

SAINT LUCIA



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

Suit No. 144 of 1997

Between:

KENNY D. ANTHONY

- Plaintiff

vs

PETER JOSIE

- Defendant

Mr. A. D. Astaphan in association with
Misses L. Jolie, K. Cenac and Ms. Anthony for
the Plaintiff
Mr. M. Wilson for Defendant

1997: May 5th
June 4th

JUDGMENT

d' Auvergne, J

The Plaintiff, a former lecturer, Barrister-at-Law and presently the Prime Minister of St. Lucia filed a Writ on the 17th day of February 1997 against the Defendant, a former Minister of Agriculture, Lands, Fisheries and Forestry and claimed the following:

- (a) An injunction to restrain the Defendant by himself, his servants or agents or otherwise from further speaking or publishing the said or similar words defamatory of the Plaintiff.
- (b) Damages for the slander published by the Defendant of the Plaintiff on the 4th day of September 1996 and on the 7th day of November 1996 and on divers other occasions.
- (c) Aggravated and/or exemplary damages.
- (d) Interest thereon at such rate as the Honourable Court shall deem fit.
- (e) Costs.
- (f) Such further or other relief that the Court deems fit.

ANTHONY

KENNY

D

V

PETER

JOSIE

"The said or similar words defamatory of the Plaintiff" referred to will be cited later at pages 7 and 8.

Two months later, namely, 17th day of April, 1997 the Plaintiff filed a **SUMMONS FOR AN INTERLOCUTORY INJUNCTION AGAINST THE DEFENDANT AND/OR TO STRIKE OUT THE DEFENDANT'S DEFENCE AND FOR LEAVE TO ENTER JUDGMENT** and claimed the following:

1. An order that the Defendant be restrained whether by himself, his servants or agents or otherwise from further speaking or publishing, printing or causing to be spoken, published or printed the words complained of in the Statement of Claim filed herein or any such words defamatory of the Plaintiff.

AND/OR

2. An order that the Defence of the Defendant be struck out under Order 18 Rule 19 of the Rules of the Supreme Court 1970 and/or under the inherent jurisdiction of the Court on the grounds
 - (1) that it discloses no reasonable defence;
 - (2) that it is frivolous, vexatious and embarrassing; and/or
 - (3) that it is an abuse of the process of the Court.

AND

3. That the Plaintiff be at liberty to enter judgment against the Defendant for damages to be assessed with costs to be taxed if not agreed.
4. That the Defendant do pay the costs of this application.

This Summons was supported by an Affidavit which is reproduced in its entirety:

AFFIDAVIT

I, **KENNY D. ANTHONY** of Cul de Sac in the Quarter of Castries in St. Lucia, hereby make oath and say as follows:

1. I am the Plaintiff in this matter.
2. The Defendant is and was at all material times fully aware that I am the St. Lucia Labour Party's Candidate in the constituency of Vieux Fort South as I and other executive members of the said St. Lucia Labour Party have said so publicly on several occasions and at several political meetings attended by the people of St. Lucia.
3. On or about the 17th day of February 1997 I instructed my Solicitors and they duly filed and served a Writ and Statement of Claim against the Defendant. All of the facts stated therein are to the best of my knowledge, information and belief, true.
4. On the 5th day of March 1997 the Defendant filed and served a Defence to the Statement of Claim.
5. I have read the Defendant's Defence and I say that all of the allegations contained therein are false.

6. Furthermore, I am advised by counsel and verily believe to be true that the allegations set out in the said Defence are unclear and, even if clear, would not constitute any defence known to law even if proved to be true and ought therefore to be struck out as embarrassing.
7. I say further that the alleged "context" pleaded in paragraphs 4 and 6 of the Defendant's Defence and which the Defendant alleges occurred in 1979 is false and misleading and I say categorically, and unequivocally that I did not receive and/or "lose" the sums of \$275,000.00 or \$250,000.00 and as alleged or at all, nor did I ever so state to the Defendant or anyone else in the presence of the Defendant or otherwise as alleged or at all.
8. In addition thereto, in a number of public speeches delivered by the Defendant throughout the island of St. Lucia, the Defendant has repeatedly made mention of various and different sums allegedly received by me, other than the US\$100,000.00 referred to in paragraph 6 of his Defence, and has at all material times expressly stated or clearly implied that I stole or misappropriated or fraudulently obtained for my personal benefit the alleged various sums referred to by him, and that I am a dishonest man who cannot be trusted.
9. I am further advised by Counsel and verily believe to be true that quite apart from the fact that the Defence is embarrassing and/or discloses no defence known to law and is therefore not maintainable in law, the said Defence is also frivolous and vexatious and/or constitutes an abuse of the process of the Court and ought to be struck out.

At the hearing of the application I will respectfully seek the leave of the Court to refer to and rely on the said Statement of Claim and Defence filed in this matter.

10. I am informed by Counsel and verily believe to be true that the grounds amongst others relied on in support of the application that the Defendant's Defence is frivolous and vexatious and/or constitutes an abuse of the process of the Court are, namely:
 - (a) that the sole defence raised by the Defendant in his Defence is that the Defendant spoke the words complained of in order to elicit a public explanation from me. The Defendant has not pleaded any particulars or facts to justify the accusation that I am dishonest or that I stole or misappropriated the sum of \$275,000.00 or \$250,000.00 as alleged or at all or to establish that the accusations made by the Defendant are true. Furthermore, at paragraph 12(b) of his Defence, the Defendant purports to say that he never and will never impute criminal conduct or dishonesty towards me but instead seeks to elicit an explanation from me in relation to an alleged incident which the Defendant alleges occurred in 1979.
 - (b) that the Defendant admits using the words complained of in paragraph 4 of the Statement of Claim but seeks to place the words complained of in an alleged "context", which said alleged context is not only false, but was never referred to or mentioned by the Defendant in any way or at all in speaking the words complained of or at any time prior to the filing of the Defendant's Defence and/or is not and was never public knowledge or well known to the people of St. Lucia.
 - (c) that the Defendant seeks to explain the reason why he used the words complained of by pleading an alleged "context" and his desire to obtain a public, as opposed to a personal, explanation from me in relation to an

alleged incident which the Defendant alleges occurred in 1979.

- (d) in any event, and on the assumption that the alleged context pleaded in paragraph 6 of the Defence is true (which is denied), the said alleged context pleaded by the Defendant contains no facts or particulars or substratum of facts and does not and cannot amount to justification of the words complained of and/or as a basis for a defence of fair comment and/or do not warrant the imputation of theft, dishonesty and/or corruption made by the Defendant of and concerning me in and by the words complained of. Therefore, I believe that the sole purpose of the Defendant is to politicize the judicial process and/or to use the process of the Court for a collateral purpose, namely, to discuss political rumour and an alleged occurrence and/or to embarrass me.
 - (e) the allegation of eliciting or seeking to elicit a public explanation from a public figure on an alleged occurrence is not a defence known to law. As a result, the Defendant is seeking to utilize the process of the Court for an ulterior purpose, namely, purporting to elicit a public explanation from me and, as such, the Defence constitutes an abuse of the process of the Court.
 - (f) the Defendant has not pleaded any particulars, facts or substratum of facts that supports or can support any or any bona fide defence known to law and/or which establishes or can establish that the allegations or factual assertions made against me are true.
 - (g) the Defendant has not pleaded any facts or particulars that the substantiate or can substantiate any of the allegations or accusations or imputations made by him against me and which are expressly or impliedly stated in the words complained of set out in paragraph 4 and 5 of the Statement of Claim filed herein on my behalf.
 - (h) the Defendant's Defence is a sham and is not a defence or bona fide defence.
11. Furthermore, on or about the 10th day of March 1997, Mr. George Odium, the very person referred to in the Defendant's Defence as George Odium, in a public statement has publicly and categorically denied the allegations and accusations made against me by the Defendant.
 12. In the premises, I respectfully ask this Honourable Court to make an order striking out the Defendant's Defence and granting me leave to enter judgment for damages to be assessed with costs.
 13. Further and/or in the alternative, the Defendant continues to speak or cause to be spoken the same or similar words at public political meetings and otherwise which are clearly defamatory of me and which continue to cause me great harm, notwithstanding that the Writ and Statement of Claim was duly filed and served on him.
 14. Furthermore, I understand that the United Workers Party of which the Defendant is an active member intends to publish or cause to be published advertisements containing the same or similar slanderous statements and/or imputations of and concerning me.
 15. The words spoken by the Defendant are wholly false and I believe that in speaking the said words complained of the Defendant was and is actuated by express malice in that he at

all material times knew and knows that the allegations are false but made and continues to make them nevertheless to embarrass me and to further his own ends and that of his political party.

At the hearing of this application I will seek the leave of the Court to refer to and rely on, inter alia, paragraphs 8 and 9 of my Statement of Claim filed herein on my behalf for their full terms and effect.

16. Further, the Defendant's Defence clearly indicates that he has no defence and/or that his defence is wholly without merit and, therefore, his actions in continuing to speak the said words are calculated to cause harm and/or further harm to me, knowing full well that the allegations are false.
17. I believe that unless restrained by this Court the Defendant will continue to speak and/or repeat the said or some similar allegations.
18. I further believe that unless the Defendant, his servants, and/or agents or otherwise are restrained by this Court, I will suffer irreparable harm to my reputation, which said harm will not and cannot be compensated or adequately compensated or remedied by damages, particularly if the Defendant is unable or unwilling to pay the same.
19. In the circumstances, I humbly pray that the Court will restrain the Defendant, by himself, his servants or agents or otherwise, from speaking or further speaking or from permitting or causing to be spoken, printed or published or further spoken the said or similar words complained of until after the trial of the action or until further order.

On the 2nd day of May 1997 the Defendant filed an Affidavit in Reply which is also reproduced:

AFFIDAVIT IN REPLY

I, **PETER JOSIE** of Bonne Terre in the quarter of Gros Islet in the State of St. Lucia Agronomist do hereby make oath and say as follows:-

1. I do not attend meetings held by the applicant or his party and have no knowledge of the applicants utterances there at and reiterate that I have no knowledge that the applicant is in fact the SLP candidate for Vieux Fort South in the next General Election.
2. The Plaintiff duly filed and served a Writ and Statement of Claim against me but at the time of filing there was no application for any Interlocutory Injunction.
3. On the 5th day of March 1997 I duly filed and served a Defence on the Plaintiff which defence raises two defences to the Plaintiff's action, namely, justification and fair comment in the public interest.
4. That the Plaintiff having a Doctorate in the Law is well acquainted with the said defences and the fact that they may be pleaded individually or as a rolled up plea.

5. That the Plaintiff took a full two months from the date of filing of the Writ of Summons and Statement of Claim before applying for an Interlocutory Injunction and in any event now applies for the same well after the Defence has been filed and served.
6. That all the allegations contained in my defence are true.
7. That I am advised by Counsel and verily believe that it is a well settled principle of law that in actions of defamation where justification and fair comment in the public interest is intended to be pleaded or are pleaded in the defence as in the instance the Court shall not grant an interlocutory injunction.
8. That in circumstances aforesaid it is the well settled practice that a trial on the merits is proceeded with, as the success of either of the aforesaid defences means that no wrong was committed.
9. That the defences are clear and unambiguous well known to the law of defamation and the Defendant looks forward to a trial on the merits in the said case.
10. That the paragraphs 7-14 of the Plaintiff's Affidavit in Support both inclusive delves into the merits of the case and therefore should be struck out.
11. That the Plaintiff in paragraph 15 of the Affidavit in Support states that he shall on the application seek leave of the Court to refer to and rely on the Statement of Claim which is clearly not permissible as it is an attempt to deal with the merits of the case.
12. That the Plaintiff's Affidavit in this application is in fact what is unclear both as to its nature and its intended objectives and is calculated to embarrass the Defendant as there is no clarity as to the nature of this application.
13. That the Plaintiff has given no undertaking to pay damages to the Defendant in the event of any loss being occasioned to the Defendant by virtue of the order sought which order in any event the Defendants states the Plaintiff cannot obtain in law.
14. That in the circumstances the Defendant hereby applies that the Plaintiff's application be dismissed with costs to the Defendant and that the Plaintiff to apply to this Honourable Court for a date for this action to be heard on the merits.

On that same date the Plaintiff filed another Affidavit in Support of the Application. Simon Phillip of Marie Therese Street in the town of Gros Islet deposed that he attended a public meeting on the 16th of April, 1997 and heard the Defendant say the following words of and concerning the Plaintiff.

"..... Because Kenny Anthony when he did not want to be Prime Minister he could get away with losing a brief case of money, misplacing it and doing what the hell you wanted with it. We as

St. Lucians have to find out from him if you want to be Minister of Finance. You cannot tell us if Peter Josie is lying about the brief case. And the man is so indiscreet, instead of answering, he is taking me to Court. He is telling the judge to tell me to stop talking about things which concern the country. You must be mad or you stupid or what. These guys think they can intimidate a man like me."

The application was heard on the 5th day of May, 1997. Only the Interlocutory Injunction against the Defendant was heard.

Learned Counsel for the Plaintiff argued strenuously and quoted copious cases supporting the application that the Order of injunctive relief sought, should be granted to the Plaintiff.

Learned Counsel for the Defendant commenced his arguments by stressing that this was a simple application for injunctive relief and nothing else. He contended that the Defendant was not denying that certain words were used but that it was fair comment on a matter of public interest which he could and will justify. **Fraser v Evans & others (1969) 1 ALLER Page 8.**

CONCLUSIONS:

I will commence by stating that the application which was heard was for an order that the Defendant be restrained whether by himself, his servants or agents or otherwise from further speaking or publishing, printing or causing to be spoken, published or printed the words complained of in the Statement of Claim namely:

"You (George Odlum) told us in 1979 (that the Plaintiff) was sent to Guyana, was coming back with TWO HUNDRED AND SEVENTY FIVE THOUSAND DOLLARS (\$275,000.00), he said he lost the money in Trinidad at the Airport because he went to urinate. You think George Odlum can ever trust, if that really happened, if it really happened... Ou pa sav say des mal crab qui passer wetay a dan mem tou. You think that can ever survive?"

"(that the said Plaintiff) "can jump high he can jump low, he can run around but there are too many questions including the TWO HUNDRED AND FIFTY THOUSAND DOLLARS (\$250,000.00) that Odlum and myself had sent him to collect from Guyana and

Trinidad and I will tell you whom we sent him to; I will tell you when the time comes; he has to answer that question and Odlum too; they have to answer because I know... If you are a thief before you enter into politics how can you not be a thief when you enter into government. How can you? That is why this election is about honesty. It's about character. It's about issues. It's about the quality of men. I have been here now for 22 years on a platform, nobody can point a finger at me. And it's not because I am a perfect man. It is because in the conduct of my public life and private life... I know what I want out of life, money can not buy it."

It is trite law that the Court has jurisdiction to grant an injunction at any stage of the cause restraining the publication of the libel or slander, but this jurisdiction must be exercised with great caution.

An injunction will not be granted if the Defendant pleads that he intends to justify his statements or to make fair comment on a matter of public interest.

Bonnard v Perryman (1891 - 4) ALLER 965

Khashoggi v 1 PC Magazines Ltd and Another (1986) 3 ALLER 577

Fraser v Evans & Others 1969 1 ALLER Page 8

Despite the fact that this is an application for injunctive relief, in order for me to ascertain whether the words complained of are capable of bearing a defamatory meaning, I must refer to the Statement of Claim and take into consideration not only the actual words complained of, but also their context and the person or persons to whom they were said, and that the test to be applied is not whether some person might have understood the words as reflecting adversely on the Plaintiff but whether an ordinary, reasonable man would so construe them; and that if the words are to be held to be defamatory by reason of an inference to be drawn from them it must be a natural and necessary inference with reference only to the literal, popular and universally accepted meaning of words.

Nabarro and Caribbean Corporate Services Ltd v Powell, Offshore Incorporations Ltd Cheslaw and HWR Services Ltd. British Virgin Islands Civil Appeal No. 8 of 1994 Page 3.

**Learie Carasco aka Rickwayne vs Neville Cenac St. Lucia Civil
Appeal No. 6 of 1994 Page 8.**

It is pleaded in paragraph 4 of the Statement of Claim that the Defendant falsely and maliciously spoke and published of and concerning the Plaintiff to divers persons present, the words mentioned earlier on page 7 of this judgment.

The Defendant on the other hand has denied that the alleged statements are false and malicious infact he pleaded that his intention was to elicit a public explanation from a public figure.

"The law however assumes in favour of the Plaintiff..... for it is not be assumed that anyone is of bad character."

Lionel S. Craig v Thomas Miller Barbados of No. 317 of 1986.

It is trite law that a slander which imports a criminal offence punishable with imprisonment is actionable without proof of special damage.

Learned Counsel for the Plaintiff argued that the words used by the Defendant imputed many criminal offences chargeable under the Criminal Code of Saint Lucia.

As stated earlier, this is not a decision on the substantive matter which is not yet ripe for hearing but an interlocutory matter seeking injunctive relief and I bear in mind the principles to be considered.

A person applying for an interlocutory injunction must always give an undertaking to pay damages in case it should turn out at the hearing that he is in the wrong.

Learned Counsel for the Defendant pointed out that the Plaintiff in his Affidavit did not give an undertaking to pay damages.

At the hearing Learned Counsel, Mr. A. Astaphan, for the Plaintiff gave an undertaking as to damages which was accepted.

See **Supreme Court Practice 1995 Vol. 1 Page 520** "The undertaking is properly given by the Plaintiff's Counsel even though the Plaintiffs are a Limited Company."

The next question for me to resolve, is do the words complained of mentioned earlier in this judgment reasonably convey any imputation or impropriety or misconduct on the part of the Plaintiff in relation to the carrying on of his profession or of unfitness to carry on his profession in a proper and satisfactory manner?

At the time when the words were alleged to be spoken the Plaintiff was a Barrister-at-Law, the leader of the St. Lucia Labour Party and the Saint Lucia Labour Party candidate for the Vieux Fort South Constituency at the elections to be held in St. Lucia on the 23rd May, 1997.

In my view, the ordinary sensible person hearing those words complained of, would understand them to mean that the Plaintiff was a thief and a dishonest person, one morally unfit to be elected to public office. I have given much consideration to **Fraser v Evans** quoted earlier.

I now refer to **Suit 175 of 1996 John G. M. Compton vs Patrick Joseph** which decision was upheld by the Court of Appeal in January 1997 and I quote from page 9:

"Generally, courts are reluctant to fetter free speech because of the questions that may arise during the proceedings, such as whether the meaning of the words or statements complained of are defamatory and whether the defences of fair comment and justification are applicable."

However, if there is reason to believe that there will be further publications and that damages will not be an adequate remedy then

the injunctive relief should be granted.

Finally the many issues of law and fact which have arisen and will arise in this case will be finally resolved when the case comes to trial.

As I have said, in my judgment, the words complained of, would convey imputations of misconduct and dishonesty to the reasonable man on the part of the Plaintiff in relation to his profession as a barrister and as someone morally unfit to hold public office.

In these circumstances the Court will intervene and grant the relief sought.

My order is therefore as follows:

- (1) That an injunction be and is hereby granted to the Plaintiff and the Defendant is restrained by himself, his servants or agents or otherwise from further speaking or publishing printing or causing to be spoken, published or printed the words complained of in the Statement of Claim until the determination of the case or further order of the Court.
- (2) That Cost be Costs in the cause.

.....
SUZIE d'AUVERGNE
HIGH COURT JUDGE