

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
ANTIGUA AND BARBUDA

CLAIM NO: ANUHCV 2011/0780

BETWEEN:

STEADROY C.O. BENJAMIN

Claimant

and

JUSTIN SIMON

Defendant

Appearances:

Mr. Steadroy Benjamin in Person
Ms. E. Ann Henry for the Defendant

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2012: March 2
June 5
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RULING

- [1] **MICHEL, J.:** This case pits against each other two gentlemen who are both members of the legal profession and of the national parliament – the Claimant being a member of the utter bar and an elected member of the House of Representatives and the Defendant being a member of the inner bar and an ex officio member of the House of Representatives.

[2] The facts of the case, so far as I have been able to glean from the statements of case and written submissions filed in this matter, are that on 7th August 2008 the Claimant was charged by the police with criminal offences under **the Forgery Act** of Antigua and Barbuda. The Director of Public Prosecutions advised the police that the charges against the Claimant should not be proceeded with. The police endeavoured nonetheless to proceed with the prosecution of the charges. The Claimant instituted judicial review proceedings against the Commissioner of Police challenging the right of the police to proceed with the charges against the advice of the DPP. The High Court dismissed the Claimant's application for judicial review. On appeal by the Claimant, the Court of Appeal reversed the High Court in a decision delivered on 19th September 2011.

[3] On 21st September 2011, Observer Radio broadcasted and published a recorded statement of the Defendant, which contained the following words -

"The issue in the matter was not with respect to what Cutie did. The issue was whether the D.P.P having given the Police an advice not to institute charges against Cute Benjamin whether or not they are obliged to follow the advice of the D.P.P – that was the issue – that was the issue in Court. **Nothing to do with whether or not Cutie Benjamin did wrong because Cutie Benjamin did do wrong.** He signed a Passport Form certifying that he knew the person that was applying. The person happened to have been a Jamaican who stole the Birth Certificate of someone who was deceased"

[4] Then on 6th October 2011, Observer Newspaper printed and published extracts of an interview given by the Defendant on or about 5th October 2011 in which the Defendant said - on the same issue concerning the Claimant - "it is regrettable that the matter did not go to trial."

[5] By claim form (with accompanying statement of claim) filed on 2nd December 2011, the Claimant instituted defamation proceedings against the Defendant “in his persona and in his official capacity as Attorney General of Antigua and Barbuda”.

[6] By amended claim form filed on 6th January 2012, the Claimant added “Attorney General of Antigua and Barbuda” as a second defendant, with “Justin Simon” – the holder of the office of Attorney General of Antigua and Barbuda – thereby becoming the first defendant. I am not sure of the necessity for this amendment, considering that it is averred in the claim form and statement of claim that Justin Simon is the Attorney General and that the action is brought against him in his persona and in his official capacity. There is no possibility of the Claimant being awarded two sets of damages (if he prevails in this action) by virtue of having the Defendant duplicated in the title of the action. And there is no likelihood of the Claimant’s defamation action being dismissed on the basis (say) that defamatory statements made by Mr. Simon were made in his official capacity and not in his personal capacity. Moreover, if Justin Simon Q.C. demits office as Attorney General during the course of this trial, the new holder of the office of Attorney General will not, by assuming that office, become a defendant in a defamation action resulting from words spoken by Justin Simon Q.C., even although Mr. Simon was at the time holding the office of Attorney General.

[7] In his statement of claim, the Claimant alleges that the earlier-quoted words of the Defendant, published on 21st September and 6th October 2011, meant and were understood to mean that:

1. The Claimant is dishonest;
2. At all material times when the Claimant signed the Passport Form he knew that he was making a false declaration;
3. The Claimant signed the Passport Form with the specific intention of deceiving the passport authorities to grant a passport to a person who was not so entitled;

4. The Claimant committed a criminal offence;
5. The Claimant is a criminal;
6. The Claimant is guilty of the offences with which he was charged;
7. The Claimant uses his position as a lawyer and as a Member of Parliament to take part in unsavoury acts;
8. The Claimant is to be held accountable for a criminal act;
9. The Claimant is corrupt;
10. The Claimant is not a role model;
11. The Claimant is not a fit and proper person to be enrolled as a Barrister and Solicitor in the State of Antigua and Barbuda and to be a member of the Honourable Legal Profession; and
12. The Claimant is not to be trusted.

[8] The single question before the Court at this stage is whether the words complained of are reasonably capable of bearing the meanings attributed to them in paragraph 7 above. The Court is not at this stage concerned with whether the Defendant (in his personal and/or official capacities) was justified in publishing the words complained of, or whether the words were fair comment on a matter of public interest, or whether the occasion on which the words were published attracted any privilege - absolute or qualified. Indeed, the Court is not even concerned at this stage with whether the words complained of bear the meanings attributed to them in paragraph 7 above, but only as to whether they are reasonably capable of bearing these meanings.

[9] In answering the question as to whether words complained of by a claimant in a defamation action are reasonably capable of bearing the meaning or meanings attributed to them by the claimant, resort is often had to the Jamaican case of **Bonnick v Morris**¹. In that case, Lord Nicholas of

¹[2003] 1 AC 300

Birkenhead, in delivering the judgment of the Privy Council (on an appeal from the Court of Appeal of Jamaica) said –

“As to meaning, the approach to be adopted by a court is not in doubt. The principles were conveniently summarised by Sir Thomas Bingham MR in **Skuse v Granada Television Ltd** [1996] EMLR 278, 285-287. In short, the court should give the article the natural and ordinary meaning it would have conveyed to the ordinary reasonable reader of the ‘Sunday Gleaner’, 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.”

[10] As it is with the ordinary, reasonable reader of the Sunday Gleaner, so it is with the ordinary reasonable listener to the Observer Radio Station and the ordinary, reasonable reader of the Daily Observer Newspaper, and so the approach adopted by the Privy Council in **Bonnick v Morris**¹ will accordingly be followed by the Court in the present case.

[11] Applying the approach of the Privy Council to the ascertainment of the natural and ordinary meaning of the words alleged by the Claimant to be defamatory of him, it is difficult not to come to the conclusion that the ordinary, reasonable listener to Observer Radio hearing the recorded statement of the Defendant once and the ordinary, reasonable reader of the Daily Observer reading the article once (which quotes the words of the Defendant) would understand the Defendant - who is the Attorney General of Antigua and Barbuda - to be saying that the Claimant

did do wrong by falsely certifying a passport form and facilitating a fraudulent act by a Jamaican national who sought to pass himself off as an already-deceased Antiguan, and that it is regrettable that the resulting charges brought against the Claimant did not go to trial, and he (the ordinary reasonable listener and reader) would take these words to mean that:

the Claimant is dishonest;

when he signed the passport form he knew that he was making a false declaration;

he signed the passport form with the specific intention of deceiving the passport authorities to grant a passport to a person who was not entitled;

he committed a criminal offence;

he is guilty of the offences with which he was charged;

he uses his positions as a lawyer and a member of parliament to take part in unsavoury acts;

he is corrupt;

he is not to be trusted.

- [12] There are four meanings contended for by the Claimant that I do not believe would be conveyed to the ordinary, reasonable listener to Observer Radio and the ordinary, reasonable reader of the Daily Observer by the words complained of. The first is that the Claimant is a criminal. The popular acceptance of the designation of a person as a criminal is that the person has been convicted of one or more serious criminal offences, and nothing in the words complained of conveys this about the Claimant. The second is that the Claimant is to be held accountable for a criminal act. The ordinary reasonable listener and reader would have to stretch and strain the offending words a bit to get this meaning from them and so this meaning is not a natural and ordinary meaning of the words complained of. The third is that the Claimant is not a role model. This is really a generic characterization that can be applied to any person about whom an

unflattering statement is made or an unflattering view taken and it is not a natural and ordinary meaning of the offending words. The fourth is that the Claimant is not a fit and proper person to be enrolled as a Barrister and Solicitor in the State of Antigua and Barbuda and to be a member of the Honourable Legal Profession. The words complained of are not reasonably capable of conveying this meaning to the ordinary, reasonable listener to Observer Radio or the ordinary, reasonable reader of the Daily Observer, who in any event may not regard practitioners of the law as paragons of virtue disinclined to take part in unsavoury acts.

[13] The Court does not therefore accept that the words complained of are reasonably capable of bearing the fifth, eighth, tenth and eleventh meanings contended for by the Claimant in paragraph 11 of the statement of claim, even though the threshold of exclusion is a high one. The Court accepts though that the words complained of are capable of bearing the other eight meanings ascribed to them in paragraph 11 of the statement of claim. Of course, if the Defendant intends to defend the action he will have to file a defence to the claim and time will be given to him to do so.

[14] The Court's Order is as follows:

1. The words complained of by the Claimant in paragraphs 6 and 10 of the statement of claim as being defamatory of him are reasonably capable of bearing the meanings attributed to them in sub-paragraphs 1, 2, 3, 4, 6, 7, 9 and 12 of paragraph 11 of the statement of claim.
2. The words complained of by the Claimant in paragraphs 6 and 10 of the statement of claim as being defamatory of him are not reasonably capable of bearing the meanings attributed to them in sub-paragraphs 5, 8, 10 and 11 of paragraph 11 of the statement of claim.

A handwritten mark, possibly a signature or initials, consisting of a stylized 'N' or 'M' shape with a horizontal line extending to the right.

3. The Defendant shall file and serve a defence to the claim within 14 days of the date of this order.
4. Costs on this application shall be costs in the cause.



Mario Michel
High Court Judge