

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
FEDERATION OF SAINT CHRISTOPHER AND NEVIS
ST. CHRISTOPHER CIRCUIT
(CIVIL)**

Claim No. SKBHCV 1993/0241

BETWEEN

EUGENE HAMILTON **Claimant**

and

CEDRIC LIBURD **Defendant**

AND

Claim No. SKBHCV 1993/0246

EUGENE HAMILTON **Claimant**

And

DENZIL DOUGLAS **Defendant**

**Appearing: Mr Terence Byron for the Claimant
Mr. Sylvester Anthony for First Defendant
Mrs. Patricia Dublin Lewis and Mrs Miselle O'brien Norton
for the Second Defendant**

2010: April 23rd

DECISION

[1] BELLE.J. On 23rd day of October 1993 Cedric Liburd allegedly uttered certain words from a political platform of the then opposition St. Kitts Nevis Labour

Party which are outlined in the Claimant's Statement of Claim claiming damages against the defendant. The Defendant also wrote an article published in the Labour Spokesman in which similar words were used. The context was that of a political campaign in which Liburd and the Claimant Hamilton were on opposing sides in the battle for district # 8 in St. Christopher for the general elections of 1993. The Claimant was the campaign manager for Sydney Morris the candidate for the then governing People Action Movement political party and the incumbent for District #8 and the Defendant was the candidate for the opposition St Kitts-Nevis Labour Party for the same district.

- [2] Claim No 1993/0246 alleges that Dr. Denzil Douglas uttered defamatory words from the Political platform of the St. Kitts Nevis Labour Party on 11th November 1993. The offending words in the case of Dr. Douglas were as follows:

"We are going to move on to constituency #8. The man who has exposed the Government on numerous occasions, the man who going to defeat Sidney Morris, right now, right now Comrade Cedric Liburd is holding Sidney Morris in his throat.

Cedric Liburd is the man who over the last few months has exposed to you the people the corruption that there is in the Public Service National Insurance Scheme.

It was Cedric Liburd who told you that the scheme was so corrupt that the manager received \$120,000.00. Tell him that Dr. Denzil Llewellyn Douglas say so. Let him sue me now. Let him go and sue me tonight.

I say Eugene Hamilton received \$120,000.00 from the National Insurance Scheme for public servants. Tell him I say he must go and sue me tonight.'

- [3] In the Statement of Claim in the suit against Mr. Liburd the Claimant cited the following words allegedly spoken by the Defendant Liburd on 23rd October 1993 at a public meeting held by the then opposition St. Kitts Nevis Labour Party at Maynard's Park in the village of Cayon.

“Gene Hamilton! Ask Mr. Morris to retire, and you come on de platform, where we can debate the issues, and de people of Cayon will decide who is de better man to run dis constituency, comrades and friends. And, Comrades, I also want to say to Gene Hamilton: On the 9th of October I responded to an article in the Democrat calling Cedric Liburd a liar. And, this evening, I want to call on Gene Hamilton once again. Since the 9th of October, I have an article in The Labour Spokesman with my signature at that article asking Gene Hamilton four questions. And I want to ask Gene Hamilton two of those questions this evening.

Gene Hamilton is presently the General Manager of National Caribbean Insurance Company, and, Gene Hamilton, I want to ask you as General Manager whether or not you have taken \$120,000.00 for yourself in two \$60,000.00 cheques. I want to ask you, Gene, whether or not you have taken from National Caribbean Insurance Company \$120,000.00 for yourself. And if you can answer that, Gene Hamilton, we can talk.

We can talk because you know in National Caribbean Insurance Company that the General Manager does not get commissions. But you and Morris decided that you must receive \$120,000.00, because you all know what you all want to do with the \$120,000.00, comrades and friends. So Gene Hamilton tell the country whether or not you have taken \$120,000.00 for yourself from National Caribbean Insurance Company...”

- [4] Part 69.4 of the CPR 2000 provides for the court to make a ruling on whether the words complained of are capable of bearing a meaning or meanings attributed to them in the statement of case. Part 69.4 (2) states:

“If it appears to the judge on the hearing of an application under paragraph (1) that none of the words complained of are capable of bearing the meaning or meanings attributed to them in the statement of case, the judge may dismiss the claim or make such other order or give such judgement in the proceedings as may be just.”

[5] Counsel for the Claimant Mr. Hamilton had pleaded that Mr. Liburd's words in their natural and ordinary and /or inferential meaning meant, and were understood to mean, that the Plaintiff

- (i) "has unjustly enriched himself to the tune of \$120,000.00 or some other substantial sum;
- (ii) has, further unjustly enriched himself to the tune of \$120,000 in flagrant , wilful and corrupt breach of the established rules and/or policy of National Caribbean Insurance Company.
- (iii) Has misappropriated or embezzled for his own use \$120,000.00 in funds of his employer, National Caribbean Insurance Company Limited.
- (iv) Has improperly , dishonestly and corruptly abused his office as General Manager to unjustly enrich himself to the tune of \$120,000.00

[6] Further by way of innuendo, the said words meant and were understood to mean that the Plaintiff

- (i) has conspired with the Honourable Sidney Morris to convert to the Plaintiff's own use or for an indirect, sinister and ulterior purpose \$120,000 in funds of National Caribbean Insurance Company Limited.
- (ii) has relied upon a corrupt political influence promoted by the Plaintiff together with the Honourable Sidney Morris to improperly or dishonestly take as General Manager of National Caribbean Insurance Company Limited the sum of \$120,000 or some other substantial sum under the guise that the said sum is an insurance commission, when the Plaintiff is not entitled to any or any such commission.
- (iii) has whether by himself or together with the Honourable Sydney Morris defrauded his employer National Caribbean Insurance Company Limited of the sum of \$120,000. "

[7] It is noted that part of the background to the alleged defamatory words is a series of publications on the same matter in the form of an article in the Labour Spokesman newspaper in its issue of Saturday 11th September 1993 and later at a number of public meetings of the St Kitts Nevis Labour Party including a public meeting on 21st September 1993 at Five Ways in Basseterre when the Defendant Hamilton allegedly stated inter alia: "***Comrades and friends the reason why this issue is before us, what we are saying, is that Gene Hamilton as the General Manager for the National Caribbean Insurance***

should not be earning any commission. It is a policy for the National Caribbean Insurance Company that the General Manager does not write any new business for the company. Because he is paid. He is paid a salary of \$7,500 monthly, and therefore, any time he writes business he will be competing with the agents of the company. And that is why he should not be getting any commission. But Simmonds and Morris decided Gene Hamilton will be paid and they directed the Board of Directors at National to pay Gene Hamilton that money.”

[8] As far as the words spoken by Dr. Denzil Douglas are concerned these words were emphatic in identifying the receipt of the said \$120,000 by the Claimant from the National Insurance Company with the corruption in the public service National Insurance Scheme. He then went further to call on Mr. Hamilton to sue him for saying that he received the money from the said corrupt scheme.

[9] The Claimant therefore alleged against Denzil Douglas that the offending words in their natural and ordinary meaning and / or inferential meaning meant and were understood to mean that the Claimant :

- (i) “is guilty of corruption in receipt of a sum of \$120,000.00 or some other substantial sum, from National Caribbean Insurance Company Limited in connection with a public service National Insurance Scheme;
- (ii) has received from a public service National Insurance Scheme a sum of \$120,000.00 which is tainted with corruption;
- (iii) has improperly, dishonestly and corruptly abused his office as General Manager to unjustly enrich himself to the tune of \$120,000.00.”

[10] It is well settled that the question whether words which are complained of are capable of conveying a defamatory meaning is a question of law and is therefore one calling for the decision of the court. If the words are so capable

then it is a question for the jury whether the words do in fact convey a defamatory meaning. See **Jones v Skelton** [1963] 1 WLR 820. More recently this position has been applied under the new rules in England and Wales in **Mapp v News Group Newspapers Ltd.** (1998) Q.B. 520. The law was further developed in **Gillick v Brook Advisory Centres** (2001) EWCA Civ 1263 where the court opined as follows:

“The purpose of the new rule is to enable the Court to fix in advance the ground rules and permissible meanings which are of cardinal importance not only for the purpose of assessing the degree of injury to the Claimant’s reputation but also for the purpose of evaluating any defences raised , in particular justification and fair comment.”

It should be noted however that the English CPR PD 53 Para 4. 1 (3) permits the court to determine whether the “statement is capable of bearing any other meaning defamatory of the claimant.” Part 69.4 does not contain these words.

[11] In Mr. Liburd’s case the alleged defamation took two forms, firstly a platform speech on the campaign trail at Maynard’s Park Cayon and statements made in an article in the mouth-piece of the Labour Party, the Labour Spokesman. Neither statement specifically used the word corruption or alleged that a crime had been committed by the Claimant. The statements pointed to the allegation that the Claimant took a commission of \$120,000.00 from the Public Service Insurance Medical Scheme which was operated by the National Caribbean Insurance Company at the time, when he was not entitled to do so, because as a manager he should not have received commission.

[12] The alleged imputation then is one of the Claimant, ignoring the rules of his own company, and improperly paying himself or arranging to be paid a commission for which he was not entitled. In my view these statements could be understood to mean and were capable of meaning that the Claimant had acted improperly and sought to enrich himself unjustly in a manner in which he was not entitled. This was being done at the expense of policy holders of the insurance scheme.

This was dishonest and unfair to the policy holders and sales agents of the company.

[13] As an activist for the PAM party the innuendo meaning would be that the Claimant had colluded with other PAM leaders to misappropriate the funds for the medical scheme by improperly taking a commission of \$120,000 to satisfy his greed. In so doing he enriched himself at the expense of the policy holders. Since then the scheme had collapsed. These words were published in spite of articles in the Democrat Newspaper refuting the claims.

[14] Also by way of innuendo in the case of Mr. Liburd, it must be considered that the Claimant was a campaign manager for Sydney Morris the Deputy Prime Minister of the then PAM government who was a candidate for a seat in the National Assembly and a man with considerable power and influence in the government of the day. It is arguable then that persons with the peculiar knowledge of the connection between Sydney Morris and the Claimant could have drawn the conclusions submitted by Mr. Byron counsel for the Claimant. A similar meaning was essentially urged by the Defendant in his speech of 21st September at Five Ways in Basseterre.

[15] As far as the words spoken by Dr. Denzil Douglas are concerned, again I find that these words are capable of meaning that the Claimant as a manager of the corrupt medical insurance scheme, had corruptly managed the insurance scheme to his benefit in improperly enriching himself at the expense of the policy holders, mainly public servants, contrary to the policy of the said insurance company.

[16] There was little submitted in argument on the behalf of the Defendants to suggest that the words allegedly spoken by the Defendant were not capable of bearing the meaning given to them. Counsel for the Defendant Cedric Liburd suggested that the meaning of the words is less defamatory, based on the

context of a political campaign. Counsel did not go beyond the mere assertion of this point. It was therefore left unclear whether the court was being urged to declare an actual meaning of the words. The submission should have been clarified because the court has no jurisdiction to determine the actual meaning of the words at this stage. This is a matter for the jury. A determination that the words were capable of a less defamatory meaning would only be relevant if it explicitly rules out the meaning alleged by the Claimant.

[17] Counsel for the Defendant Denzil Douglas raised the issue of fair comment. This may be relevant at this stage. However there were no supporting submissions from his counsel relating to the issue at hand. Counsel never attempted to argue why the words were incapable of the meaning attributed to them.

[18] I therefore hold that the words in both cases are capable of conveying the ordinary meanings alleged, and in the case of Cedric Liburd the words are capable of conveying the innuendo pleaded as long as the necessary evidential platform is laid.

Francis H V Belle
High Court Judge