

IN THE EASTERN CARIBBEAN SUPREME COURT

SAINT LUCIA

IN THE HIGH COURT OF JUSTICE

CLAIM NO.SLUHCV2015/0038

BETWEEN:

MARY LILIA AUGUSTE

Claimant

and

CORNELIUS HERELLE

Defendant

Appearances:

Ms. Reneé St. Rose for the Claimant

No appearance for the Defendant

2017: May 25th.

JUDGMENT

- [1] **WILKINSON J.:** On January 22nd 2015, Ms. Auguste filed her claim form and statement of claim and therein she sought the following relief: (i) damages including aggravated damages, (ii) an injunction restraining the Defendant whether by himself, his servants or agents or otherwise howsoever, from further publishing or causing to be published the said or similar defamatory words about her; (iii) costs on an indemnity basis and/or wasted costs, (iv) interest on any sums awarded, and (v) further or other relief.
- [2] Ms. Auguste alleged at paragraph 4 of her statement of claim said that Mr. Herelle on September 25th 2014, falsely and maliciously published the defamatory publication complained about and which was disparaging, false, scandalous, spiteful, and defamatory of her on the social media network, Facebook.
- [3] Ms. Auguste alleged at paragraph 11 that further or in the alternative that by way of innuendo, the words published were meant and understood to hold the meanings particularised therein.

- [4] There was disclosed to the Court a copy of the publication as downloaded on October 2nd 2014 at 3.31p.m. The Court observed immediately that not only was there the publication complained off, but there was also published a picture of Ms. Auguste with the publication and that at the date downloaded, there were 35 pages of a thread of comments generated by the publication. The publication read as follows:

"WE NEED TO STOP SPINNING, TELL THE TRUTH THE WHOLE TRUTH by Corneilus Herelle

People like Sidney Dantes who is normally one of the voices of reason on here, decided to run with a story without checking a second source or getting the other side of that story. He wrote about Lilia Auguste and the CSA's refusal to pay her the \$200.00. And if he and his supporters have their way, the CSA President would be hung by her nuts (which she does not have). Sidney and Company – here is the other side of that ...story.

We have a Public Service Commission, and you should have checked with them for the other side of that story before you draw your battle lines. I do not take sides, I like truth. Here is what I was told the "real" situation is. They offered Lilia Auguste \$200.00 to appease here (her), but she turned it down and requested \$350.00 the \$300.00, that was for taking on no additional duties (work). She asked for that because the accountant was asked to take on additional duties, so they adjusted the accountant's salary accordingly. Do you think she should get an increase for taking no (on) additional duties? When they agreed to give her \$200.00 she wanted more.

Stay with me now, you may find this interesting. She resigned her post as Industrial Relations Officer from the CSA to take up a job at Public Services that never existed before. New post created for her for selling out the CSA. CSA gave her a gratuity of \$160,000.00 when she resigned. A few years ago, she also got about \$60,000.00 when she lied and said that she had to go for open heart surgery: she never had open heart surgery. So she lied. Do you think she should have lied to get that \$60,000.00?

While she was working at the CSA her priority was to attend to SLPs and SLP business while turning away those she knew were not SLP and others she was not sure about (confirmed by several people). She has no formal qualifications, yet she was earning more than people in the Public Service with degrees and many years of service. I was told about \$5000.00 or more. She has a sense of entitlement, coupled with her greed, bitterness and dishonesty.

Since you think she is right. I implore you to have her post a defense, or call these lies. Tell her there are lies, damn lies and statistics. The numbers are there to tell the story.

When (we) should really stop seeing colours, mainly red or yellow and start doing some critical, objective thinking. Our burning desire should be to tell the truth, and to look for the thinks (things) that are wrong and try to address those. We should call a spade, a spade – regardless of who is holding or using that spade. Even if it is our colour. A true friend tells you the truth whether it is pleasant or not. Our colour bashing is blurring our vision, and objectivity.”

- [5] As is customary in defamation suits, a letter before action was issued on October 8th 2014 by Ms. Shellone Surae, Counsel for Ms. Auguste and delivered to Mr. Herelle via email. Amongst other things in the letter, Mr. Herelle was reminded that the publication was being easily accessed over the worldwide web and told that Ms. Auguste had been bombarded with international telephone calls and messages inquiring about the publication. He was also informed that his publication had escalated and caused severe emotional stress and embarrassment to Ms. Auguste and her family. The letter demanded that Mr. Herelle retract the publication and comments following it on the Facebook page of SLAPS and that he proffer a suitably worded apology in the same widely publicized manner to Ms. Auguste within 48 hours of receipt of Counsel's letter. Mr. Herelle was further informed that should the publication not be removed from Facebook and any other forum where it was published by him and Ms. Auguste not receive an apology published in similar manner, then legal proceedings would be commenced against him.

- [6] In response to Counsel's letter, Mr. Herelle via email sent a letter of response to Counsel dated December 1st 2014. His letter read:-

“Upon first reading your letter to me, I was not sure what to make of it. There are many things wrong including an outright lie, but I will not try this case through this medium. I will save that for the “legal proceedings” which your letter said will be “commenced against” me...

My post was not difficult to understand, anyone with a basic command of the English Language would have clearly understood what I said, thereby avoiding the many mistakes and accusations you made....

In light of the tardiness of your handling of the issue, including your outright lie(s), you are not in a position to “demand” that I “retract” my post, not (nor) will I acquiesce to your demand for an apology.

If after careful calculation of the costs to both sides, your strategist tell you that court is the answer, then this negro (me), will have no choice but to show up in court, because what you are trying to do here is wrong on many levels.

If after seventy-two hours (72 hrs) of receipt of this letter via e-mail, I have not heard from you, I will assume you have decided not to “commence legal proceedings”...

Yours faithfully,

(signed)

Cornelius K. Herelle"

- [7] Mr. Herelle published both Ms. Auguste's Counsel's letter to him and his letter of response on Facebook. These publications also generated comments.
- [8] Mr. Herelle was served the claim form, statement of claim, supporting documents and the order of the Court for alternative service by email at corneliusherelle@gmail.com on April 7th 2015. There was no acknowledgment of service or defence filed in response to the claim.
- [9] On April 29th 2015, Ms. Auguste applied for judgment in default of acknowledgment of service with damages to be assessed. On May 22nd 2015, judgment in default of acknowledgment of service was entered and assessment of damages was fixed for November 18th 2015, and then adjourned. Ms. Auguste filed a further affidavit in support of the assessment of damages on July 7th 2015.
- [10] The assessment of damages came on for hearing on April 27th 2016, and thereat on the application of Ms. Auguste, the hearing was adjourned to give her an opportunity to serve Mr. Herelle with notice of the hearing. The matter was adjourned to July 21st 2016, and leave was granted to serve Mr. Herelle by email notice of the new hearing date. On July 5th 2016, Ms. Deborah Regis, administrative assistant at the law firm of Ms. Auguste's attorneys-at-law filed an affidavit of service setting out that amongst other things, Mr. Herelle was served the Court's order of April 27th 2016, which fixed the new hearing date. Like his response to the claim form and statement of claim, Mr. Herelle filed no documents in regards to the assessment of damages. The hearing on assessment of damages occurred on July 21st 2016.
- [11] Ms. Auguste describes herself as an honest, diligent, objective and fair individual and said that she displayed these qualities while employed with the CSA. On a personal level she suffers from a heart condition.
- [12] Historically, Ms. Auguste was employed with the Civil Service Association of Saint Lucia (hereinafter "CSA") between the years 1985 to 2014. Between the years 2008 - 2014, Ms. Auguste held the post of assistant general secretary/industrial relations of the Association. According to her, she was the face of the CSA for many years as in the capacity of assistant general secretary/industrial relations she was responsible for representing the CSA on tribunals and other committees established by the Minister of Labour. She also represented the CSA on committees and boards at the local, regional and international level. Amongst her duties as assistant general secretary/industrial relations she also conducted appraisals of employees who were under her supervision.

- [13] Ms. Auguste has moved on from the CSA and as of April 15th 2014, has been employed by the Government of Saint Lucia in the Civil Service attached to the Ministry of Public Service, Information and Broadcasting Public Services Department, Negotiations Unit. At this Ministry, she is responsible for providing administrative support to the Government negotiating team, rendering advice and expertise to the Director of Negotiations on industrial relations issues, conducting research into particular industrial relations issues and representing the Negotiations Unit at various forums.
- [14] Ms. Auguste is of the view that the publication says and implies several negative things about her character and person. Amongst those things she understands the publication to mean and say:-
- (a) she was a sell-out, having sold out the CSA; that she was a dishonest person and had been dishonest and deceptive throughout her tenure with the CSA; and that because of her dishonest nature, she caused false medical reports to be prepared to gain monetary benefits from the CSA in the sum of \$60,000.00;
 - (b) she was a greedy person who would go to great lengths to gain financially and do so using dishonest means;
 - (c) that she was politically motivated, unfair and unbiased in the performance of her duties with the CSA;
 - (d) that she was unqualified for the position held with the CSA and no more suitably qualified for her current position within the Government of Saint Lucia and which had been specially created to benefit her;
 - (e) that Mr. Herelle was advising the general public and the world at large that he had evidence to support the publication and his publication being the truth, he invited and challenged her to deny the publication.
- [15] Ms. Auguste believes that there was an ulterior motive behind the publication and so the publication was malicious. It followed an ongoing dispute between the CSA and herself and the publication was published at a time when the dispute was before the Labour Commissioner for consideration. In addition, she knew that Mr. Herelle to be the nephew of the President of the CSA.
- [16] Ms. Auguste was aware that Mr. Herelle had numerous followers on Facebook and that having published the defamatory publication over the internet there was guaranteed a limitless amount of access and availability to persons all over the world. Following the publication, many persons posted comments under Mr. Herelle's publication. Some persons questioned the validity of the allegations while others appeared to believe the publication. Ms. Auguste said that she felt shocked by the number of persons who had not only read the publication but also felt the need to post a comment in response to the publication.

- [17] Following the publication, Ms. Auguste received several telephone calls and emails from person's resident at the United States of America, England and the Caribbean who had either read or heard about the publication. These persons expressed their concerns and made comments about the adverse effects the publication would have on her life generally, her reputation professionally, personally and socially. They were also aware of the extent of the publication.
- [18] Ms. Auguste says that as a result of the publication that she has been distressed, the effects of the publication have been extremely taxing and emotionally exhausting. She has been embarrassed and been made to feel embarrassed by comments and remarks connected to the publication. She has had to deal head on with comments made in relation to the publication.
- [19] Ms. Auguste holds the view that there has been much injury to her reputation following the publication. The publication reflected in a negative way on both on her personal and professional integrity and reputation.

Findings and Analysis

- [20] One matter that is clear and so the Court need not trouble itself with it, is declaring whether or not the publication was defamatory and this is because Ms. Auguste obtained a default judgment and so for all intents and purposes, the publication is deemed to be defamatory. All that is left for the Court to do, is assess what amount of damages Ms. Auguste should be awarded for the defamatory publication.
- [21] Ms. Auguste has pleaded that the publication was falsely and maliciously published. According to the authorities, Ms. Auguste does not need to prove the falsity of or malice in the publication to establish her case. If the words are defamatory, then the law presumes that they are false. The malice signified by the phrase "falsely and maliciously," is malice in law. Today, malice in that sense is presumed from the fact of publication of the defamatory words and so there is no need for Ms. Auguste to have pleaded "falsely and maliciously" or to prove it¹.
- [22] 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.

¹ Halbury's Laws of England 4 edition Vol. 28 para. 82

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

- [23] The Court when considering Mr. Herelle's publication 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) circumstances of publication. The Court will at times also be required to determine whether there is true or legal innuendo.³
- [24] The Court will start with the circumstances of publication. The mode of publication was via Mr. Herelle's Facebook page. What is Facebook? This social media is of relatively recent vintage being approximately 13 years⁴. While social media can be a great way to interact and communicate with others, users must recall that publication can be to the whole world and even where a publisher might have selected to share with only a few, one of the few might just decide to share a publication or comment by reposting it.
- [25] As this media and other social media such as Twitter have grown in use, so too have the cases brought concerning their publications. What the cases confirm is that publications on social media are equally as capable as being deemed a defamatory publication using the same principles as the 'old fashioned' publication in a newspaper, magazine or other printed material.
- [26] In **The Lord Mc. Alphine of West Green v. Sally Bercow**⁵ the defendant published on Twitter comments implying that Lord Mc Alphine was a paedophile. There Lord Mc Alphine's Counsel stated "Twitter is not just a closed coffee shop among friends. It goes out to hundreds of thousands of people and you must take responsibility for it. It is not a place where you can gossip and say things with impunity, and we are about to demonstrate that."
- [27] As the Court understands, Mr. Herelle's publication was not behind a locked Facebook profile and so only selected persons could see the publication but rather it was on a public profile with the net result that the publication was to the whole world.
- [28] According to Ms. Auguste, up to the date that she filed her affidavit in support of the assessment - July 7th 2015, the publication was still available to the whole world.
- [29] That the publication generated a reaction is not to be doubted. As the Court observed prior, there was disclosed 35 pages of comments in a message thread to the publication by October 2nd 2014, when a copy of the publication was downloaded.
- [30] Again as to the width of the publication, Ms. Auguste evidence is that she received telephone calls and email messages from people resident abroad at the United States of America, England, and throughout the Caribbean region.

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

⁴ According to the Facebook website it was founded at February 2004.

⁵ [2013] EWHC 1342

- [31] The Court is also of the view that given the role held by Ms. Auguste over the years in the CSA, it cannot be contested that given the number of persons employed by the Government of Saint Lucia in the civil service that there would have been a keen interest in the publication among the civil servants.
- [32] Moving on, on an aside, looking at the publication, by its very heading of "*WE NEED TO STOP SPINNING, TELL THE TRUTH THE WHOLE TRUTH.*" Mr. Herelle's sets up the publication as being the truth. The Court in passing observes that there were hearsay statements in the publication - see paragraphs 2 and 4 where Mr. Herelle says "*Here is what I was told the 'real' situation is.....*" and "*I was told about \$5000.00 or more....*" There are no statements that he went on to verify these matters of hearsay.
- [33] The Court's second observation in relation to the headline of the publication is that Mr. Herelle states that he is telling the "WHOLE TRUTH" and yet never availed himself of his right to file a defence stating that the words complained of were true in substance and in fact⁶. Truth is a defence to defamation.
- [34] Although the Court is not called upon at this stage to find whether the statement is defamatory or not, the test for a defamatory statement assist the Court, i.e. how the publication makes Ms. Auguste be thought of by right thinking members of society, the ordinary reasonable person. The Court agrees with Ms. Auguste's submissions on how the publication could be interpreted by others and adopts them.
- [35] Now using The Court agrees that the publication attacks her integrity as a person and employee as not once but twice in that it is stated that Ms. Auguste when she worked with the CSA as assistant general secretary/industrial relations she was unqualified for the job and then again when she went on to work with the Government of Saint Lucia in the civil service that a new job was created for her as a benefit for her selling out the CSA and it was a job for which she was not qualified and for which she was paid more than other civil servants with university degrees. .
- [36] No proof was offered by Mr. Herelle as to what the qualification requirements were for either job held by Ms. Auguste, and that she failed to hold those qualifications. Secondly, it is common within government service, organisations, business entities and otherwise as they grow, merge, shrink and change for more efficiency, new positions/jobs can evolve and others be eliminated. No proof was offered that the "new post", if it was indeed new, was not part of the civil service plan.
- [37] The Court agrees that the publication depicts Ms. Auguste to be a greedy, dishonest and deceptive person. There is first the statement in relation to the \$200.00 - \$350.00. Mr. Herelle has not set out what he knows to be Ms. Auguste's duties before the issue of the additional payment and what he knows to be her duties after

⁶ Halsbury's Laws of England, 4 edition para. 82

the additional payment in order to support his publication. Where then is the proof that she received additional payment with no additional duties imposed.

- [38] There is then the publication about the \$60,000.00 which was procured by lies and dishonesty. Mr. Herelle offers not an iota of proof to support this publication. This was the burden of Mr. Herelle before publication.
- [39] The Court believes that any reasonable board of the CSA would have required before granting any medical assistance in the sum of \$60,000.00 a medical certificate or note and be satisfied that there was a legitimate medical cause for which assistance was required before supporting Ms. Auguste's request. Mr. Herelle has not proved that the conditions under which assistance for medical care was granted were fabricated.
- [40] Mr. Herelle seeks to top off his earlier allegations with further allegations that Ms. Auguste (a) while employed with the CSA made known her political affiliation, and (b) discharged her duties with the CSA in an unprofessional way by being discriminatory, biased, unfair and irrational as she acted and sort to benefit only those persons of the same political affiliation as herself.
- [41] And just for good measure and to in the Court's mind aggravate the situation, Mr. Herelle lastly challenges Ms. Auguste's defenders to tell her to post a defence to his publication and call his publication lies. He reiterates that whatever she would say *"there are lies, damn lies and statistics."*
- [42] Bearing in mind the matters raised, the Court is of the view that the publication in summary sought to and did portray Ms. Auguste as a dishonest, deceptive, greedy, untrustworthy, selfish, unqualified for posts held, falsified matters relating to her health for profit, unprofessional and executed her job in a politically charged discriminatory and bias manner.
- [43] The Court at this juncture calls to mind the effects Ms. Auguste has said that the publication has had on her wellbeing and reputation as this like the circumstances of publication also goes towards the measure of damages. .
- [44] In considering the award, the Court has considered the authorities **David Bristol v. Dr. Richardson St. Rose**⁷, **Elwardo Lynch v. Ralph Gonsalves**⁸ and **Keith Mitchell v. Steve Fassihi et al**⁹ and has borne in mind the age of some of the authorities so as to bring Ms. Auguste's award in line with today's values.
- [45] In measuring the damages to be awarded, a further consideration for the Court is that as noted prior, Ms. Auguste's picture was part of the publication, further when Ms. Auguste's Counsel asked Mr. Herelle to issue a retraction, proffer a suitably

⁷ HCVAP 2005/16 (St. Lucia)

⁸ HCVAP 2009/002 (St. Vincent)

⁹ HCVAP 2003/22 (Grenada)

worded apology within 48 hours, he instead "dug in his heels" and turned his attack on Counsel and her law firm and thereafter not only published Ms. Auguste's Counsel's letter but also his letter in reply. There was absolutely no remorse displayed by Mr. Herelle about the publication.

- [46] The Court also in deciding the award bears in mind the manner of publication - Facebook and duration, and that while users could choose to communicate with friends and others through private or public messages, Mr. Herelle opted to communicate through public messages and thus was assured that he would reach the widest possible audience on the World Wide Web.
- [47] Finally, the Court is of the view that given Mr. Herelle's "digging in his heels" attitude, his challenging Ms. Auguste to contest his publication, his refusal to retract his publication and that the publication was still available up to at least July 7th 2015, that this is a case most deserving of an award of aggravated damages.
- [48] The Court relying on the authorities cited is of the view that it ought to in all the circumstances award Ms. Auguste \$80,000.00 in general damages and \$40,000.00 in aggravated damages.
- [49] **Court's orders:-**
- 1) Mr. Herelle is ordered to remove the publication and all comments which followed in a thread/personal time line from his Facebook page and wherever the publication may appear that is under his control within 72 hours of this judgment.
 - 2) An injunction is hereby granted restraining Mr. Herelle whether by himself, his servants or agents from publishing or causing to be published any further defamatory material about Ms. Auguste.
 - 3) Ms. Auguste is awarded \$80,000.00 in general damages and \$40,000.00 in aggravated damages.
 - 4) Interest is awarded at the rate of 6 percent on judgment with effect from date of the default judgment - May 22nd 2015.
 - 5) Costs is awarded in the sum of \$5,500.00.

JUSTICE ROSALYN E. WILKINSON
HIGH COURT JUDGE

BY THE COURT
REGISTRAR

