr. George was granted leave to file an affidavit in reply to the application for assessment. The hearing was adjourned to 21st November 2013.
- [19] On 15th November 2013, Mr. Frederick filed an application supported by affidavit seeking an order that the amended application of Mr. George filed on 12th June 2012, be struck out with costs to Mr. Frederick.

- [20] On 20th November 2013, Mr. Frederick filed an amended application supported by affidavit seeking an order that Mr. George's application filed 12th June 2012, be struck out with costs.
- [21] The pending applications next came on for hearing on 26th November 2013; the hearing was adjourned due to Counsel for Mr. Frederick being occupied in another Court. The hearing was adjourned to 11th December 2013.
- [22] The pending application came on again 11th December 2013, however due to both Parties having filed further documents and which documents were not before the Court, the hearing was adjourned to 4th February 2014.
- [23] The pending applications came on as scheduled on 4th February 2014. At this date, documents filed by both Parties were missing. The hearing was adjourned to 24th February 2014. On 24th February 2014, the Court heard Counsel for both Parties on the assessment on damages.
- [24] Approximately 1 year later, on 25th February 2015, the 2 pending applications came on for hearing. By the end of the Court's sitting, the hearing of Mr. George's application to set aside the default judgment had not yet been concluded. The continuation of the hearing of Mr. George's application and the hearing of Mr. Frederick's application were adjourned to a date to be fixed by the Registrar.
- [25] The 2 pending applications next came on for hearing on 9th March 2015. On this date, Counsel for Mr. Frederick informed the Court that she had not been informed of the fixture and up to that morning the matter was not listed on any cause list. She had showed up as a courtesy to the Court only because she had been informed by Counsel for Mr. George that the matter was on this day. Further, she said, she was now committed to fixtures before Belle J. The Court adjourned the continuation of the 2 pending applications to a date to be fixed by the Registrar.

- [26] According to the Court's record, the matter did not return to any cause list for continuation of the hearing of the 2 pending applications. That being so, the only hearing completed and upon which the Court can render a decision, is that of the assessment of damages.

Law

- [27] The first reference is to The **Civil Code** articles 985 and 989H provides:
- “985. Every person capable of discerning right from wrong is responsible for damage caused either by his act, imprudence, neglect or want of skill, and he is not relievable from obligations thus arising.
- 989H. In an action for slander in respect of words calculated to disparage the plaintiff in any office, profession, calling, trade or business held or carried on by him at the time of the publication, it shall not be necessary to allege or prove special damage, whether or not the words are spoken of the plaintiff in the way of his office, profession, calling, trade or business. *(Added by Act 34 of 1956)*”
- [28] In the past, the standard that defined a defamatory statement was that it was a statement which exposed a man to hatred, ridicule or contempt or caused him to be shunned or avoided by right-thinking members of society generally. It was considered to discredit a man. Today, in **Tort Law**² the authors have updated that view and state that a statement is defamatory if on reading or hearing it, it would make an ordinary, reasonable person tend to (a) think less well as a person of the individual referred, (b) think that the person referred to lacked the ability to do their job effectively, (c) shun or avoid the person referred to, (d) treat the person referred to as a figure of fun or an object of ridicule.

Findings and Analysis

- [29] At this juncture the Court need not concern itself with whether or not the publication is defamatory because Mr. Frederick has obtained a default judgment and so for all intents and purposes, the publication is deemed defamatory. All that is left for the Court to do is to assess the general damages to be awarded as a

² McBride and Bagshaw, Longman, 2008, 3rd edition

result of the defamatory statement. There was no exemplary or aggravated damages sought.

- [30] For the record, the Court observes that (a) Mr. George despite Carter J (Ag) giving him leave on 13th November 2013, to file an affidavit, he did not file one, and (b) Mr. George did not exercise his rights pursuant to **CPR 2000 rules 12.13 and 16.3(3) (c)** and file a Form 31 giving notice of his intention to be heard on assessment (Form 31 came into effect by SI No.5 of 2013.).
- [31] According to Mr. Frederick's affidavit in support of the assessment, Mr. George had a prepared speech and afterwards answered questions from the press. Following the press conference, the statement was repeated several times in the English and popular Creole radio programs. It was also the subject of several radio call-in talk-shows for days and during those shows. Mr. Frederick says that he was criticized and vilified.
- [32] Mr. Frederick deposed that he was disparaged in his public office as a Minister of Government and this was evident on listening to the callers to the radio call-in talk-shows. He also felt that he was shunned or avoided by several respectable persons because of the press statement.
- [33] Mr. Frederick deposed that he also felt quite irritated and distressed by Mr. George's press statement because of its negative impact. He was disappointed because although some persons who knew the truth had called in to the radio call-in talk-shows to dispute the press statement, this did not quell the continued abuse that he received.
- [34] The Court when considering Mr. George's press statement is to (a) look at the words published and assign to them their natural and ordinary meaning standing in the shoes of an ordinary, reasonable person, (b) look at the publication as a

whole, and (c) the circumstances of publication. The Court will at times also be required to determine whether there is true or legal innuendo.³

- [35] This was no statement made “*off the cuff*” at an ordinary event, but rather one made at a deliberately planned event – a press conference. What does the statement say? Looking at the natural and ordinary meaning of the words, the Court agrees that in the first instance they suggest that Mr. Frederick with his particular ministerial portfolio, was in charge of certain relief supplies about to enter Saint Lucia from Trinidad and Tobago.
- [36] The words further suggest that some wrongdoing has occurred in relation to donated food, water, other supplies and building materials. That wrong doing, which Mr. Frederick describes as pilfering, was being committed under the charge of Mr. Frederick as it was being carried out by persons known to him and who were his “close associates” and “political operatives”.
- [37] The words further state that Mr. Frederick was partisan in his approach to the distribution of the food, water, other supplies and building materials in that the items were being assigned to election candidates of the United Workers Party and not even to Parliamentary Representatives. No interpretation is needed here.
- [38] The statement then goes on to describe Mr. Frederick as a person who is ‘*an abject failure*’ and one who has failed in relation to his portfolio. It appears to the Court that article 989H of the **Civil Code** is to be considered here. According to the authors of **Tort Law**⁴ such statement which fixes Mr. Frederick as a person who lacks the ability to do his job, can also lead the Court to finding that a defamatory statement had been made. The Court need not go any further having already stated that by the default judgment the statement is deemed defamatory.

³ Halsbury’s Laws of England, 4 ed. Vol.28 paras. 42 through 47.

⁴ Ibid.

- [39] Overall the Court would conclude that the words in their natural and ordinary meaning were certainly meant to fix Mr. Frederick as (a) being a failure in his portfolio, (b) corrupt by way of being partisan and use of close associates and political operatives, dishonest practices and lacking integrity in his manner of dealing with the donated food, water, supplies and building materials.
- [40] The passage of a hurricane is generally a horrific and traumatizing event for most persons who endure it and more so for persons who have suffered as a consequence of the passage of a hurricane. For a person with Mr. Frederick's ministerial portfolio at that time and in those circumstances to be so charged, would have had an even greater impact than in ordinary times the Court believes.
- [41] The Court now examines the publication as a whole. While the Court was not provided with the entire transcript from the press conference, the matters cited were certainly meant for the public to overall view Mr. Frederick in a negative way. Again the Court repeats itself, the statement must be measured against the events immediately preceding it for its full impact on a community – it was a community immediately coming thru a hurricane. A community with many desperate persons in it.
- [42] The Court now looks at the circumstances surrounding the publication. The word "circumstance" can be described as meaning the details such as place, manner, conditions, and other influencing factors. The place of publication was the office of the Political Leader of the Saint Lucia Labour Party at Castries, the Party in Opposition with Mr. George, the Public Relations Officer of that Party hosting. That alone tells the ordinary reasonable person, that more than likely, the statement will have a "*political flavour*".
- [43] That the publication occurs at a press conference and according to Mr. Frederick, in attendance at the press conference were included members of both the television and print press. There was a prepared statement and after the

statement was made, questions from the press were answered by Mr. George. This the Court believes it is reasonable to say, assures publication on those media. It was also public knowledge that press entities today, not only publish in the traditional modes of television, radio and print, but also use such social media platforms such as Facebook, Instagram and Twitter. All with a world-wide reach. Mr. George was therefore assured that his press statement would reach the whole world. In addition, publication on social media is available 24 x 7 and never goes away. It is usually permanent.

- [44] The Court now comes to consideration of the award. The Court has looked at the awards made in **SLUHCV 2000/0411 Kenny D. Anthony v. Vaughan Lewis** and **Civil Appeal No. 22 of 2003 Keith Mitchell v. Steve Fassihi et al.** Immediately apparent is that the claimant and appellant in these 2 cases are like Mr. Frederick, Members of Parliament, and furthermore both were at the relevant times Prime Ministers of their respective countries, Saint Lucia and Grenada. At Grenada, according to the facts distilled by Gordon JA, at paragraph 2, the allegation was that Dr. Mitchell had used his office to harbour criminals, assist in money laundering, of having his election campaign financed by criminals, of using public monies to set up private family businesses, appointing known criminals as Honorary Councils and Ambassadors at large and other defamatory matters. At Saint Lucia, according to the publication cited by Edwards J at paragraph 4, it stated that when the country becomes corrupt, and investors knew that they had to hand in dollars before they could execute a contract, there would be no investment except by the mafia, money launderers, bobolists etc. The statement went on to add that it wanted to warn the public that when the government gave contracts to people who set up financial business, then in no time the people were handing over \$250,000.00, and the nation was not told where the money was put. The statement continued that Dr. Anthony just take the money and put it behind his back and nobody knew where it was.”

[45] At 2006, Edwards J awarded Dr. Anthony \$60,000.00 as compensatory damages, aggravated damages, and exemplary damages.

[46] At 2004, Gordon JA confirmed the high court award of general damages of \$100,000.00, and further awarded \$50,000.00 exemplary damages.

[47] The Court is of the view that the statements in both cases cited are more egregious in their allegations than that of Mr. George, and indeed, the statements were made about the Prime Ministers who head the government of their respective countries. Looking in particular at the Dr. Kenny Anthony case, the Court believes that a fair award for general damages would be \$50,000.00, and will so order.

[48] **Court's Order**

1. Mr. Frederick is awarded general damages in the sum of \$50,000.00.
2. Interest is awarded at the rate of 6 percent on judgment with effect from the date of the default judgment – 6th July 2011.
3. Prescribed costs is awarded.
4. The pending applications of Mr. George and Mr. Frederick are to be fixed for hearing.

**Rosalyn E. Wilkinson
High Court Judge**

By the Court

Registrar