

**EASTERN CARIBBEAN SUPREME COURT
ANGUILLA CIRCUIT**

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

Claim Number: AXA HCV 2015/0040

Between:

DAVID CARTY

Claimant

AND

HUBERT HUGHES

Defendant

Appearances:

Keesha Carty for the Claimant

Yanique Stewart for the Defendant

**2016: February 3
: April 6**

RULING ON WHETHER WORDS ARE CAPABLE OF DEFAMATORY MEANING

- [1] **GLASGOW, M:** The defendant has applied to the court to determine whether certain words pleaded in the statement of claim are capable of bearing the defamatory meaning or meanings set out on the statement of claim. I have found, for the reasons set out herein below, that the words are capable of bearing some but not all of the meanings pleaded by the claimant.

BACKGROUND

- [2] The two gentlemen in these proceedings are prominent and well established citizens of the island of Anguilla. The claimant, Mr. David Carty is a successful businessman engaged in the "*boat building and outfitting business...*"¹ Mr. Carty is a historian, teacher, and a politician who ran for public office and served as Speaker of the Anguilla House of Assembly. He is a supporter of the ruling political party, the Anguilla United Front (hereinafter the AUF) and openly campaigned for that party during the period leading up to the last national elections held in April 2015. The defendant, Mr. Hubert Hughes is equally a successful entrepreneur, public figure and politician. He is a member of the political party called the Anguilla United Movement (hereinafter the AUM) which formed the government of Anguilla from 2010 to 2015. Mr. Hughes served as the Chief Minister of Anguilla during that period.
- [3] The parties are at odds regarding statements made by Mr. Hughes very closely after the national elections in April 2015. Mr. Hughes was, at the material time, a platform speaker at a public meeting held by the AUM in the George Hill district on Saturday April 25, 2015. The meeting was

¹ Paragraph 1 of the amended statement of claim filed on December 15, 2015

previously advertised on Klass FM radio 92.9 and was then broadcast live on radio and on the internet through the radio station's online portal.

- [4] Mr. Carty complains that during the speech, Mr. Hughes made certain disparaging remarks about him which statements are defamatory. The claim was amended to assert that Mr. Hughes is alleged to have said the following –

1. *The people in Anguilla, like every other Caribbean person was brought here in chains from Africa. By who? British slave ships. You were used on the sugar canes estates and you had no rights, no rights. When they wanted to command your arm for not producing enough they cut your arms off. You had no rights and you have no way of representation. And there were those people in the Caribbean including Anguilla who struggled to get you some rights - the right to vote, the right to vote, the right to determine your own leaders and own destiny. You had not that. The colonial boys in London make sure they protect their sugar planters in the region. And they could not give you the vote. They wouldn't allow you even to go to Sunday school because you would learn to read the bible and the bible taught you that all men were equal. How can you be exposed to such knowledge? So you were forbidden from going to Sunday school and if you go to places like Barbados and St. Kitts you would see how far the churches were built from the villages because the white man could jump on his horse and buggy and you couldn't get there.*
2. *He fought for the liberation of the slaves and the plantations in St. Kitts. He was not born great, he was not educated. He educated himself through the process but he became great because of the process. And I want you to know I went on to England and I continued to watch the liberation struggles down in Africa I saw hundreds and thousands of people died in the bush in Africa fighting for the right to vote. Dying for the right.*
3. *I said in that booklet 40 years after we opted for self-determination, 40 years after we said we want to establish our own destiny, we are more colonized and more enslaved today than we have ever been. That's what I said. That's what I said.*
4. *I want you to know that in every one of these same colonies the white establishment has been fighting a war and I never thought the white establishment would get so powerful in Anguilla to enslave you. You will not be enslaved. I'm going to send a message to all those white racists that we will not be enslaved by them.*

5. *I'm prepared to go in the bush to ensure that the white racists in Anguilla does not succeed in enslaving my people. I will not be afraid to say white is white and black is black.*
6. *Martin Luther King died for the right, fighting for the right to vote. Hundreds and thousands of South African black men and women were destroyed and fought for the right to vote. The right to vote. How can we have won that sacred right and have it robbed from us on the 22nd April?*
7. *And why is it not free and fair, because you all favour David Carty and a particular party because he represent white interest.*
8. *They have selected David Carty and Emile Gumbs because of the fairness of their skin to be their representatives. And under that system they have tarnished Anguilla.*
9. *David Carty go out there and muster all the white people and they are celebrating their victory tonight but tell them that's a short victory.*
10. *I want you to know that slavery will not establish in Anguilla.*

[5] The claim is that the foregoing words, especially the ones quoted at paragraphs 7 to 10 above, in their natural and ordinary meaning indicate that *"the Claimant is a racist who favours whites and has tarnished Anguilla's reputation because of his racism."*² Mr. Carty also pleads that

By innuendo and reasonable inference, the words complained of ... mean that the Claimant is a racist; that he discriminates against people of colour; that he favours white people and looks down on black people; that he is trying to enslave the people of Anguilla; that he is trying to enslave the black people of Anguilla; that he is the reason why Anguilla does not have free and fair elections; that he has tarnished Anguilla's reputation through his racism; That his "white" interests are adverse to the interests of Anguilla; that the Claimant does not subscribe to the constitutional and fundamental right of equality of persons and the right against discrimination based upon race; that the Claimant is an elitist; that the Claimant is destroying Anguilla and Mr. Hughes will not allow it; and the that the Claimant has influenced the Governor and the Deputy Governor to the detriment of Anguilla because of his colour.³

[6] Mr. Carty continues that

the words must be taken in context, which context paints the Claimant as one of many

² Paragraph 13 of the amended statement of claim filed on December 15, 2015

³ Ibid at paragraph 14

*racists, who has worked to undermine the rights and advancement of Anguilla and Anguillians and one of those trying to enslave the people of Anguilla, against whom Mr. Hughes and others must fight.*⁴

[7] The pleadings also state that *"The words complained of ... were calculated, reckless, untrue and/or driven by malice, with a view to lowering the Claimant in the estimation and/or minds of right thinking persons in society."*⁵

[8] Mr. Hughes did not file a defence to the action but instead has asked the court to exercise its powers pursuant to CPR 69.4 which states that

At any time after the service of the statement of claim, either party may apply to a judge in chambers for an order determining whether or not the words complained of are capable of bearing a meaning or meanings attributed to them in the statement of case.

SUBMISSIONS

[9] In written submissions opposing the application, Mr. Hughes explains that the quoted words *"are not capable of the meanings ascribed to them in the statement of case."*⁶ It is submitted that *"the words complained of ... are not defamatory ... either in their natural and ordinary meanings or by innuendo. Furthermore, the words do not refer to the Claimant and could not reasonably be understood to be referring to the Claimant."*⁷ The words are said to mean –

1. *The Claimant and a particular party is favoured by the Governor and Deputy Governor because of interests he shares with the white population;*
2. *The Claimant had at one time been selected by the British to be their representative because of the fairness of his skin;*
3. *The British by selecting persons on the basis of their light skin to be their representatives, had tarnished Anguilla;*
4. *The Claimant had persuaded white voters to oppose the Defendant's party at the polls and was celebrating the electoral defeat of the Defendant's party along with those voters but the victory being celebrated would be short lived."*⁸

⁴ Ibid at paragraph 15

⁵ Ibid at paragraph 16

⁶ Defendant's submissions filed on November 9, 2015 at paragraph 5

⁷ Ibid at paragraph 6

⁸ Ibid at paragraph 7

[10] Mr. Hughes's position is that the

*fact that a person has shared interests with a particular segment of the population cannot by itself lower him in the estimation of right thinking people. If he is favoured by other persons, governments or institutions because of the lightness of his skin, that is a criticism, not of that person, but of the persons, governments or institutions that so favoured him. It is not wrong for a person supporting a political party during elections to seek to persuade any segment of the population to vote for his party and against the candidates of rival political party. These allegations, even if accepted, would not tend to lower a person in the estimation of right thinking persons. It is hyperbolic to suggest that the relevant words are capable of meaning that the Claimant is someone who is trying to establish slavery in Anguilla or that the Claimant is someone who does not subscribe to the constitutional protection in relation to the equality of persons and the right to protection from discrimination based on race... The words are incapable of meaning that the Claimant is racist or that he has tarnished Anguilla or that he looks down on black people.*⁹

[11] Mr. Carty, in his written submissions, restates the principle that the determination of whether the words are capable of the meaning or meanings ascribed to them is a narrow question at this point in the proceedings. It is not to be conflated with the hearing on the substance of the claim. In that regard, I am not to consider, among other things, whether the words are indeed defamatory of Mr. Carty. Relying on the cases of **Beulah Mills v Michael Perkins and Nevis Broadcasting Limited**¹⁰ and **Abraham Mansoor et al v Grenville Radio Limited et al**¹¹, Mr. Carty submits that I ought to look at all the words spoken by Mr. Hughes to “*establish the context in which the offending words were published because context affects meaning.*”¹² Adopting this approach would indicate that the words bear the meanings indicated by Mr. Carty and that they do not merely seek to castigate the conduct of the Governor or the Deputy Governor. Rather, the parts of the speech condemning those two individuals were insubstantial. If the whole speech is reviewed, “*the fair minded listener would reasonably conclude that the entire thrust and the majority of the words were capable of defaming the Claimant as alleged in the Statement of Claim.*”¹³

ANALYSIS AND FINDINGS

[12] The court's obligation on an application of this nature is to determine whether or not the words complained of are capable of bearing a meaning or meanings attributed to them in the statement of case. This indeed is a narrow remit. The court is not tasked with deciding whether the words were in fact defamatory of Mr. Carty. There is judicial guidance to assist this exercise. Blenman J in **Mansoor** quoted the advice from Lord Diplock in **Slim v Daily Telegraph Ltd**¹⁴ that

⁹ Supra, note 6 at paragraph 8

¹⁰ NEVHCV 2009/0098

¹¹ ANUHCV 2008/0408

¹² Mr. Carty's submission filed on November 9, 2015

¹³ Mr. Carty's

¹⁴

in deciding what meanings the words are capable of bearing, there is acknowledgment that the words are reasonably capable of bearing different meanings, but that after deciding what are the possible meanings the decision maker must decide on one of those meanings as being the only natural and ordinary meaning of the words.

- [13] In arriving at the natural and ordinary meaning of the words,

the court should give the article the natural and ordinary meaning it would have conveyed to the ordinary reasonable reader ..., reading the article once. The ordinary, reasonable reader is not naïve; he can read between the lines. But he is not unduly suspicious. He is not avid for scandal. He would not select one bad meaning where other, non-defamatory meanings are available. The court must read the article as a whole, and eschew over-elaborate analysis and, also, too literal an approach. The intention of the publisher is not relevant.¹⁵

- [14] In this regard, the approach is not one of construction in the legal sense since the ordinary reader would be not *"inhibited by a knowledge of the rules of construction... he can and does read between the lines in the light of his general knowledge and experience of worldly affairs"*¹⁶

- [15] It must also be borne in mind that the

ordinary and natural meaning may include implications and inferences which reasonable hearers in the society would draw from the words. If the implications or imputations tend to lower the claimants in the estimation of right thinking members of the society or they expose them to public hatred and ridicule they would be defamatory.¹⁷

- [16] Mr. Hughes' intentions or motives when making the statements are irrelevant to the question of whether the words are capable of bearing the meaning or meanings ascribed to them.

- [17] There can be little debate that the entire thrust of the speech was to make complaint about the AUM's loss at the last national elections. Reading the transcript of what Mr. Hughes said that night in April 2015, the ordinary reasonable listener could only come away with the understanding that the blame for the political party's loss, in his view, lay squarely with the British administrators of Anguilla's political affairs who were aided by certain local enablers. In fact, much of what is complained about is prefaced by the words *"I told you many years ago that the British Governors should not conduct elections in Anguilla and let me tell you why."*¹⁸ His meaning was not oblique, opaque or obfuscated when he stated that *"the elections were stolen from you'll"*¹⁹. Mr. Hughes went on to not only blame these persons but in quite an extensive manner stated the reasons why he felt that these persons acted in this manner. He stated that notwithstanding the gains made in terms of self-determination and the right to vote, *"we are more colonized and more enslaved than*

¹⁵ Bonnick v Morris [2002] UKPC 31

¹⁶ Lewis and another v Daily Telegraph Ltd [1963]2 All ER 151 at 154

¹⁷ Mansoor et al v Grenville Radio Limited et al ANUHCv 2004/0408; See also Cottle J in Pinard – Byrne v Linton et al DOMHCV2003/0424 at paragraphs 18 to 22

¹⁸ Supra note 1, at paragraph 10

¹⁹ Ibid

we have ever been."²⁰The persons responsible for this state of affairs are part of what he terms "*the white establishment*"²¹ which "*has been fighting a war...*" ²²Mr. Hughes stated that he "*never thought the white establishment would get so powerful in Anguilla and enslave you.*"²³ He vowed that "*you will not be enslaved. We will send a message all those white racists that we will not be enslaved by them.*"²⁴He states that "*he is prepared to go in the bush to ensure that the white racists in Anguilla does not succeed in enslaving my people.*"²⁵

[18] It is in the context of those just quoted statements and others accusing the British representatives of racism and a drive to enslave Anguillians that Mr. Hughes then went to state that the elections were not free and fair because the accused persons favoured Mr. Carty since he represents "*white interest*". I would stop here to state that in the context of all that had been said to this point the natural and ordinary meaning that can be attached to this statement in relation to Mr. Carty is that he is part of the cabal that has been accused of racism and trying to enslave Anguillians. This view is only fortified by the statement that Mr. Carty was selected by the establishment to represent their interest because of the colour of his skin. The warning that the victory of "*the white people*" who are celebrating would be short lived only goes further in serving to exemplify the purport to be attached to these statements.

[19] Mr. Hughes asks me to find that the entire tenor of the speech suggests that he meant that Mr. Carty has a shared interest or pigmentation with a certain group of people and that he is indeed favoured because of the shared interest or pigmentation. I am urged to find that a right thinking member of the public should not think poorly of Mr. Carty if he so favoured. I believe that Mr. Hughes would be correct to offer such connotation if perhaps one takes one or more of the statements out of the context of the entire speech. But I must look at the entirety of the speech before arriving at a conclusion about the meanings of the allegedly defamatory statements.

[20] Having read the entire speech and having considered the specific statements referenced by Mr. Carty in the amended claim, the first point I note is that the speech was given to AUM supporters who would, by all means, fit the description of the ordinary reasonable listener by a large majority. Secondly, in terms of the meanings to be ascribed to the words set out at paragraph 3 of this ruling, I do not agree with Mr. Carty that the natural and ordinary meaning of the words used indicate the following meanings as outlined at paragraphs 14 of the amended statement of claim –

that he discriminates against people of colour; that he favours white people and looks down on black people; that he is trying to enslave the people of Anguilla; that he is trying to enslave the black people of Anguilla; that he is the reason why Anguilla does not have free and fair elections; that he has tarnished Anguilla's reputation through his racism; That his "white" interests are adverse to the interests of Anguilla; that the Claimant does not subscribe to the constitutional and fundamental right of equality of persons and the right against discrimination based upon race; that the Claimant is an elitist; that the Claimant is

²⁰ Ibid

²¹ Ibid

²² Ibid

²³ Ibid

²⁴ Ibid

²⁵ Ibid

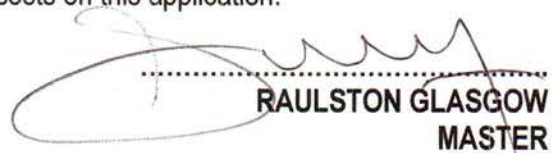
destroying Anguilla and the Defendant will not allow it; and the that the Claimant has influenced the Governor and the Deputy Governor to the detriment of Anguilla because of his colour.

[21] The words do not convey those meanings by innuendo and reasonable inference either. Rather, as I have stated above, the entire tone and context of the speech targeted the British administrators who were said to have stolen the elections. The administrators were said to have acted in this manner because of a racist disposition and due to an effort to "*enslave Anguillians*". With these aims in mind, the British administrators were seeking to influence local matters by selecting persons who were of certain skin colour and who favoured their interests. When the specific references to Mr. Carty are considered in this context, it cannot be said that he was specifically accused by Mr. Hughes of doing any of the several acts recited at paragraph 14 of the statement of claim and recited at paragraph 19 herein. In respect of Mr. Carty, Mr. Hughes comments that due to the affinity of skin colour and interests shared with the people against whom he was complaining, the respondent is favoured by those persons and is part of the system of racism that is seeking to control Anguilla and to enslave the people of Anguilla. Mr. Carty was, along with those persons, celebrating the victory that Mr. Hughes decried as flowing from a stolen election. The statements would convey the meaning that Mr. Carty is also racist. They would also convey the meaning that he is part of the reason that Anguillians did not enjoy a free and fair election. Mr. Carty is not accused of doing anything. He is nonetheless branded as part of the group forming the focus of Mr. Hughes' ire.

[22] In the circumstances, the natural and ordinary meanings to be ascribed thereto suggest the following descriptions pleaded by Mr. Carty at paragraphs 13 to 16 of his statement of claim –

1. *the Claimant is a racist;*
2. *the Claimant as one of many racists, ... has worked to undermine the rights and advancement of Anguilla and Anguillians and one of those trying to enslave the people of Anguilla, against whom the Defendant and others must fight.*

[23] Having found that the words used by Mr. Hughes conveyed some but not all the meanings ascribed to them by Mr. Carty on the pleadings, the claim must proceed in the normal course of things. Mr. Carty is to file and serve further amendments to the claim to remove the meanings set out at paragraph 20 of this ruling and retain only those set out at paragraph 22 above. Mr. Carty is to file and serve the amended pleadings within 14 days of today's date. Mr. Hughes may file a defence to the further amended pleadings within 28 days of the receipt thereof. Any reply to the defence must be filed within 14 days of the receipt of the defence. The matter will take its usual course thereafter. The parties are to bear their own costs on this application.


RAULSTON GLASGOW
MASTER