

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

CLAIM NO. SVGHCV2006/0477

BETWEEN:

DR RALPH GONSALVES

Claimant

AND

**DANIEL CUMMINGS
BDS LIMITED**

Defendants

Before:

Master Cheryl Mathurin

Appearances:

Mr. G Grahame Bollers for the Claimant

Mr. Emory Robertson for the Defendants

2007: May 18th; June 15th

RULING

- [1] **MATHURIN, M:** On the 8th March 2007, the first named Defendant (hereafter Mr. Cummings), filed an application for a determination as to whether or not the words complained of in the substantive action herein are capable of bearing a meaning or meanings attributed to them in the Statement of Claim. The application is made pursuant to CPR2000 Rule 69.4 which allows any party after the filing of the statement of claim to file an application for a ruling on whether or not the words are capable of bearing the meanings attributed to them. Parties filed written submissions to assist the Court in its determination.
- [2] The Claimant (Dr Gonsalves) alleges that on the 9th of June 2006, Mr Cummings used the following words, which he states were defamatory of him by publishing them over the 2nd named Defendant's airwaves.

"How could the Prime Minister justify every other trip overseas, every other trip his wife and children going to all parts, corners of the world at our expense most of the time."

- [3] Dr Gonsalves alleges that in their natural and ordinary meaning the said words were meant and were understood to mean that he had done the following things;

- a. *That he, the Prime Minister and Minister of Finance was corrupt.*
- b. *That he, the Prime Minister and Minister of Finance had committed the common law offence of Misbehaviour in Public Office*
- c. *That he, the Prime Minister and Minister of Finance had misused public funds for the payment of this childrens' overseas travel*
- d. *That he, the Prime Minister and Minister of Finance abused his office by misusing public funds for the payment of his childrens' overseas travel*
- e. *That in his capacity of Prime Minister and Minister of Finance caused public funds to be used to pay for airline tickets for his children to travel with him thereby had committed one or more criminal offences punishable by imprisonment including that of misconduct in public office, and of obtaining a pecuniary advantage by deception contrary to s.226 of the Criminal Code Cap 124 of the Laws of Saint Vincent and the Grenadines [Revised Edition] 1990"*

- [4] Mr Cummings in his affidavit in support of the application dated the 8th March 2007 states that the words are not capable of bearing a defamatory meaning as the words set out in the statement of claim do not accurately reflect the entirety of what was said the particular sentence of the broadcast and he states that the precise words that he uttered were as follows;

"How could the Prime Minister justify every trip overseas, every other trip, his wife and children, going to all far fetched corners of the world at our expense most of the time when there are so many starving children, can't even get a butter bread to go to school when the day come"

- [5] The parties filed several authorities as well as excerpts from Halsbury's and Gatley on Libel in support of their submissions on the issue, all of which I have taken into consideration. The Claimant has not relied on innuendo in the Claim, he has relied on the natural and ordinary meaning of the words used and he will obviously not be allowed to tender extrinsic facts in support of a defamatory meaning nor will he be able to ask of others what they understood the words to mean.

- [6] Alleyne J. in **Gonsalves v Gibson and others** SVGHCV2006/405 and 406 succinctly encapsulated the principles by which a court should be guided in arriving at its determination by referring to the words of Lord Bingham MR in the case of **Skuse v Granada Television Limited** (1996) EMLR 278 at 285

- "1. *The court should give to the material complained of the natural and ordinary meaning which it would have conveyed to the ordinary reasonable person watching the programme once...*

2. *The hypothetical reasonable reader (or viewer) is not naïve but he is not unduly suspicious. He can read between the lines. He can read in an implication more readily than a lawyer, and may indulge in a certain amount of loose thinking. But he must be treated as being a man who is not avid for scandal and someone who does not, and should not, select one bad meaning where other non-defamatory meanings are available.*
3. *While limiting its attention to what the defendant has actually said or written, the court should be cautious of an over-elaborate analysis of the material in issue.*
4. *The court should not be too literal in its approach.*
5. *A statement should be taken to be defamatory if it would tend to lower the plaintiff in the estimation of right thinking members of society generally or would be likely to affect a person adversely in the estimation of reasonable people generally.*
6. *In determining the meaning of the material complained of the court is not limited by the meanings which either the plaintiff or the defendant seeks to put upon the words.*
7. *The defamatory meaning pleaded by the plaintiff is treated as the most injurious meaning the words are capable of bearing and the questions a judge sitting alone has to ask himself are, first, is the natural and ordinary meaning of the words that which is alleged in the statement of claim and, secondly, if not, what (if any) less injurious defamatory meaning do they bear.*
8. *The court is not at this stage concerned with the merits or demerits of any possible defence.”*

[7] In applying these principles, I have looked at the natural and ordinary meaning not only of the words alleged to be defamatory but also the words that Mr Cummings alleged that were the precise words that he used and I find that the words complained of are capable of the meanings alleged in the statement of claim.

[8] Costs of this application are assessed in the sum of \$500.00 to the Claimant

**CHERYL MATHURIN
MASTER**