

ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

SUIT NO. ANUHCV 2004/0408

BETWEEN:

ABRAHAM MANSOOR  
ESAU MANOOR  
EDWARD MANSOOR  
ABDO MANSOOR & SONS LTD  
Trading as TOWN HOUSE FURNISHING

Claimants

And

GRENVILLE RADIO LIMITED

First Defendant

IVOR GRENVILLE THEOPHILUS BIRD

Second Defendant

JAMES "SLY J" SIMON

Third Defendant

JAMES TANNY ROSE

Fourth Defendant

**Appearances:**

Mr. Gerald Watt QC with Dr. David Dorsett for the Claimants

Mr. Hugh Marshall Jnr and Mrs. Cherissa Roberts-Thomas for the First, Second and Third Defendants

Mr. Steadroy Benjamin for the Fourth Defendant

.....  
2007: February 20<sup>th</sup>  
October 12<sup>th</sup>  
.....

**JUDGMENT**

[1] **Blenman; J:** This is an amended claim for slander.

[2] Mr. Abraham Mansoor (Abraham), Mr. Esau Mansoor (Esau), Mr. Edward Mansoor (Edward) (referred to also as the Mansoors) are directors of and closely associated with Abdo Mansoor & Sons (Abdo Mansoor) which is a private company limited by shares with

its registered office situated at Market & Tanner Streets and trading as Town House Furnishings at Market Street of Saint John in the State of Antigua and Barbuda.

- [3] Grenville Radio Limited (Grenville Radio) is a company registered in the State of Antigua and Barbuda with its registered office situate at Bird Road Ottos, St John's, Antigua. It is the owner and operator of a local radio station known as ZDK Radio which has a wide listening public.
- [4] Mr. Ivor Grenville Theophilus Bird (Mr. Bird) is and was at all material times the General Manager and program director and responsible for the general operation, administration and programming of the ZDK Radio.
- [5] Mr. James "Sly J" Simon (Mr. Simon) is an employee and/or agent of the Grenville Radio and is a Talk Show host on several programmes on Z.D.K Radio and particularly a show known as "Your View" which permits the general public to air its views.
- [6] Mr. James Tanny Rose is a member of the general public, a social activist, a media consultant and a leading activist in the Antigua Labour Party. He regularly calls into ZDK radio to voice his views on a number of issues.
- [7] In the Amended Claim, the Mansoors and Abdo Mansoor allege that, on or about the 15<sup>th</sup> day of July 2004, during the course of a radio program entitled "Your View" hosted by Mr. Simon on ZDK Radio, the Grenville Radio, Mr. Bird, Mr. Simon and Mr. Rose falsely and maliciously caused words to be published of and concerning them as a consequence of which they were defamed. The Mansoors and Abdo Mansoor also contend that Grenville Radio, Mr. Bird, Mr. Simon and Mr. Rose also allowed a female anonymous caller to publish defamatory words about them; accordingly they contend that the defendants are liable for their alleged defamation based on the words spoken by both Mr. Rose and the caller.

[8] The words complained of are as follows:

'How can Dr Cort justify telling me or you or the whole country that things is worse than ever when he a give Abdo Mansoor five (5 trailer load of things tax free, duty free and all the free in the world. ...so when you gave away all the concessions to all your campaign team (wonder if you understand what I mean) and under the guise of local, when you turn the government into insurance company by giving persons concessions for all them things under the guise of they burn in fire that is the reason why the economy is worse than ever. That is the reason.

Anyway Sly J, remember some time ago I mention that Mansoor got five containers gratis.

But what I got in my hand Sly, is a copy of the request that was made by Mansoor himself you see when he make noise and he lock down the custom end me go at his end cause he no treat he workers and them good so them glad fu gi me things from him.

Cabinet Decision #28 of 25<sup>th</sup> May 2004. This is what all Errol Cort and his government give to the Mansoors.

"Now Sly, all them things is supposed to damage in the fire. Now Sly let me say this. Mansoor rented 3500 square feet of space right at the place that was burned. I am asking you Sly, I am not saying it is impossible for all them things there to hold in 35 square foot, but some engineer or somebody will have fu come come tell me how all them things hold in that small space there.

Now they get in all right 462 stove. That enough stove fu keep them for over 6 years, according to what the person tell me they sell normally. They get 190 fridges and 225 washers. They have enough things to keep them for over 5 years. Now tell me how can the other business places compete? Everything come to one million (right) nineteen thousand and thirty-five dollars and fifty cents (\$1,019,035.50). Now the duty on this is 80%. So that is over \$800,000 they get from our taxpayers money. That is only for duty. When you add in the customs service tax it is even more. And when you add in the white the \$100 for every one of them equipment you see the amount of money that Errol Cort and this government has given to the Mansoors and them get all them things there? They have enough stock that will last five years imported in his business unless they get a good price overseas? And I want to find out from the police, what kind of claim the Mansoors sent in when they had the fire. And how is it, I am no engineer, but I want to know how all them things here hold in 3500 square feet of space. I want to find out

that. I want to find out from the government how they know that what Mansoor submit here is the amount that they really lost. They need to tell us if they feel that Mansoor pad the list. But they could not have felt so, because everything Mansoor submitted they have given them carte blanche, cabinet decision 28, #28 25<sup>th</sup> May, 2004.

Now sly, you tell me a little man bring in a little thing down at the harbour and the custom officer doing the job, in all fairness to them, they put on de charge. You think them feel good to know that Mansoor place bun down and the Sunshine Government gives them all them things here duty free? Two hundred and fifty two of one stove, right 38 Magic Chef Washers, all kinds of things that them have there, Sly, that can't be fair?

And Errol Cort is bragging before the Chamber of Commerce that he save money by sending home poor people on the job program. If you read the article he is saying that they have money because they send home poor people. And in the same breath he is giving Mansoor this \$800,000 for duty that he gave to Mansoor could have paid – kept the job program going for another three years...and he give Mansoor them that richer than everything else than you can imagine and he give them nearly a \$1 million in tax payers money for duty because their place burn down that should have insured. That cannot be right. Sly, read page eight of the Observer, you see that?

Female anonymous caller: I'm just calling to tell you this. The stoves and the fridge and everything else that the Mansoors get is what they were giving out for election bribes. So that is why now they get them back...That is what the Cort was giving them his people all over so now he give them back to them. That is what he does. That is the bribe that he was giving to his people so now he give them back them come in free."

- [9] The Mansoors and Abdo Mansoor further contend that the above words were also intended to mean and did convey the meaning that they were guilty of election fraud, sharp practices and they were dishonest businessmen, this caused them to be ridiculed and shunned. The publication of the words also made persons hold them in contempt and persons hate them. The Mansoors and Abdo Mansoor also contend that they are honest business persons and that they have been injured in their reputation. They argue that the natural and ordinary meanings of the words were dishonest and fraudulent and given to sharp practices in that they had deliberately lied to the Government of Antigua and Barbuda in order to obtain duty free concessions in circumstances in which they were not

entitled to receive the concessions. The Mansoors and Abdo Mansoor further complain that the above words were meant that they had conspired with Dr. Cort to defraud and/or deprive the Government's revenue by grossly inflating the loss they had suffered when the warehouse in which they housed their goods was destroyed by fire. This false publication they contend has caused them to be discredited as businessmen and has resulted in other persons subsequently saying disparaging things about them (based on the words spoken by Mr. Rose and the female anonymous caller)

[10] Accordingly, the Mansoors and Abdo Mansoor seek damages including exemplary and aggravated damages against all of the defendants for the alleged defamation. They also seek an injunction to restrain the defendants from further publishing those words or any other words that are defamatory of them. They fear that unless restrained the defendants would continue to disparage them.

[11] The Grenville Radio, Mr. Bird and Mr. Simon, in their amended defence deny that they defamed the Mansoors and/or Abdo Mansoor as alleged or at all. Grenville Radio admits that Mr. Simon is its employee and that he hosts a programme styled "Your View" on which the public airs its views; further it admits the words were spoken by Mr. Rose. However, it denies that they were falsely or maliciously spoken. Grenville Radio, Mr. Bird and Mr. Simon contend that the words were published about the Government of Antigua and not Abdo Mansoor or the Mansoors. Significantly, they deny that the words were falsely or maliciously published in relation to the Mansoors. Further, they deny having any malice towards the Mansoors and they take issue with the ordinary and natural meaning ascribed to the words or the understanding of them as urged by the Mansoors. The first three defendants are adamant that the words were directed towards the Government of Antigua.

[12] In addition, Mr. Bird, Mr. Simon and Grenville Radio accept no responsibility for the words spoken by the anonymous caller and take the position that they have no control over the views expressed by persons who "call in" to radio programmes and in any event the radio station during and at the end of each one of the programmes "Your View" clearly gave disclaimers on behalf of the station, its management and/or Mr. Simon for any views

expressed. They therefore contend that they cannot be held responsible for the publication of any words, 'which may' be deemed to have been defamatory. Alternatively, in their defence the Grenville Radio Station, Mr. Bird, and Mr. Simon contend that the words, complained of amounted to fair comment on matters of public interest or they were justified as they were true. Further, and in the alternative, they contend that the words complained of were spoken on the occasion of qualified privilege. They deny having any malice towards the Mansoors. Accordingly, they assert that the Mansoors and Abdo Mansoor are not entitled to any relief whatsoever.

- [13] In his amended defence, Mr. Rose, while admitting that he said the words complained of, denies any knowledge of the anonymous call from the female caller and accepts no responsibility for the alleged publication of those words by the female caller. In addition, Mr. Rose disputes that his words complained of were published of the Mansoors in way of their business, occupation or employment. He contends that the words he spoke were in relation to the Government of Antigua and that he had only mentioned Abdo Mansoors. Further, in his defence, he contends that the words amounted to fair comment on matters of public interest; were not meant or understood to have the meaning attributed to them. Alternatively, Mr. Rose says that the words were spoken on an occasion of qualified privilege. He denies that Mansoors and/or Abdo Mansoor have been injured either in their credit or reputation. He also denies that he has in any way defamed either the Mansoors or Abdo Mansoor and is adamant that he has no malice towards them. Accordingly, he says that they are not entitled to any relief in the circumstances.

### Issues

- [14] The issues that arise for the Court's determination are:
- (1) whether the words are capable of being defamatory;
  - (2) whether the words were defamatory in the circumstances;
  - (3) Whether the words were defamatory of the Mansoors and/or Abdo Mansoor;
  - (4) can the defendants avail themselves of the defences of justification, fair comment and/or qualified privileges;

(5) to what remedies, if any, are the Mansoors and/or Abdo Mansoor entitled?

## Law

[15] I will now address the applicable law. Firstly the relevant provisions of the Civil Procedures Rules 2000 are found in Part 69.

Part 69.2 states as follows:

"The statement of claim (or counterclaim) in a defamation claim must, in addition to the matters set out in Part 8:

- (a) give sufficient particulars of the publications in respect of which the claim is brought to enable them to be identified;
- (b) if the claimant alleges that the words or matters complained of were used in a defamatory sense other than their ordinary meaning – give particulars of the facts and matters relied on in support of such sense; and
- (c) if the claimant alleges that the defendant maliciously published the words or matters – give particulars in support of the allegation."

Part 69.3 states that:

A defendant (or in the case of a counterclaim, the claimant) who alleges that:

- (a) in so far as the words complained of consist of statements of facts, they are true in substance and in fact; and
- (b) In so far as they consist of expressions of opinion, they are fair comment on a matter of public interest; or
- (c) Pleads to like effect; must give particulars stating –
  - (i) which of the words complained of are alleged to be statements of facts; and
  - (ii) the facts and matters relied on in support of the allegation that the words are true."

[16] The next relevant law is that of the Representation of the People Amendment Act No. 17 of 2001 29(1) states that:

- "(1) A person is guilty of a corrupt practice if he is found guilty by a court of competent jurisdiction of bribery.

- (2) A person is guilty of bribery if he, directly or indirectly, by himself or by any other person on his behalf
- (a) gives any money or procures any office to or for any voter or to or for any other person on behalf of any voter or to or for any other person in order to induce any voter to vote or refrain from voting;
  - (b) corruptly does any such act as aforesaid on account of any voter having voted or refrained from voting; or
  - (c) makes any such gift of procurement as aforesaid to or for any other person in order to induce that person to procure the return of any person at an election or the vote of any voter.

### **Background**

[17] Abraham, Esau and Edward Mansoor (the Mansoors) are brothers of a well-known business family and they are the directors of Abdo Mansoor which trades in commercial goods and among other things are involved in the importation and sale of goods that are warehoused in Antigua before sale. Abdo Mansoor warehoused its commercial and household appliances at Cassada Gardens and on 9<sup>th</sup> December, 2003, there was a fire which destroyed the goods. The goods, that were destroyed, however, were not insured and the Mansoors and Abdo Mansoor suffered losses as consequence. Mr. Edward applied to the Cabinet of Government of Antigua for duty free concessions and by Cabinet decision dated 28<sup>th</sup> day of June, 2004 duty free concessions were granted for goods to be imported.

[18] The Mansoors' brother, Dr Edmond Mansoor, (Dr Edmond) is a medical doctor and a member of the United Progressive Party. He had campaigned for the party in 2004 general elections in Antigua and Barbuda. Dr Edmond also supported and campaigned for Dr. Errol Cort during the election. The UPP won the 2004 elections and formed the Government with Dr. Cort being appointed Minister of Finance. Dr Edmond is a Senator and a Minister of Information Technology.

[19] It appears that, before and after elections, the UPP spoke to fiscal measures that were necessary for Antigua. The economy in Antigua was said to be in a difficult state

financially. Mr. Rose was of the view that prior to the general elections the UPP had a declared policy of taking serious actions in relation to the grant of duty free concessions in the light of fiscal imbalance. He was of the view that it had promised to reduce the duty free concessions. After the fire at the warehouse, Mr. Rose was able to access the list of items submitted by the Mansoors to Cabinet of the Government of Antigua in order to obtain the duty free concession. This was the list of the items that were allegedly destroyed in the fire. Also, Mr. Rose was aware of the role that Dr Edmond had played in Dr Cort's successful campaign and election to Parliament. Mr. Rose was also cognizant of the fact that Dr Edmond was appointed as a member of the Senate and prior to elections had hosted a radio programme "Have Your Say". Mr. Rose was concerned that the Government of Antigua (Cabinet) could have granted duty free concessions for such a substantial amount of items namely (1079) pieces of house hold furniture and equipment and it was against that background that he telephoned ZDK during the programme "Your View" that was hosted by Mr. Simon and made the comments that are at the center of the controversy and have been referred to above. On conclusion of the alleged words, a female anonymous caller also called into the same programme and contributed thereto

[20] For his part, Mr. Simon who is an experienced talk show host was of the view that Dr Edmond has made derogatory remarks of the Rt. Honourable VC Bird Snr who was the Premier of Antigua and later it's Prime Minister for several years and the remark was very hurtful to Mr. Simon. He was of the view that "it was relevant to the nation when Dr. Edmond's family gets special treatment from the Ministry of Finance in respect of goods they import and sell. In his view, whether this is further reward to Dr. Edmond for what he said about Prime Minister Vere Bird Snr is a matter of public interest". Mr. Simon is aware of technical measures that he could have implemented to terminate calls from contributors to the programme if the calls disparage or insult persons.

[21] Mr. Bird was of the view that the Mansoors were not entitled "by law" to the grant of the duty free concessions they received. He said that this was a "political hand out or payoff". He was of the view that both Mr. Rose's and the anonymous caller's utterances were not aimed at the Mansoors but upon the conduct of public officers that had decided to give the

Mansoor a personal or special benefit not given to other members of the general public. The views expressed by Mr. Rose were not authorized by himself or the Grenville Company nor Mr. Simon but Mr. Bird felt that it was his duty to expose the matter to public scrutiny. However, he was clear that the members of the public were angered by the disparaging comments that Dr Edmond had made about his father and former Prime Minister VC Bird Snr.

- [22] Grenville Radio has as its directors and, is owned by a well known family, the Bird's family, with one of the sons Mr. Ivor Bird as its General Manager. The radio station, apparently, is regarded as associated with the opposition Antigua Labour Party which formed the Government of Antigua and Barbuda for several years and which was headed by VC Bird Snr and later by another son Mr. Lester Bird who later was the Prime Minister of Antigua and Barbuda.

#### **Mr. Benjamin's submissions**

- [23] Learned Counsel, Mr. Steadroy Benjamin said that the first issue to be determined is whether the words spoken by Mr. Rose were spoken of and concerning the Mansoors and Abdo Mansoor. Learned Counsel Mr. Benjamin submitted that Mr. Rose did not publish the words of and concerning the Mansoors, once the spoken words are put in context this is the only obvious deduction and conclusion that could be drawn. He urged the court to consider the entire statement made by Mr. Rose and decide whether a reasonable listener would have understood the statements in the way in which the Mansoors say it would be understood. It is clear that Mr. Rose was commenting on the Government of Antigua policies. Counsel referred the court to Gately on Libel and Slander 8<sup>th</sup> edition paragraph 120 page 65 which states:

“the test of reasonableness guides and directs the Court in its functions of deciding whether it is open to a jury in any particular case to hold that reasonable persons would understand the words complained of in a defamatory sense”. In determining whether the words are capable of a defamatory meaning Mr. Benjamin ask the court to construe the words according to the fair and natural meaning which would be given to them by reasonable persons of ordinary intelligence, and do not consider what persons setting themselves to work to deduce some unusual meaning might succeed in extracting from them. “The test according to the

authorities," said Lord Selbourne "is whether, under the circumstances in which the words were spoken, reasonable men to whom the publication was made would be likely to understand it in a libelous sense". Counsel pointed the Court should not attempt to interpret Mr. Rose's statement "like a lawyer, straining the language of the words."

[24] In further support of his contention, Mr. Benjamin referred the Court to the pronouncements by Lord Reid in **Lewis v Daily Telegraph Limited [1964] A.C 235 at 258:**

"There is no doubt that in actions for libel the question is what the words convey to the ordinary man: it is not one of construction in the legal sense. The ordinary man does not live in an ivory tower and he is not inhibited by a knowledge of the rules of construction". See also: **Morgan v Odhams Press Limited [1971] 1 W.L.R 1239 at 1245"**

[25] Next, Mr. Benjamin invited the Court to examine the very opening remarks of Mr. Rose namely.

"How can Dr. Cort justify telling me or you or the whole country that things is worse than ever when he gave Ado Mansoor five (5) trailer load of things tax-free, duty free and all the free in the world". It is clear that his reference was to Dr Cort in his capacity as Minister of Finance under whose portfolio the application for and the grant of duty free concessions are considered and made."

Again in the same paragraph Mr. Rose continued:

"...so when you give away all the concessions to your campaign (wonder if you understand what I mean) and under the guise of local, when you turn your government into insurance company by giving persons concessions for all the things under the guise of the burn in fire that is the reason why the economy is worse than ever. This is the reason."

Mr. Rose then made reference to Cabinet decision #28 of 25<sup>th</sup> May, 2004. The Mansoors never denied that they made a request for duty free concessions to the Government for 1079 pieces of furniture and that the total value therefore inclusive of their profits amounted to \$1,019,035.50. Nor did they deny that they received full and total exemption of all taxes on the items listed to include Environmental Tax.

Mr. Rose continued:

"And when you add the white the \$100.00 for every one of the equipment you see the amount of money that Errol and his government has given to the Mansoors and them get all them things there?"

And again:

"I want to find out from the government how they know what Mansoor submit here is the amount they lost. They need to tell us if the fact that Mansoor pad the list. But they could not have felt so because everything Mansoor submitted they have given them carte blanche Cabinet Decision 28, #28 of 25<sup>th</sup> May 2004."

[26] Learned Counsel Mr. Benjamin submitted that the examination of the above words would reveal the whole focus of the words spoken by Mr. Rose was geared towards the government's policy of the granting duty free concessions. Indeed, on cross-examination Mr. Rose repeated that position consistently. In fact, he indicated that his interest in the matter was heightened because it was the first time that he had encountered a duty free application of this magnitude and nature being granted in total. In his words, "right across the board". As he stated in cross examination had that type of carte blanche duty been granted to another company he would have made similar comments since the Sunshine Government had campaigned prior to the election of March 2004 that it would take a serious and responsible position to the granting of Duty free Concessions in light of the fiscal imbalance in the economy and the harsh economic times the country was experiencing due to the contraction of the economy and the downturn of economic activity in the State.

[27] Next, Mr. Benjamin addressed the issue of whether the words spoken by Mr. Rose were defamatory of the Mansoors. He submitted that the words are not defamatory and that when placed within the context of the statement made by Mr. Rose they could not possibly have any meaning as urged on the Court by the Mansoors and Abdo Mansoor. He adverted the Court's attention to the fact that Mr. Rose in cross examination emphatically denied that he intended to refer to the Mansoors in the terms as have been alleged. Learned Counsel Mr. Benjamin submitted that the meaning attached by the Mansoors to the words spoken by Mr. Rose is a huge stretch of the Mansoors' imagination. There is no way that any reasonable person on hearing Mr. Rose's entire speech could come to a

conclusion in similar terms as the Mansoors. He referred the Court to Gately on Libel and Slander (8<sup>th</sup> edition) at paragraph 31:

"The gist of the torts of libel and slander is the publication of matter (usually words) conveying a defamatory meaning. A defamatory imputation is one to a man's discredit or which tends to lower him in the estimation of others or to expose him to hatred, contempt or ridicule or to injure his reputation in his office, trade or profession or to injure his financial credit. The standard opinion is that of right thinking persons generally."

[28] Mr. Benjamin maintained that the words spoken by Mr. Rose were against the background of the Cabinet Decision No 28. made on the 25<sup>th</sup> May, 2004. He posited that it was never stated that the Cabinet Decision did not exist; it was never contradicted that the Mansoors had benefited directly or indirectly from the said decision in that 1079 pieces of furniture were imported into the country free from all duties, levy, rates and taxes; it was never denied that the Sunshine Government gave duty free concessions on the entire list of items prepared by or on behalf of the Mansoors; and it was admitted that Mansoors derived the duty free concessions.

[29] Learned Counsel Mr. Benjamin advocated that no cogent evidence was led establishing that Mr. Rose in his statement disparaged any of the Mansoors in their office, calling, trade or profession. Nor was there evidence to show that Mr. Rose imputed or characterized any of the Mansoors as being dishonest, greedy, fraudulent, liars, conspirators and/or given to sharp practices. If anything, during cross-examination Mr. Rose exhibited and stated his great admiration, trust and friendship with and for the Mansoors; persons with whom he had been on friendly terms for well over 20 years. To demonstrate the nature of the relationship Mr. Rose even gave evidence that one of the Mansoors invited him to leave the Antigua Labour Party and join the Sunshine government; that was never rebutted or denied by the Mansoors or any of them. Mr. Benjamin submitted that on the evidence there is nothing inherent in Mr. Rose's statement which would tend to lower the Mansoors in the estimation of the right thinking people in society and as such the words are not

defamatory. If, however, the Court were to rule otherwise, Counsel next turned his attention to the defences advanced by Mr. Rose.

### **Qualified Privilege**

[30] Mr. Benjamin submitted that the defence of qualified privilege is applicable to the case at bar. He said that qualified privilege owes its existence to a central purpose of protecting persons who make defamatory statements in circumstances where the common convenience and welfare of society demands such protection. One such privileged occasion concerns the circumstances where a person who makes a communication has an interest or a duty, legal social or moral to make it to the person to whom it is made and the person to whom it is made has a corresponding interest or duty to receive it. See: Halsbury's Laws of England 3<sup>rd</sup> Edition paragraph 10. It is for the court to determine whether a legal, moral or social duty to communicate the defamatory statement exists. In relation to a social or moral duty it has been held that the following objective test is applicable: whether the great mass of right thinking men in the position of the defendants would have considered it their duty, under the circumstances, to make the communication? See: **Stuart v Bell (1891) 2Q B 350** per Lindley L.J.

[31] Next Mr. Benjamin referred the Court to witness statement of Mr. Rose at pages 74 and 75; at paragraphs 12,13,14,15,16,17,18,19 and in particular paragraph 20 which states;

"In these circumstances, I honestly believed that the general public had a right to know what has transpired in this matter and further, I am honest when I say that I believe that I was under a moral or social duty to publish the words complained of to members of the general public who were entitled to receive this same."

[32] Mr. Benjamin said that there was public interest in the matter since it addressed the granting of duty free concessions at time when the government had declared its policy to seriously curtail and limit the grant of duty free concessions. He emphasized that every statement made by Mr. Rose was concerned about the granting of duty free concessions and the verification process or lack of such a process used by the government in making such a complete grant of concessions. Mr. Rose, in cross examination, said clearly that

the grant of duty free concessions was normal but never had he seen such a total and complete grant to anyone; it was that complete grant that caught his attention. Mr. Benjamin submitted that the public had a right to know what had transpired – but that is not to suggest that the public's "right to know is unfettered." Counsel referred the Court to the pronouncements of Lord Nicholas in **Reynolds v Times Newspaper (2001) 2 A.C 127** who gave a non exhaustive list of circumstances which would be relevant to the privilege that the media attracts, the seriousness of the allegation; the nature of the information; the extent of which the subject matter is a matter of public concern; the source of the information, steps taken to verify the information; the status of the information; whether comment was sought from the Claimants; whether the article contained the gist of the Claimants' side of the story; the tone of the article and the circumstances of the publication including timing." Mr. Benjamin reiterated that the defence of the qualified privilege applies in the case at bar since there was a legal, moral and social duty to communicate the said information and the public had an interest in receiving it.

### **Fair Comment**

[33] Next, Mr. Benjamin stated that for the purpose of the defence of fair comment Mr. Rose must show that the words are comments and not statements of fact, that there is a basis of fact for the comments contained in the matter complained of and that the comments are a matter of public interest. These requirements are conjunctive. However, if the Mansoors can show that the comments were not made honestly or were actuated by malice, the plea will be defeated – See: Gatley paragraph 69. To put another way, for the defence of fair comment to succeed, the comments made on the matter of public interest must be made honestly and without malice, and the facts upon which they were based must be true (for the comment to be fair) see: **Reynolds v Times Newspaper (1994) 4 All ER 6 (614) – 615**

[34] Learned Counsel, Mr. Benjamin reinforced that it is clear that the statements made by Mr. Rose were upon a matter of public interest, namely the policy of the Sunshine Government with respect to the granting of duty free concessions. Further, the evidence shows that Mr. Rose honestly believed that the grant of all the duty free concessions to the Mansoors and

Abdo Mansoor, at a time when the State was in economic crisis and despite the Government's declared policy of a curtailing of granting of duty free concession, was unfair in all the circumstances. Mr. Benjamin submitted, further, that there is no evidence of malice on the part of Mr. Rose. To the contrary, it is clear that Mr. Rose did reasonably believe the truth of the statement he made since he had in his possession documentary evidence which supported all of the statements made by him. Indeed, the facts upon which the statements were made are true. Mr. Rose is therefore entitled to avail himself of the defence of fair comment.

### **Justification**

[35] Mr. Rose has relied on the defence of justification. Learned Counsel Mr. Benjamin posited that it is trite law that justification can only be raised where a defendant has clear and sufficient evidence of the truth of the imputation. There is an abundance of evidence that the statement made by Mr. Rose is true in substance and in form. Counsel referred the Court to Mr. Rose's Witness Statement at paragraphs 25 (i) to (ii) thereof. At no time has any of the Mansoors or Abdo Mansoor denied that they all received full and complete duty free concessions at the time when the State was in an economic crisis; this was so despite the government's declared policy of curtailing, monitoring and reducing the grant of duty free concessions. Mr. Benjamin submitted that the defence of justification must also succeed and in all the circumstances the question of damages would not arise.

### **Damages**

[36] Next, Mr. Benjamin addressed the quantum of damages (if any) to be awarded to the Mansoors and Abdo Mansoor. The principles to be applied in the assessment of damages are well known and need only be summarized. General damages are awarded in defamation cases are at large – See: **Cassell v Broome (1972) 1 AER 801 at 825 9 – c, 825 b-e and 826 d per Lord Hailsham**. Slander is actionable per (as is the case here) and damage is presumed. The purpose of general damages is to compensate the claimant for the effect of the defamatory statement (s) and are said to serve three main functions: as a consolation for the distress, hurt and humiliation caused; to repair injury to reputation and as a vindication of reputation (See: Gately, *ibid* 8 edition para 9.2). Mr.

Benjamin submitted that there has been no loss to the claimants' business. In fact in cross examination, evidence was extracted from the Mansoors that, if anything, their business has grown and expanded so much so that they are now in the process of constructing a huge shopping complex at the corner of American and All Saints Roads. It is clear that their reputation has not been injured in any way and they have not suffered in their business. Neither from the evidence can it be deduced that they have been lowered in the minds of the right thinking persons in society. They are therefore not entitled to any relief.

#### **Mr. Marshall's submissions**

[37] Learned Counsel Mr. Hugh Marshall Jnr submitted that in order for the Mansoors to be successful on this claim they must first establish that the alleged words, not being in permanent form, but spoken on the radio station of Grenville Radio during a morning program hosted by Mr. Simon, referred to them (the Mansoors) and that each of them has sustained actual damage by the words. "This would be the loss of something materially capable of pecuniary definition". The Mansoors and Abdo Mansoor must first allege this loss in their statement of case. Thereafter, they must present the evidence to prove their loss. See: **Radcliffe v Evans [1892] 2 QB 524** which emphasizes that great detail must be given of the actual loss and generally non specific statements of the loss are not satisfactory. There is a general allegation that the Mansoors' reputation as honest businessmen has been seriously injured, however the Mansoors do not allege any specific loss that they have sustained by reason of the publication of the statement. In fact, in cross examination by Mr. Benjamin, Mr. Edward said 'My business has three branches and we have been constructing a shopping centre which will be our new show room and warehouse. Business is good. Yes, it has grown". This statement, coupled with the fact that no special damage has been pleaded, Mr. Marshall submitted, must result in the failure of the Mansoors' case; this is so because they have not fulfilled the fundamental elements to sustain a case for slander.

[38] Next, Mr. Marshall said that it is accepted that there are exceptions to the rule that special damage must be pleaded and established in order to maintain an action for slander. Relevant to the case at bar, is the exception that is "words calculated to disparage the

Mansoor in their office, profession, calling, trade or business". The Mansoors and Abdo Mansoor allege that the words in their ordinary and natural meanings meant they as business persons were dishonest, fraudulent, greedy and given to sharp practices. Mr. Marshall submitted that this pleading is not enough to bring the Mansoors and Abdo Mansoor within this exception. They must plead that the words were spoken of and concerning them in their business. In support of this proposition, Counsel referred the Court to **Jones v Jones [1916] 2 A.C 481**. To simply state that the words in their natural meaning were 'understood' or 'meant' that the Mansoors as businessmen were dishonest is not sufficient. Mr. Marshall submitted that the Mansoors must plead that the defendants when publishing the words did so calculating to injure the Mansoors in their business. There is no such plea. Mr. Marshall therefore submitted that the statement of case does not go far enough to fall within the exception and accordingly the claim must fail.

[39] Next, Mr. Marshall submitted that, should the Court be of the view that the exception does apply and that the matter is actionable per se then it is necessary for the Mansoors and each of them to establish that the words spoken were capable of bearing the meaning complained of. Mr. Marshall however emphasized that Mr. Abraham, Mr. Esau and Mr. Edward were not the subject of the words. The law requires that the words published must be published of the Mansoors. It is essential that the Mansoors and each of them are reasonably identified as persons to whom the statements referred. The test in arriving at this conclusion would necessitate a consideration of the context in which the words were used and the determination of the question as to whether they could reasonably be understood to refer to the Mansoors and each of them individually. The evidence is unmistakably that the Abdo Mansoor carried on the business of "Town House Furnishings and is named "Abdo Mansoor & Sons Ltd". The offending words clearly identify "Abdo Mansoor"; this is stated in the first sentence of the words complained of. Mr. Marshall, therefore, submitted that no reasonable person would conclude that 'ABDO MANSOOR' was anyone other than "Abdo Mansoor" the business entity, which is the business and indeed it is the entity that obtained duty free concessions. Accordingly, Mr. Marshall submitted that the Mansoors have not established that they, individually, were referred to in any way.

[40] Alternatively, Learned Counsel Mr. Marshall argued that the words refer to the activities of Abdo Mansoor only and not Abraham, Esau or Edward (the Mansoors). No statement has been made about them in relation to their business as they have no business. The business is that of the Abdo Mansoor. This is confirmed in the witness statement of Mr. Abraham. In essence, the statements concern the grant of duty free concessions to Adbo Mansoor only. This in itself is confirmed by the statement "...he give Ado Mansoor five (5) trailer load of things tax-free duty-free and all the free in the world". The Mansoors have failed to establish their claim in so far as the words do not refer to them.

[41] Mr. Marshall posited that the Court must equally be satisfied that the words spoken are in fact and in the circumstances, defamatory. Mr. Marshall said that the Mansoors, one after the other, asserted that the information was largely accurate or correct. He therefore, submitted that the natural and ordinary meaning of the words cannot mean that which the Mansoors and Abdo Mansoor in their pleadings have pleaded. In fact, the natural and ordinary meanings are clear. The statement (s) have called into question the methodology of the government in granting concessions. It clearly was an indictment on the members of cabinet (in particular Dr. Cort) in relation to method adopted in the grant of the concessions. The ordinary man would understand from the statements that members of the government did not employ proper procedures and rationale in granting the duty free concessions to Mr. Abdo Mansoor.

[42] Next, Mr. Marshall said that particular attention must be drawn to the statement of case as it refers to "Female anonymous caller" at paragraph 7 of the statement of case, where she says:

*"I am just calling to tell you this. The stoves and fridge and everything else that the Mansoors get is what they were giving out for election bribes. So that is why they get them back...That is what the Cort was giving them his people all over so now he give them back to them. That is what he does. That is the bribe that he was giving to his people so now he give them back them come in free".*

The Mansoors have singled this statement out but it is essential to the defence of the defendants that its natural and ordinary meaning be examined. Bearing in mind it is spoken in "local language" or broken English Mr. Marshall submitted that its natural

meaning must be understood in the context of the scrutiny of the public officials to wit members of Cabinet and in particular Dr Cort under whose portfolio the collection of taxes fell at the material time. Mr. Marshall submitted that the reasonable and ordinary meaning of the words were that Dr Cort during the election took items from Abdo Mansoor and gave them out as election bribes and now he is in government following the election he has an obligation to replace them and has accordingly awarded Abdo Mansoor concessions to reduce the cost of his replacing them. Mr. Marshall, therefore, argued that the words of the caller do not in any way touch and concern the Mansoors and is in no way defamatory of them.

### **Defences**

[43] Mr. Marshall then addressed the defences that were relied on by Grenville Radio, Mr. Bird and Mr. Simon. He said that each of the first three claimants admitted that the grant of duty free concessions was a matter of public interest that could rightly be discussed on the radio and that the discussion was largely accurate. Mr. Marshall said that it is established that the statements made were statements of fact and not opinion and that the statements were accurate, any inference drawn from the statements was that the Government did not employ prudent procedures or established principles to grant the concessions. This inference is borne out by the evidence of the Mansoors when they assert that they did not employ any established procedure to obtain the concessions. In particular this is stated by the Mr. Esau in cross examination when he says "I don't know that the concessions were obtain in an unorthodox manner, I would not suspect that it was the usual procedure for the obtaining of concessions from cabinet." He later states in reference to submitting of the list "I presented to the Deputy Prime Minister who was present in my business (store of Abdo Mansoor & Sons Ltd.)" it is undisputed that this Claimant and the Deputy Prime Minister are personal friends. Mr. Marshall postulated that the defendants have succeeded in establishing the defence stated below.

### **Fair Comment**

[44] Next, Mr. Marshall said that the content of the statement made by Mr. Rose is substantially accurate, this was admitted by the Mansoors in cross examination. The only issue being

to the amount of duty that would have been payable and the space in which the items were kept. Counsel therefore submitted that the defence of fair comment must stand. The Mansoors also took issue with the “tone” in which the information was disseminated. Mr. Marshall argued that even if the tone was repugnant and offensive, the defence of fair comment must still stand. He referred the Court to **Keays v Guardian Newspapers Ltd [2003] EWHC 1565**. **Branson v Bower [2002] 2 W.L.R 452**. He submitted that any honest person would ask “can that quantity of items hold in those premises?” Next, Mr. Marshall submitted that the interpretation of the words of the female anonymous caller of which the Court has been invited to adopt is an honest view of which the caller was entitled to hold, though it may be prejudiced or obstinate. Counsel therefore posited that the defence of fair comment must stand against any action for slander.

### **Justification**

[45] Learned Counsel Mr. Marshall stated that Grenville Radio, Mr. Bird and Mr. Simon rely on the defence of justification. Mr. Marshall said that defence arise where the statements published are statements of fact and are “basically” true. He said that it has already been established that:

The proper procedures for the grant of concessions were not employed;

The concessions were granted by an unorthodox method;

There was no verification by the Government of the information presented on behalf of Abdo Mansoor;

The grant of concession is a matter for public concern;

The contents of the statement of Mr. Rose were substantially accurate.

In light of the above, Mr. Marshall submitted that the defence of justification must also succeed. This defence must succeed if the Court is satisfied that the substance of the statement is true. See: **Chase v Newsgroup Newspapers Ltd. [2003] E.M.L.R. 218**. Counsel said that essentially the statement is correct, the “sting” of the statement is correct in that the Government employed an unorthodox method and gave duty free “every thing free” to Abdo Mansoor in respect of 462 stoves, 190 fridges, 225 washer; the concessions were contained in Cabinet Decision number 28 dated the 25<sup>th</sup> May 2004; these items were

to replace items Mansoor lost in a fire of a warehouse of 3500 square feet; the Government carried out no verification of the items lost.

### **Mr. Watt's submissions**

[46] Learned Queens Counsel Mr. Watt said that in determining whether the statements that were published on 15<sup>th</sup> July 2001 were defamatory the test of what is defamatory is set out in Halsbury's Laws England Vol. 28 4<sup>th</sup> edn at paras 43 & 44 which state:

"In deciding whether or not a statement is defamatory. The Court must first consider what meaning the words would convey to the ordinary person."

[47] Learned Queens Counsel Mr. Watt stated that the Court having determined the meaning of the words, the next test to be applied is whether, under the circumstances in which the words were published, the reasonable person would be likely to understand them in a defamatory sense. Queens Counsel posited that before it is possible to determine whether or not particular words bear a defamatory meaning, it is necessary to determine their meaning for the purposes of the law of defamation, the fact that the same words can mean different things to different people is ignored. The court seeks to determine and act upon the one and only meaning that the readers as reasonable persons would have collectively understood the words to bear; this is the natural and ordinary meaning; **Slim v Daily Telegraph Ltd 1968 1 ALL ER 497, at 505.**

[48] Next, Mr. Watt urged the Court to find that the ordinary and natural meaning of the words spoken by Mr. Rose and published by Grenville Radio, Mr. Bird and Mr. Simon are that the Mansoors and Abdo Mansoor are dishonest, fraudulent and greedy business persons who were given to sharp practices and that the Mansoors had lied to the Government of Antigua and Barbuda and duped Cabinet and had colluded with Dr Cort to defraud and deprive the Government of revenue by inflating the loss suffered by their business in order to reap unfair profits and advantage; in addition that they were guilty of election fraud since they had bribed electors to vote for Dr Cort by giving away fridges and stoves to the electors. This is why Dr Cort was now unlawfully giving the claimants the opportunity to replace the fridges and stoves and had wrongfully granted them duty free concession. Further, he submitted that the words used by the female anonymous caller, and published

by Grenville Radio, Mr. Bird and Mr. Simon can only mean what they say. To suggest as was stated by Mr. Marshall that the pronoun "they" (third person plural) referred to Errol Cort and not to the Mansoors is not acceptable. Mr. Watt adverted the court's attention to the fact that the Mansoors were grossly embarrassed by the statements that were published and were hurt when they were ridiculed. They were slandered in relation of their profession. Mr. Watt posited that the sting of the slander is as obvious as it is crude. He emphasized that the vulgar baseless accusation carried over the airwaves was that the Mansoors had bribed several electors by giving out refrigerators and stoves to secure their votes and was now being reimbursed by the Minister of Finance, in the form of duty free concessions. He says that even after the commencement of the present proceedings that the defendants persisted in publishing abusive and insulting statements about the Mansoors which slandered them.

### **Justification**

[49] Learned Queens Counsel Mr. Watt said that in order to succeed with the defence of justification the defendants must establish that the imputations in respect of which they are sued are substantially true. While it is true that the Mansoors have pleaded that the defendants published the matter "falsely" the common law dictates that a defamatory imputation is presumed to be false and the burden lies upon the defendants to show that it is substantially true; this the defendants have failed to do. He stated that no evidence has been led on the part of Grenville Radio, Mr. Bird and Mr. Simon in respect of the truth of the matter, they have appeared to rely on a disclaimer, which does not as a matter of law exonerate the defendants from defamatory statements, and as far as Mr. Rose is concerned his defence is that all of the words published by him were directed to the Government and Government officials and none directed at the Mansoors. Mr. Watt therefore concluded that the defendants pleaded defence of justification must therefore fail.

### **Fair Comment**

[50] Next, Mr. Watt argued that if a defamatory allegation is to be defended as fair comment it must be recognizable by the ordinary reasonable reader or listener as comment and the

key to this is whether it is supported by facts which are stated or indicated upon which comment is based. If the defendants have failed to distinguish clearly, in what they have published, between the facts on which they are commenting and the comments they wish to make on those facts, those to whom the words are published may regard the comments either as statements of fact or as founded upon unrevealed information in possession of the publisher. In such circumstances the publication may stand in the same position as any ordinary allegation of fact. In support of this proposition Fletcher Moulton LJ in **Hunt v Star Newspaper (1908) 2 KB 309 at 319-320** pronounced:

“Comment in order to be justifiable as fair comment must appear as comment and must not be mixed up with the facts that the reader cannot distinguish between what is report and what is comment. If the facts are stated separately and the comment appears as an inference drawn from those facts any injustice that it might do will be to some extent negative by the reader seeing the grounds upon which the unfavourable inference is based. Any matter therefore which does not indicate with a reasonable clearness that it purports to be comment, and not statement of fact cannot be protected in the plea of fair comment.”

- [51] Mr. Watt submitted that the offending words and sting of the libel is contained not in comment but was stated as fact by Mr. Rose and published by him and the other defendants. Queens Counsel submitted, that Mr. Rose did not believe the facts as stated, other than the granting of the duty free concessions, and the other statements detrimental to the Mansoors' reputation were not opinions honestly held by Mr. Rose, but were actuated by malice fuelled by political hatred and ill will, and would of necessity negate any plea of fair comment on behalf of Mr. Rose and the other defendants. See: **Silkin v Beaverbrook Newspaper Ltd and Another 195.8.2 ALL ER p 516 518 LD p520 LD post.**

### **Qualified Privilege**

- [52] Next, Mr. Watt said that the defendants have all pleaded the defence of qualified privilege. In order to avail themselves of this defence each defendant must prove that he falls under one of the categories that attracts the defence such as where there is limited communications between persons having a common and corresponding duty or interest to make and receive the communication; or communications to the public at large, or to a section, having a social or moral duty to do so, or in reply to a public attack. See:

Halsbury's Vol. 28 4<sup>th</sup> Ed at para 109. Mr. Watt said that the defence of qualified privilege attaches to the occasion on which the words are published rather than to the words themselves. Words wholly unconnected with and irrelevant to the occasion may not be privileged; but words that are generally irrelevant and unnecessary and having some relation to the occasion will be within the privilege but will constitute evidence of express malice. See: Halsbury's *ibid* at para 112.

[53] Mr. Watts Learned Queens Counsel referred the Court to **Reynolds v Times Newspaper Ltd (2001) AC 127**. He said that as a consequence of this decision there exists now a much more extensive protection for publications to the public at large where the matter is of sufficient public concern, this is of rather a different nature from the "classical" privilege founded on relationship. The very existence of the privilege in this other type of case, however, is a matter which involves a closer scrutiny of the facts. It involves addressing questions like the extent to which the defendant took steps to verify the information he imparts, the urgency of the matter, the extent of the public right to know about it and whether the defendant has sought any explanation or comment from the person about whom the statement is made. The important question to be addressed is whether the newspaper conferred to the standard of "responsible journalism." See: Reynolds *ante*.

[54] Mr. Watt said that in the circumstances of the case at bar, neither Mr. Rose nor the other defendants had any duty to impart the information that they did, neither did the general listening public in the state of Antigua and Barbuda have a corresponding duty to receive it and on Mr. Rose's own evidence he describes himself as a social commentator and a social and political activist he says "I am a member of the Antigua Labour Party. I take a great interest in the actions and activity of the United Progressive Party's Government of Antigua and Barbuda. Further, Mr. Watt said that Mr. Rose quite mistakenly accuses Mr. Edward of being an election campaigner, political activist and political talk show host, a political appointee to the position of President of the Senate and a political figure i.e Minister of Information and technology in the Prime Minister's office. In cross examination, Mr. Rose sought to fob this cardinal mistake of identity as a "mere mistake" he omits to explain mistake as to what. What is clear on Mr. Rose's own evidence is that the attack on

the Mansoors was politically motivated. There is no doubt that Mr. Rose did not really believe in the truth of what he published and was therefore motivated by malice. Mr. Watt advocated that there can be no other finding by the Court on the evidence before it. Further, Mr. Rose cannot succeed in the defence of qualified privilege under the **Reynolds** principle i.e responsible journalism.”

[55] Next, Learned Queens Counsel Mr. Watt submitted that the Grenville Radio, Mr. Bird and Mr. Simon cannot succeed on the plea of qualified privilege, under “the duty principle”. The defendants certainly did not have a duty to accuse the Mansoors of improper, fraudulent and unethical behaviour or of committing criminal offences under the provisions of the representation of the People Act (Amended) 2001. Neither did listeners in Antigua and Barbuda have an interest, to receive such information. Mr. Watt said that, further, on the evidence before the court it is abundantly clear that the defendants have failed to show the “responsible journalism” needed to enable Grenville Radio and its servants or agents to successfully avail themselves of the defence of qualified privilege. Queens Counsel referred the Courts to **Bonnick v Morris & Others (2003) 1 AC p 300 paras 10, 12,13,16,19, 22, 24, 26-28.**

[56] In further support of his contention, Mr. Watt adverted the Court’s attention to the fact that Mr. Bird candidly admitted the fact that he and the audience of ZDK were exceedingly angry at a remark allegedly made (dustbin of history) about VC Bird Snr by Dr Edmond who is family member of the Mansoors but, the latter who is unconnected to the case, this is the individual that Mr. Rose had confused with Mr. Edward. Mr. Bird stated that he had never seen the listeners of ZDK in such a rage. In addition, Mr. Watt argued that based on Mr. Simon’s evidence, in his witness statements and that given in court there is no doubt that he has personal animosity towards the Mansoors, as he admits to being hurt by words alleged used by Dr. Edmond, “that the entire contribution of VC Bird Sr., to the nation of Antigua and Barbuda should be placed in the “dustbin of history.” Mr. Simon said that he (Simon) was born in Antigua, while Dr. Edmond stemmed from Lebanon or Syria in origin and culture. It is clear on the evidence, that the words published by Grenville Radio, Mr. Bird and Mr. Simon were a direct result of their anger, and was prompted by spite and ill

will, and the motive for publishing the offending words was to hurt the entire Mansoor family in their reputation and their various businesses (including the Mansoors) purely for political revenge. This is malice in its purest legal form.

### **Malice**

- [57] Next, Mr. Watt QC turned his attention to the issue of malice. He said that nowhere in their evidence has any of the defendants declared in unambiguous terms or at all they honestly believed the statement made by Mr. Rose to be true even though Mr. Rose stated that he honestly believed that he had a duty to inform the public of the duty free concessions. The defences of both fair comment and qualified privilege are defeated by proof that the defendants published the words complained of maliciously. The fact that the defendants did not honestly believe that what they published was true is usually conclusive proof of malice to rebut the defence of qualified privilege and fair comment. See: Halsbury's Laws of England 4<sup>th</sup> Ed Re Vol 28 para 149 & 153 and **Horrocks v Lowe (1974) 1 ALL ER 662 at 669**. See: also p666 e-g, p671 g-j p672 a-e See: also **Silken v Beaverbrock Newspaper and Another supra**
- [58] The issue of malice in the context of qualified privilege is dealt with in Gately on Libel and Slander 10<sup>th</sup> Ed Para 163. In order to avail oneself of the defence of qualified privilege, there should be no improper motive in making or publishing the statement; the absence of honest belief in the truth of the publication is generally conclusive evidence of malice; the positive belief in the truth of what is published will usually protect the defendant unless he can be proved to have misused the occasion. In whatever context malice is raised, evidence tending to show, or from which it can be inferred, that the defendant had no honest belief in the truth of the defamatory statement will usually be powerful evidence of malice. If it be proved that (the Defendant) did not believe that what he published was true this is generally conclusive evidence of express malice, for no sense of duty to protect his own legitimate interests can justify a man in telling deliberate falsehoods about another save in the exceptional case where a person may be under a duty to pass on without endorsing, defamatory reports made by some other person.

- [59] In addition to all of the above Mr. Watt posited that it is the law that other defamatory words published by the defendants about the Mansoors can be relied on as evidence of malice even though they are not the subject of an action and were published subsequent to the commencement of the action. In this regard, Mr. Abraham said that on a subsequent occasion a caller on ZDK said that Mansoors padded the list to get concessions. Mr. Edward told the Court that subsequent to 25<sup>th</sup> June on "Your View" ZDK radio callers made defamatory statements of the Mansoors. Mr. Watt said that this evidence remains unchallenged by all of the defendants.
- [60] In addition, Mr. Watt said that, Grenville Radio Limited, Mr. Bird and Mr. Simon stood by and allowed the female anonymous caller to publish defamatory words which imputed to the Mansoors the commission of criminal offences for which each of the Mansoors could be made to suffer physically by way of imprisonment. See: Representation of the People's Act Cap. 379 S72 (2) and Representation of the People (Amendment) Act #17 of 2001.
- [61] Mr. Watt finally submitted in light of all of the above, that, the slander in the case at bar, is actionable per se, and the damages awarded should be at large. Queens Counsel argued that since the words complained of were published from the date of filing the claim to November 2006 and coupled with the fact that Mr. Simon said that he had available to him on the programme "Your View" mechanisms "to cut off" distasteful calls and that anonymous calls should be cut off immediately it was clear that the defendants acted with malice since Mr. Simon intentionally did not cut off the disparaging slanderous calls. Mr. Watt also urged the Court to award the Mansoors aggravated damages together with costs. In support of his contention he asked that the Court consider the following: the sting of the slander in its imputation of dishonesty, greed and fraudulent behaviour imputed to the Mansoors; the evidence to the contrary that they have good reputation as businessmen for over 40 years; the clear evidence of political spite and ill will harboured against them; the plea of justification relied on by the defendants and their failure to lead any credible evidence to substantiate their position; the complete absence of any evidence to indicate that any of the defendants honestly believed the published words were/are true; the failure of the defendants to offer an apology coupled with the continued repetition of

the slander on the programme "Your View". In further support of the claim for aggravated damages Mr. Watt referred the Court to the judgments of Her Ladyship Justice Ola Mae Edwards in **Vance Amory v Hastings Daniel Claim No 9 of 1999** and **Kenny D Anthony v Vaughn Lewis Claim No SLU HCV 04/11/2000**.

#### **Court's Analyses and findings**

- [62] I have reviewed the evidence in its entirety and have given careful and deliberate consideration to the submissions advanced by all counsel. I do not propose to repeat here the very extensive evidence that was adduced on behalf of all of the parties. I am sure that I will be excused if I do not reproduce again the several very helpful arguments of Learned Counsel even though I have paid special regard to all of the arguments.
- [63] I have listened to the Mansoors and observed their demeanour as they testified and I have reviewed their evidence in detail. I find all of them to be truthful and credible. I am also satisfied that they bear no ill will towards the defendants but are only concerned with vindicating their rights not to be defamed. Further, and, as a matter of fact that the Mansoors are reputable businessmen who have been in business for over 40 years and they have had good relationships with the defendants before the alleged defamation. Indeed, they shared very cordial relationship with Mr. Bird and Mr. Rose and they were very good customers to Grenville Radio. Mr. Simon also enjoyed a very cordial relationship with them.
- [64] The Mansoors imported goods into Antigua for the purpose of retailing. They suffered losses when their goods were destroyed when the warehouse in which they were stored was burnt; other persons whose goods were housed in the same warehouse also suffered losses. The Mansoors were not a part of the campaign team involved in the election of Dr Cort nor the UPP administration, even though their brother Dr Edmond campaigned for both Dr Cort and the UPP. As a consequence of the losses suffered, the Mansoors prepared a list of the items that were lost in the fire, and applied to the Cabinet of the Government of Antigua for duty free concessions to import the goods. They were granted the concessions.

[65] Mr. Rose was concerned that the Mansoors were granted such extensive duty free concessions, which in his view was unfair. He was critical of the fiscal policy of the UPP administration which had apparently indicated that it was going to implement strict economic measures in relation to duty free concessions and he made this known. However, other persons who had similarly suffered losses in the fire also received duty free concessions but the Mansoors alone were singled out. In fact, armed with the list upon which the duty free concessions were granted to the Mansoors, Mr. Rose published the offending words without first ascertaining from the Mansoors their side of the story. He did not present a fair picture of what had transpired in so doing. I am satisfied however that none of the defendants are of the view that the Mansoors are dishonest businessmen. Neither am I of the view that they harbour any hatred for the Mansoors. (In fact, even during the course of the trial when complimentary remarks were made by the witnesses who testified on behalf of the defendants about the Mansoors, two of the claimants were all in smiles.

[66] I have also paid particular regard to the evidence adduced on behalf of the defendants. Mr. Bird and Mr. Rose both struck me as very skilful and intelligent even though they were not candid as they could have been, be that as it may, I am satisfied that they have no deep seated feelings against the Mansoors, even though for expediency they are not averse to having statements published against them. Mr. Bird and Mr. Simon are aggrieved by "the hurtful" words allegedly spoken by the Mansoors brother Dr Edmond about the Rt Honourable VC Bird.

[67] I found Mr. Simon to be an intelligent and straight forward witness who when pressed was quick to adopt convenient postures. He harbours no hatred towards the Mansoors but is upset with Dr Edmond for allegedly making an unkind remark about the Rt Honourable VC Bird, the latter who Mr. Simon clearly liked. In my view this caused him not to terminate the calls with the offending words about the Mansoors.

- [68] From his demeanour and evidence Mr. Simon struck me as also being interested in engaging the public in discourse. He also felt that the Mansoors benefitted by way of the duty free concessions due to their brother's statement against the Rt Honourable V.C Bird.
- [69] I was also able to glean from the evidence that the management of Grenville Radio takes a keen interest in the politics in Antigua and to a large extent this impacts on the nature of some of the programmes that are aired even though Mr. Bird sought to paint a somewhat different picture.
- [70] It was in those circumstances that Mr. Rose's and the caller's words were published about the claimants in which the Mansoors and Abdo Mansoor allege that they were slandered in their professions. The publication of the alleged offending words has however not affected their business. In fact, to the contrary their business has thrived so much so that they are expanding. The Mansoors are hurt and embarrassed as a result of the publications and seek to be compensated for injury to their reputation.
- [71] Before dealing with the main issues that arise for determination, I digress to state that there is no dispute that the words spoken by Mr. Rose and the female caller were published to the public. With respect to the words that were allegedly made by the anonymous caller in the case at bar, Grenville Radio, Mr. Bird and Mr. Simon have taken the posture that even though those words were indeed stated by the caller they are not responsible for those words. Mr. Rose for his part disassociates himself altogether from the caller's words. Perhaps, it is appropriate to address the issue of liability at this juncture and state that it is the law that all of the persons who in anyway contribute to the publication of the words would be liable for the defamatory statements. Indeed, the managing director, the editor, the broadcaster, the host are all liable for any defamatory remarks that are published. Let me say straightaway that, it is no answer to a claim for defamation for the defendants to assert that, they gave a disclaimer to the words that were published. In the circumstances, Grenville Radio, Mr. Bird and Mr. Simon would be liable for any defamatory words published by anyone on ZDK and the disclaimer given will be of no assistance.

## Issue No 1

### Whether the words are capable of being defamatory

[72] I now come to address the issues that arise for consideration in the matter. By way of introduction it is important to determine whether the words are defamatory. This question must be approached in two stages; first I am required to determine whether the words are capable of being defamatory. If the answer is in the affirmative, then I must decide whether the words are defamatory in the circumstances.

The learned author Professor Gilbert Kodilinye in his treatise Commonwealth Caribbean Tort Law 3<sup>rd</sup> Edition at page 238 helpfully states:

“Where trial is by judge alone – as is almost invariably the case in Commonwealth Caribbean jurisdictions – the judge must perform both functions.”

As Bollers J explained in **Ramsahoye v Peter Taylor and Co Ltd [1964] LRBG 329, p 331**.

In this Colony, where there is no jury, I can do no better than repeat the dictum of Camacho CJ in **Woolford v Bishop, [1940]** where he stated in his judgment:

“On this aspect of the case, the single duty which devolves on this Court in its dual role is to determine whether the words are capable of a defamatory meaning and, given such capability; whether the words are in fact libelous of the plaintiff. If the Court decides the first question in favour of the plaintiff, the Court must then determine whether an ordinary, intelligent and unbiased person reading the words would understand them as terms of disparagement, and an allegation of dishonest and dishonourable conduct. The Court will not be astute to find subtle interpretations for plain words of obvious and invidious import.

Where the words are clearly defamatory on their face, a finding that they are capable of being defamatory will almost inevitably lead to the conclusion that they are defamatory in the circumstances. But where the words are reasonably capable of either a defamatory or a non-defamatory meaning, the Court must decide what the ordinary reader or listener of average intelligence would understand by the words.”

[73] In the case at bar, the words that were spoken by Mr. Rose are quite extensive. I have paid particular regard to the meanings of the words spoken by Mr. Rose, as urged by both

Learned Counsel Mr. Steadroy Benjamin and Mr. Marshall and to that argued by Learned Queens Counsel Mr. Watt. It bears repeating that for his part, Mr. Benjamin submitted that the words referred to the government's grant of duty free concession. He said that when the words are placed in the context they could never have the ordinary and natural meanings as urged by Mr. Watt. Mr. Marshall said the statement referred only to the grant of duty concessions to Abdo Mansoor and do not refer to the Mansoors. In addition, Mr. Marshall said that the ordinary and natural meanings of the words have called into question the methodology of the government in granting concessions. The ordinary man would understand from the statements that members of the Government did not employ proper procedures and rationale in granting the concessions that they granted to Abdo Mansoor. Next, Mr. Marshall invited the court to find that the ordinary man would understand and interpret the anonymous call to mean that the stoves and fridges that Abdo Mansoor get is what the politicians were giving out for election bribes. So that is why now the politicians get them back. That is the bribe that Dr Cort was giving to his people so now Dr Cort give them back, the goods come in free. In contradistinction and as stated previously, Mr. Watt insisted that the ordinary and natural meanings of the words were, as stated in the amended claim at paragraph 8, that the claimants in their position as businessmen were dishonest, fraudulent and greedy, and given to sharp practices, and had deliberately lied to the government of Antigua and Barbuda, and had duped the Cabinet by seeking duty free concessions in circumstances in which they were not entitled: that they had conspired with Dr Cort to defraud and/or deprive the Government 's revenue by grossly inflating the loss suffered by their business in order to reap unfair profit and advantage. The reason for so doing was that they were guilty of election fraud.

[74] As stated above, in determining whether the words are capable of bearing any defamatory meaning, if I were to answer that question in the affirmative, I have to go on and determine what was the permissible range of meanings. It is only if I were to be satisfied that the words complained of are capable of a defamatory meaning then I can properly go on to consider the second question namely whether infact the words bore the alleged or any defamatory meanings. In my determination of whether the words complained of are capable of being defamatory I acknowledge the pronouncement of Lord Diplock in *Slim v*

**Daily Telegraph Ltd** that “in deciding what meanings the words are capable of bearing, there is acknowledgement 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.”

[75] Further, in determining the ordinary and natural meanings of the words the approach the Court should adopt was stated in **Bonnick v Morris** *ibid* where Lord Nicholas said:

“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 naive; 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.” (emphasis mine)

[76] In **Gordon v Chokolingo** [1988] PC App No. 19 of 1996, on appeal from the Court of Appeal of Trinidad and Tobago. Lord Ackner, delivering the judgment of the Privy Council said:

In **Lewis v Daily Telegraph Ltd** [1964] AC 234, p 258 [Lord Reid made] the following important statement:

“There is no doubt that in actions for libel the question is what the words would convey to the ordinary man: it is not one of construction in the legal sense. The ordinary man does not live in any ivory tower and he is not inhibited by a knowledge of the rules of construction.”

Moreover, in the subsequent case of **Morgan v Odhams Press Ltd** *ibid* Lord Reid said:

“If we are to follow Lewis’ case and take the ordinary man as our guide, then we must accept a certain amount of loose thinking. The ordinary reader does not formulate reasons in his own mind; he gets a general impression and one can expect him to look again before coming to a conclusion and acting on it. But formulated reasons are very often an afterthought.

The publishers of newspapers must know the habits of mind of their readers and I see no injustice in holding them liable if readers, behaving

as they normally do, honestly reach conclusions which they might be expected to reach.”

In the same case, Lord Pearson said:

“...I do not think the reasonable man – who can also be described as an ordinary sensible man – should be envisaged as reading this article carefully. Regard should be had to the character of the article; it is vague, sensational and allusive; it is evidently designed for entertainment rather than instruction or accurate information. The ordinary, sensible man, if he read the article at all, would be likely to skim through it casually and not to give it concentrated attention or a second reading. It is no part of his work to read this article, nor does he have to base any practical decision on what he reads there. The relevant impression is that which would be conveyed to an ordinary sensible man...reading the article casually and not expecting a high degree of accuracy.”

[77] In determining what are the ordinary and natural meanings of words, I am prevented from paying regard to the evidence adduced as how they were understood. In fact, Gately on Libel and Slander *ibid* contains the following statement of the law on the matter of external evidence as to the meaning of words complained of namely that “no evidence of their meaning is admissible of the sense in which they were understood, or of any facts giving rise to inferences to be drawn from the words used. It is for the jury to determine the sense in which the words would reasonably have been understood by an ordinary man in the light of generally known facts and meanings of words.” In **Civil Appeal No 2 of 2006 Vaughn Lewis v Kenny D Anthony** His Lordship Mr. Justice Denys Barrow SC stated that the above “proposition is equally applicable to a defendant. He cannot be permitted to give evidence of how people understood the words. Were it otherwise a trial such as this would descend into a survey of which persons in the audience saw the television broadcast and the impact it had on their understanding of the words used.” I am guided by these pronouncements.

[78] I am required to read the words, spoken by Mr. Rose, as a whole. It is settled law that other portions of an article or a speech that contains defamatory words are admissible to establish the context in which the offending words were published because context affects meaning. In determining the ordinary and natural meanings of the words I am guided by the principles referred to above and I take into account all of the words used by Mr. Rose

in the entire statement and seek to determine their ordinary and natural meaning to the fair-minded person in society. It seems to me that the objective person in Antigua hearing the words spoken by Mr. Rose would reasonably conclude that the ordinary and natural meanings of the words are capable of being defamatory.

[79] I find the principle enunciated in **Bonnick v Morris** very instructive. While there is no doubt that some aspects of the words spoken by Mr. Rose could be interpreted to mean that the Cabinet did not verify the list of items that was submitted by the Mansoors to ensure that it accurately represents losses they suffered, this meaning could only be gleaned from an insignificant aspect of the words Mr. Rose spoke. The fair minded reader would reasonably conclude that the entire thrust and the majority of his words were capable of referring to the Mansoors and not towards the policy of the Government in relation to the granting of duty free Concessions. It is the entire words that should be reviewed. Aspect of Mr. Rose's speech criticized the Government of Antigua's methodology in relation to the grant of duty free concession. However, the right thinking members of society hearing all of the words spoken by Mr. Rose would conclude that the words were capable of being defamatory. I do not think that the ordinary reasonable person in society is unduly naive, sensational or suspicious. I do not propose to provide an exhaustive list of the range of the ordinary and natural meanings but they include the following:- that the Mansoors are dishonest businessmen, they padded the list of items that was submitted to Cabinet to get duty free concessions since the number of articles they claimed to have lost in the fire could not fit in the 3500 sq foot warehouse; they were granted duty free concessions on fridges and stoves because they had given them to electors for them to vote for Dr Cort and the UPP; that they were accorded those duty free concessions because they were a part of Dr Cort's campaign team and based their relationship with the UPP. I reiterate that the entire words should be read as a whole, as I have done, and there should not be any elaborate analysis of the words spoken by Mr. Rose.

[80] It is the law 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 society or they expose them to public hatred and ridicule they would be defamatory.

[81] I state that in determining whether the words are capable of being defamatory the intention of the defendants is irrelevant to my determination of the meaning of the words is defamatory See: Byron JA in **Learee Curasco (AKA) Rick Wayne v Nevil Cenac Civil Appeal No 6 of 1994 St Lucia**. It is also the law that the motive of the publisher is irrelevant to the determination of whether the words are defamatory. I therefore place no store on the evidence of the defendants as to their respective intentions and/or motives.

[82] In relation to the words spoken by the anonymous caller, the ordinary and natural meaning to a reasonable person would be that the words are capable of being defamatory namely that the Mansoors got duty free concessions on fridges and stoves because they had given out other fridges and stoves previously as election bribes. In so concluding, I have read the entire words spoken by the caller as a whole and I have refrained from too elaborate an analysis. See: **Bonnick v Morris** *ibid*.

[83] It is clear to me that the words spoken by the anonymous caller are defamatory on the face of them; this is so because the defamatory meaning is the only possible meaning. To put another way, that is the only natural and ordinary meaning: they can only be interpreted by the objective reader of defaming the Mansoors by saying that they are dishonest and greedy businessmen.

## Issue 2

### **Whether the words are defamatory**

[84] I come now to determine whether the words are defamatory in the particular case. In applying the test stated in **Ramsahoye v Peter Taylor** *ibid* I am obliged to examine the words in order to determine whether the ordinary, intelligent and unbiased person would understand them as terms of disparagement and as allegations of dishonest dishonourable conduct by the Mansoors and Abdo Mansoor both in their professions.

[85] It is established that in order for statement to be defamatory they must contain either expressly or by implication statements of fact which would tend to lower the claimants in the estimation of right thinking members of society generally or it exposes them to contempt, public hatred and ridicule. There is no dispute that a statement is defamatory if it imputes dishonesty to a person in the context of his trade, business or profession. In determining whether the statement so imputes any such lack of quality the test is that of how the ordinary reasonable man, who is fair minded to whom the words are published is likely to understand them.

[86] I am therefore now required to determine whether, under the circumstances under which the words were published, a reasonable man to whom it was published is likely to understand the words to be disparaging or allegations of dishonest conduct.

[87] Applying the relevant test as stated above, I unhesitatingly conclude that the ordinary reasonable man would conclude that the words impute and state that the relevant persons were dishonest business people and that they had misused their offices as business persons in order to obtain the duty free concessions to which they were not entitled among other misconduct. Accordingly, I have no doubt that the statements made by both the caller and Mr. Rose would be likely to be understood by the right thinking members of society as a slander.

### Issue 3

#### **Whether the words defame the Mansoors and/or Abdo Mansoor**

[88] I am required to ascertain whether the offending words referred to the Mansoors and/or Abdo Mansoor. By way of repetition, the defendants all contend that the words do not refer to the Mansoors but, if at all, only refer to Abdo Mansoor. The defendants' main contention is that the words were published about the Government.

[89] The learned author Professor in Kodilinye *ibid* has very helpfully stated as follows:

#### **"Reference to the plaintiff**

The second requirement for a successful action in defamation is that the defamatory words must be shown to have referred to the plaintiff. In most

cases the plaintiff will be mentioned by name, but this is not a necessary requirement. It is sufficient for liability if he is mentioned by, for example, his initials or his nickname, or if he is depicted in a cartoon, photograph or verbal description, or if he is identified by his office or post. It may also be sufficient if a particular group of which he is a member is mentioned. In all cases, the test is whether a reasonable person might understand the defamatory statement as referring to the plaintiff. In **AG v Milne [1973] 2 OECSLR 115 Court of Appeal, Eastern Caribbean States)** for instance, it was held that there was sufficient reference to the plaintiff where a radio broadcaster referred to 'one irresponsible businessman ...who ... pledges half a million dollars on placards, posters and other subversive material'. And in **Gairy v Bullen (No 1), [1972] 2 OECSLR 93 (High Court Grenada)** a newspaper article which alleged sexual impropriety towards young girls seeking employment was held to contain sufficient reference to the plaintiff, the Prime Minister of Grenada, although it did not mention him by name, because 'a substantial number of ordinary sensible persons who knew the plaintiff, reading the article, would believe that it referred to him.'

- [90] In *Gatley on Libel and Slander* *ibid* it is stated that to succeed in an action of defamation the plaintiff must not only prove that the defendant published the words and that they are defamatory: he must also identify himself as the person defamed. The plaintiff need not be referred to by name. The test is whether the plaintiff may reasonably be understood to be referred to by the words. The statement must "identify" the plaintiff, that is to say, it must be capable of referring to him. The issue of identification is to be decided on principles similar to those which govern the question of whether the words are capable of a defamatory meaning. Where the plaintiff is expressly identified by name, it is not necessary to produce evidence or to provide evidence to prove that anyone to whom the statement was published did identify the plaintiff. The question is not whether anyone did identify the plaintiff but whether persons who were acquainted with the plaintiff could reasonably identify him from the words used. *Gatley on Libel and Slander* *ibid* further states that at common law it is immaterial that the defendant did not intend to refer to the plaintiff, or did not even know of his existence. The question is: would the words complained of be understood by reasonable people who knew the plaintiff to refer to him? If so, they are published of and concerning the plaintiff, no matter what the intention of the defendant may have been. See: *Byron JA in Learie Carasco* *ibid*.

[91] I am cognizant of the fact that I must put myself in the place of the ordinary reasonable listener in the society and seek to determine whether the listener would reasonably conclude that the words refer to the Mansoors and/or Abdo Mansoor. Having done so and applied the relevant principles stated above the words speak for themselves and "Abdo Mansoor" and "Mansoors" are used interchangeably in the context of the entire speech. I would briefly refer to some of the excerpts from the speeches in support of my conclusion. The first paragraph of Mr. Rose's speech refers to "giving Abdo Mansoor (5) five trailer load of things tax free, duty free and all the free in the world." The second paragraph addresses giving concessions "to all your campaign team". Third paragraph states "Mansoor got five containers gratis". Fourth paragraph says "But what I got in my hand Sly, is a copy of the request you see when he make noise and he lock down custom and me go at his end cause he treat he workers and them good so them glad fuh give me things from him." I do not need to reproduce the entire speech in its entirety in order to reiterate the point that the words speak for themselves and they refer to "the Mansoors" and "Abdo Mansoor" interchangeably. When one uses the reference "the campaign team" and the pronoun "he" in relation to Mansoor, the ordinary fair minded reader would reasonably conclude that Mr. Rose was referring to the persons (the Mansoors) who own Abdo Mansoor."

[92] It is clear to me that the ordinary listener who is fair minded person in society would reasonably conclude that Mr. Rose's statement imputed that the Mansoors were dishonest and fraudulent businessmen and that among other things they had padded the list of items that they submitted to cabinet in order to obtain the duty free concession. In addition, the statements would be likely to cause persons in society to ridicule, shun or avoid the Mansoors since the statements disparaged them in their offices as businessmen.

[93] In relation to the publication of the words by the anonymous caller this would lead the ordinary reasonable person in society to reasonably conclude that it refers to the Mansoors. I have no doubt that when the words "the Mansoors" were used by the caller the listener who is fair minded would reasonable conclude that the caller was referring to the first three named claimants. I am satisfied that such a listener would conclude that the

caller was saying that the Mansoors are dishonest businessmen who had given the fridges and stoves to Dr Cort for the latter to distribute to electors in order for the electors to vote for Dr Cort. Members in society could reasonably understand the female caller's words to mean, in the context of the entire article, that the Mansoors did not indeed lose the fridges and stoves in the fire and accordingly they would be seen as dishonest businessmen. These words could also tend to expose the Mansoors to hatred contempt and ridicule and to be shunned.

[94] I am buttressed in my views above based on the pronouncements of **Lord Alverstone C.J in Jones v Hutton and Co [1909] 2 KB 444 at 454** stated that:

"If in the opinion of a jury, a substantial number of persons who knew the plaintiff reading the article, would believe that it refers to him in my opinion an action, assuming the language to be defamatory, can be maintained; and it makes no difference whether the writer of the article inserted the name or description unintentionally, by accident, or by believing that no person existed corresponding with the name or answering the description. If upon the evidence the jury are of the opinion that ordinary sensible readers, knowing the plaintiff would be of opinion that the article referred to him, the plaintiff's case is made out."

[95] Having applied the above principles, I am satisfied that the words spoken by both Mr. Rose and the anonymous caller, would be regarded by a substantial number of persons in society as referring to the Mansoors. For the sake of completeness I refer to **Knuffer v London Express Newspaper Ltd [1944] 1 All ER 4905 at 496** Viscount Simon LC said:

"where the plaintiff is not named, the test which decides whether the words refer to him is the question whether the words are such as would reasonably leave persons acquainted with the plaintiff to believe that he was the person referred to."

[96] Applying the above principles to the case at bar, I am ineluctably driven to the conclusion that persons hearing the words and the description "the Mansoors" in the alleged slander would reasonably believe that it was the Mansoors to whom both Mr. Rose and the anonymous caller were referring. As stated earlier the words, spoken by Mr. Rose and the anonymous caller are likely to lower them in the estimation of right thinking members of the Antigua and Barbuda; they could also expose them to hatred, contempt or ridicule, or cause other persons to shun or avoid them and finally the disparaging spoken words could

discredit them in their profession or trade as reputable businessmen and are actionable as a slander even in the absence of proof of actual damage.

#### **Whether Abdo Mansoor has been defamed**

[97] As stated earlier in the case at bar, Abdo Mansoor has also sued the defendants alleging that it was defamed. It is well recognized that a company can maintain a claim for slander in relation to words which are calculated to injure its reputation as it relates to its trade or business; in such a case there is no need for the company to prove special damage. See: **BG Rice Marketing v Taylor [1967] WIR 208**. In order to sustain a claim the company must lead credible evidence that the defamatory imputation is in the way of its business. It is the law that for a company to successfully institute a claim for slander the words must reflect on its trading reputation See: **Jackson v D'Ajou [1945] KB 364 at p 367**; or in the way of its business See: **Derbyshire CC v Times Newspapers [1993] AC 534 at 547**

[98] I have already indicated the ordinary and natural meaning of the impugned words and the fact that they refer to the Mansoors in contradistinction to Abdo Mansoor. Applying the principles to which I have referred to above in relation to a company, I am of the view that Abdo Mansoor cannot maintain an action for slander in respect of words which reflect solely upon its individual officers or members. See: **Church of Scientology v Globe and Mall [1978] 84 DLR (3d) 855**. In respectful view therefore Abdo Mansoor cannot maintain an action for slander against the defendants since the impugned words not reflect upon the company.

#### **Imputation of crime**

[99] I digress here to address whether the words spoken by Mr. Rose and/or the caller about "election bribes" are sufficient to establish the imputation of a crime that falls within the ambit of a slander that is actionable in the absence of proof of any special damage. Learned Queens Counsel Mr. Watt argued that the defendants have imputed that the Mansoors have committed the crime of election bribery. In order for such an imputation to be defamatory it is for the claimants to prove that the crime which they are alleged to have committed is punishable by imprisonment. It is noteworthy that section 29(1) of the

Representation of the People Act makes it an offence to commit bribery. Section 29(2) of the Representation of the People Act defines bribery to include “either the giving of money or procuring any office to or for any persons to vote for or to refrain from voting”. The section does not seem to contemplate bribery in the form alleged against the Mansoors. In the case at bar, the specific allegation of bribery imputed to the Mansoors is that of the giving of fridges and stoves. Queens Counsel for the Mansoors has provided me with very little assistance on this aspect of the case. Be that as it may, I am of the respectful view that to impute that someone gave “fridges and stoves” does not fall within the ambit of the statutory provision since it is not the type of bribery as contemplated by the legislature and therefore is not a crime within the statutory provision. Accordingly, I am not of the view that it is a crime that is actionable without proof of special damage.

#### **Issue No 4**

**Can the defendants avail themselves of the defences of justification, fair comment and qualified privilege**

#### **Defences**

[100] Having found that the impugned words do slander the Mansoors in the way of their profession or trade and are actionable without proof of special damage, I now address the defences.

#### **Fair Comment**

[101] It is the law that members of the public are entitled to comment fairly and freely on matters of public interest, they are also allowed to criticize acts of public officials. However, their comments must be on facts that exists and should be made without malice. In Gately on Libel and Slander *ibid* it is stated that “it is a defence to an action of libel or slander that the words complained of are fair comment on a matter of public interest. The right of fair comment is one of the fundamental rights of free speech and writing and it is of vital importance to the rule of law on which we depend for our personal freedom. The right is a “bulwark of free speech”. There are matters on which the public has a legitimate interest or with which it is legitimately concerned and on such matters it is desirable that all should

be able to comment freely, and even harshly, so long as they do so honestly and without malice.”

[102] In order to succeed in the defence the defendants must show that the words are comment and not statements of fact. An inference of fact from other facts referred to may amount to a comment. They must also show that there is a basis for the comment, contained or referred to in the matter complained of. The comment must satisfy the test of being “objectively fair” in the sense that an honest and fair-minded person could hold that view. The defence is not, however, inapplicable because the comment was prejudiced or exaggerated or “unfair in the ordinary sense of that word. Finally, the defendants must show that the comment is on a matter of public interest, one which has been expressly or implicitly put before the public for judgment or is otherwise a matter with which the public has a legitimate concern. If the claimants can show that the comment was actuated by malice, they will defeat the plea.

[103] The defence of fair comment is a two stage matter. First, there is the so-called “objective” stage, in which the issue is whether the words are capable of being fair comment. The burden of proof here is upon the defendant. The second is the so-called “subjective” stage: if the words are fair comment the defence fails if the defendants were actuated by malice. On this issue the burden of proof is upon the plaintiffs. Malice is considered elsewhere since it is also closely connected with the defence of qualified privilege. See: **McQuire v Western Morning News [1903] 2KB 100**

[104] In **Kemsley v Foot** Lord **ibid** Lord Porter said that there are two circumstances where the plea of fair comment can operate (1) in cases where the facts are fully set out in the alleged defamatory publication with comments, and (2) in cases where there is a sufficient substratum of fact stated or indicated. Lord Porter reviewed that law, and I propose to set out in detail what Lord Porter said since it is very relevant.  
Lord Porter said further that:

"The question therefore, in all cases is whether there is sufficient substratum of fact stated or indicated in the words which are the subject-matter of the action, and I find my view well expressed in the remarks contained in **ODGERS ON LIBEL AND SLANDER** (5<sup>th</sup> ed., 1911) at p.203:

"Sometimes, however, it is difficult to distinguish an allegation of fact from an expression of opinion. It often depends on what is stated in the rest of the article. If the defendant accurately states what some public man has really done, and then asserts that 'such conduct is disgraceful,' this is merely the expression of his opinion, his comment on the plaintiff's conduct. So, if without setting it out, he identifies the conduct on which he comments by a clear reference. In either case, the defendant enables his readers to judge for themselves how far his opinion is well founded. But if he asserts that the plaintiff has been guilty of disgraceful conduct, and does not state what the conduct was, this is an allegation of fact for which there is no defence but privilege or truth. The same considerations apply where a defendant has drawn from certain facts an inference derogatory to the plaintiff. If he states that bare inference without the facts on which it is based, such inference will be treated as an allegation of fact. But if he sets out the facts correctly, and then gives his inference, stating it as his inference from those facts, such inference will as a rule, be deemed a comment. But even in this case the writer [speaker] must be careful to state the inference as an inference and not to assert it as a new and independent fact; otherwise, his inference will become something more than a comment, and he may be driven to justify it as an allegation of fact."

[105] Further Lord Porter also stated at page 506 paras. B to C: "In a case where the facts are fully set out in the alleged libel, each fact must be justified and if the defendant fails to justify one, even if it be comparatively unimportant, he fails in his defence. Does the same principle apply where the facts are found, not in the alleged libel, but in the particulars declared in the course of the action? In my opinion, it does not. Where the facts are set out in the alleged libel, those to whom it is published can read them and may regard them as facts derogatory of the plaintiff, but where, as here they are contained only in particulars and are not published to the world at large, they are not the subject-matter of the comment, but facts alleged to justify that comment."

[106] It is the law that the defence of fair comment does not extend to misstatements of fact. In **Tse Wai Chun Paul [2001] EM LR 31** the Court of Final Appeal, of Hong Kong held that

among the five fold ingredients of the defence of fair comment were – “(2) the comment must be recognizable as comment, as distinct from an imputation of fact. (3) The comment must be based on facts which were true or protected by privilege. (4) The comment must explicitly or implicitly indicate, at least in general terms, what were the facts on which the comment was being made. The reader or hearer should be in a position to judge for himself how far the comment was well founded. (5) The comment must be one which could have been made by an honest person, however prejudiced he might be, and however exaggerated or obstinate his views. Furthermore, it must be germane to the subject matter criticized. But a critic need not be mealy-mouthed in denouncing what he disagreed with; he was entitled to dip his pen in gall for the purposes of legitimate criticism.

[107] In **Reynolds v Times Newspapers** Lord Nicholls Birkenhead, stated that “..traditionally one of the ingredients of this defence is that the comment must be fair, fairness being judged by the objective standard of whether any fair-minded person could honestly express the opinion in question. Judges have emphasized the latitude to be applied in interpreting this standard. So much so, that the time has come to recognize that in this context the epithet “fair” is now meaningless and misleading. Comment must be relevant to the facts to which it is addressed. It cannot be used as a cloak for mere invective. But the basis of our public life is that the crank, the enthusiast, may say what he honestly thinks as much as the reasonable person who sits on the jury. The true test is whether the opinion, however exaggerated, obstinate or prejudiced, was honestly held by the person expressing it.” See: **Diplock J. in Silkin v Beauerbrook Newspaper Ltd [1958] 1 WLR 743 at 747**. It is important to keep in mind that this defence is concerned with the protection of comment, not imputations of fact. If the imputation is one of fact, a ground of defence must be sought elsewhere. Further to be within this defence the comment must be recognizable as comment, as distinct from imputation of fact. As alluded to earlier, the comment must explicitly or implicitly indicate, at least in general terms, what are the facts on which the comment is being made.

[108] Applying the principles referred to above I have no difficulty in concluding that to the ordinary reasonable man Mr. Rose’s and the caller’s utterances had very little comment,

for the most part their statements are not capable of being comment at all but rather they amounted to imputations of fact. The material imputation of facts are as follows:

- (a) the Mansoors got duty free concessions from Cabinet;
- (b) that the Mansoors presented a list of claims to Cabinet upon which the duty free concessions were granted;
- (c) that they were part of the campaign team for the Government and Dr Cort and this is why Cabinet gave them duty free concessions;
- (d) The Mansoors exaggerated their claim in relation to the extent of items that were lost in the fire and wrongfully obtained duty free concessions on the padded list;
- (e) The Mansoors are dishonest and fraudulent since they inflated their losses.

[109] There is no denying that Mr. Rose's statement, in addition, made other factual imputations against the Government of Antigua and the Cabinet, which were dealt with both in evidence and during the submissions including the method of verification adopted by the Cabinet and more importantly the Government's policy in granting duty free concessions. This does not negate the fact that the above mentioned factual imputations were made by Mr. Rose in relation to the Mansoors and objectively are not capable of being comment at all.

[110] I am of the view that the words spoken by both Mr. Rose and the anonymous caller in relation to the Mansoors are stated as statements of fact. I am also of the view that the defendants have failed to plead the facts which would justify the defamatory statements that were published about the Mansoors; this omission violates Part 69.3 of CPR 2000 and established legal principles. The statements which the defendants contend are factual and have no bearing on the disparaging words about the Mansoors.

[111] Gatley on Libel and slander *ibid* states that "if a defamatory allegation is to be defended as fair comment it must be recognizable by the ordinary, reasonable reader as comment and the key to this is whether it is supported by facts, stated or indicated, upon which, as comment it may be based. Field J in *O'Brien v Salisbury* [1889] 54 JP 215 at 216 stated:

"If what is intended to be comment appears in the guise of a fact, and there is nothing to show on what it is based, then it must be treated as a statement of fact which may be protected by a plea of justification, but not by one of fair comment."

[112] In the case at bar, while the defendants have sought to establish that Abdo Mansoor received concessions on the list they submitted to Cabinet they have led no reliable or credible evidence to substantiate the imputations that I have found namely the Mansoors were part of the campaign team for the UPP Government or that they padded the list or that the Mansoors received the duty free concessions because they campaigned for the UPP.

[113] It is no defence to simply assert that the statements are substantially true. By way of emphasis, neither of the defendants has led any evidence to support the other factual imputations, which I have found are the ordinary and natural meaning of the words, and are disparaging, based on Mr. Rose's and the caller's speech namely that the Mansoors are dishonest and fraudulent businessmen who misled Cabinet and wrongfully obtained duty free concessions. Instead, during the trial and in their pleadings the defendants' focus were on establishing that the Mansoors got duty free concessions from the Government in circumstances where there was no verification and the Government's had seemed to be going against its alleged declared policies and promises to implement measures to reduce duty free concessions.

[114] Mr. Rose took the position that the words he spoke were comments that he fairly gave on the Government's policy and that he honestly believed it was his duty to comment on the Government's policies. He took pains during cross examination to insist that they were not aimed at the Mansoors, this is so even though and for what it is worth, Mr. Bird took the position during cross examination that some of Mr. Rose's words could have been interpreted as imputing dishonesty to the Mansoors. In my view, and with respect, little or no effort was utilized by the defendants in establishing that the impugned words were capable of being fair comment. Most of the defendants' effort were spent on seeking to establish that the focus of the words were the Government and seeking to establish that

the Mansoors received concessions for the entire list of items that they had submitted to Cabinet.

[115] In relation to the caller's statement, her utterances in my respectful view, were imputations of facts. There was no comment in her defamatory speech. For reasons alluded to, her words likewise were not capable of being fair comment. In relation to first, second and third defendants, even though they took the position that they are not in anyway responsible for the words of the female caller, for reasons stated earlier they are liable for the defamatory statements published by the caller.

[116] Therefore, in so far as the defendants have failed to prove that the offending words are capable of being regarded objectively as fair comment, in relation to the Mansoors as businessmen, they cannot avail themselves of the defence of fair comment.

[117] Even if I were wrong, and the words stated by Mr. Rose and the caller are capable of being fair comment I note that they imputed dishonest and dishonourable conduct by the Mansoors and they have no relation or bearing to the facts that address the Government's policy of granting duty free concessions. In passing, it seems to me that no fair minded persons would honestly say what Mr. Rose said and also what the caller spoke about the Mansoors based on the facts that they were granted the duty free concessions. In addition, I am not of the view that the offending words spoken by either Mr. Rose or the caller were germane to criticism of the Government's policy. I am far from persuaded, based on the evidence that Mr. Rose honestly believed that the Mansoors padded the list or the other negative imputations stated about the Mansoors. This holds true also for Mr. Bird and Mr. Simon, I am not satisfied that any of them honestly believed the impugned statements to be true.

[118] In any event since malice on the part of the defendants destroy the defence of fair comment for reasons which will be dealt with in detail shortly, I am of the considered opinion having reviewed the evidence that in publishing the offending words the defendants were motivated by malice against the Mansoors. The bases for the statements

of "padding the list" and "campaign team" amongst other are just not present. Accordingly, the defence of fair comment cannot be sustained. Further the allegation of dishonesty and greed and padding the list are very serious allegations. Before making the impugned statement Mr. Rose should have sought to ascertain whether, as stated in evidence, and which I accept to be true whether other persons whose goods were burnt in the warehouse in which the Mansoors goods were destroyed also received duty free concessions. It is passing strange that, Mr. Rose sought no comment from the Mansoors with whom he was on "friendly terms" about the extent of the loss they had suffered when he ought to and could have done so; on the facts. There was no urgency in my view for publishing the words without first obtaining from the Mansoors their comments. I have no doubt that Mr. Rose's motive for publishing the words have very little to do with merely criticizing the Government. In my view the Mansoors have satisfied me on the evidence that Mr. Rose and the other defendants in publishing the offending words were actuated by malice. Mr. Bird and Mr. Simon's motive had all to do with their being upset with Dr Edmond.

### **Justification**

[119] I come now to address the defence of Justification. It is a complete defence to a claim for slander that the words complained of were true in substance. Where the defendants plead justification they must prove that the defamatory imputation is true. It is not enough for them to prove that he believed that the imputation was true, even though it was published as a belief only. There is no onus on the claimants to prove that the statements are false for the law presumes that the statements complained of are false

[120] In *Gatley on Libel and Slander* *ibid* it is stated that "if the libel contains defamatory statements both of fact and of opinion, the defendant under a plea of justification, must prove that the statements of fact are true and that the statements of opinion are correct. A plea of justification means that the libel is true not only in its allegations of fact, but also in any comments made. The defendants have to prove not only that the facts are truly stated but also that any comments upon them are correct. In a plea of justification the defence that a matter of opinion or inference is true is not that the defendant truly made that inference, or truly held that opinion, but is that the opinion and inference are both of them true."

[121] It is the law that a substantial justification is sufficient. If the defendants prove that “the main charge, or gist, of the libel” is true, they need not justify statements or comments which do not add to the sting of the charge or introduce any matter which is by itself actionable. It is sufficient if the substance of the libelous statement is justified; it is unnecessary to repeat every word which might have been the subject of the original comment. As much must be justified as meets the sting of the charge, and if anything be contained in a charge which does not add to the sting of it, that need not be justified. So, in **Edwards v Bell** the defendants alleged in their newspaper that “a serious misunderstanding had taken place amongst the independent dissenters of Great Marlow and their pastor in consequence of some personal invectives publicly thrown out from the pulpit by the latter against a young lady of distinguished merit and spotless reputation”, and that “the matter was to be taken up seriously”. It was held that a plea which justified only the throwing out of personal invectives from the pulpit was sufficient, since the “gist of the libel”, namely misconduct in the pulpit, was contained in those words.

[122] The defendants have all relied on the defence of justification. It is their case firstly that the words that were spoken by Mr. Rose are true in relation to the criticism of Government's policy; it is noteworthy however that none of the defendants has sought to justify the natural and ordinary meaning of the words which I have already held defame the Mansoors. In fact all of the defendants in my view stayed clear of seeking to justify the false and defamatory statements which form the bases of the cause of action. Accordingly, I am of the respectful view that they have failed to meet the threshold of the defence and this defence therefore cannot be sustained particularly since the evidence adduced by the defendants indicated that they respected and viewed the Mansoors as honest business. Neither did Mr. Bird nor Mr. Rose provide a scintilla of evidence that they believed that the Mansoors had padded the list or got the duty free concessions through their connections with the present government.

[123] It is imperative that I state that the first, second and third defendants have relied on the defence of justification on the bases that the proper procedure for the grant of the

concessions were not employed; the concessions were granted in an unorthodox manner; there was no verification by the Government. I am of the view that the defendants have led no credible and reliable evidence to prove the contentions that proper procedures were not adhered to in the grant of duty free concessions; most of the evidence in this regard was conjecture. No evidence was led to prove what is the orthodox manner of granting duty free concessions. In any event 'the real sting' of the words was aimed towards the Mansoors and not the Government.

[124] In the Commonwealth Caribbean Law of Tort, the learned author Professor Kodiliyne states that "It is the law that a defendant should not plead justification unless he has a good reason to believe it will succeed; for failure to establish the defence will usually inflate any damages awarded against him, the Court treating it as an aggravation of the original injury." The defendants, in my view, have not sought to justify the sting of the slander.

[125] The first second and third defendants have argued that "the sting" of statements are true that the concessions were granted to Abdo Mansoor, however they have led no evidence neither have they sought to prove that it is true that the Mansoors were granted the duty free concessions in relation to items that were not destroyed and that they were granted concessions because they were part of the campaign team of the UPP. The defendants have failed to appreciate what is the sting of the statements. Accordingly, they have failed to meet the threshold required to prove the truth of the impugned statements. The defence of justification therefore fails.

### **Qualified privilege**

[126] I come now to address the defence of qualified privilege. If a statement is defamatory the defendant may still be able to be absolved from liability if he can prove that the defamatory statement was published on an occasion of qualified privilege.

[127] Gately on Libel and Slander *ibid* states that "there are occasions upon which privilege, on grounds of public policy and convenience, less compelling than those which give rise to absolute privilege, a person may yet, without incurring liability for defamation, make

statements about another which are defamatory and in fact untrue. On such occasions of privilege a person is protected if the statement was fairly warranted by the occasion (that is to say, was reasonably necessary to achieve the purpose for which the law grants the privilege) and so long as it is not shown that he made the statement with malice, i.e. knowing it to be untrue or with some indirect or improper motive. These occasions are called occasions of qualified privilege, for the protection which the law, on grounds of public policy, affords is not absolute but depends on the honesty of purpose with which the defamatory statement is made. The rule being founded on the general welfare of society, new occasions for its application will necessarily arise with continually changing conditions, though the long established statutory protection for various reports has reduced the need to extend the common law."

[128] His Lordship Mr. Justice Hugh Rawlins JA quite helpfully stated in **Bristol v St Rose Civil Appeal St Lucia No 16 of 2005**:

"where words are published under circumstances which create qualified privilege, the claimant might still prevail on a claim for defamation if he proves that the person abused the privilege because of actual malice. The test of express malice requires the claimant to prove that the defendant did not honestly, believe that the words were true because the defendant was either aware that they were not true or was indifferent to their truth or falsity. Express malice arises as a question of fact, which is to be drawn or inferred, inter alia, from the contents and source of the statement and the circumstances in which the statements were made. A defendant might be indifferent to the truth or falsity where he took no investigative steps to ensure their accuracy when he could have done so. Whether a defendant was indifferent to the truth of the defamatory statements is subjective to the defendant and depends, among other things, on his level of knowledge, education and intelligence. To a great extent, it is an enquiry as to the motive for the publication."

[129] The question whether the occasion on which the statement was made was a privileged one is a question for the judge and the defendant bears the burden of establishing the facts and circumstances necessary to create the privilege. If the judge rules that the occasion is privileged, the plaintiff must, in order to succeed in the action, prove that the defendant was not using the occasion honestly for the purpose for which the law gave it to him, but was actuated by malice.

[130] In addition, I find the exposition by Professor Kodilinye in Commonwealth Caribbean Law of Tort *ibid* very helpful. In addressing the defence of qualified privilege, he stated as follows:

“Here the defendant must show both that he was under a legal, moral or social duty to communicate the defamatory matter to a third party, and that the third party had a corresponding interest in receiving it.

Whether a legal, moral or social duty to communicate the defamatory matter exists in the particular case is a question of law, to be decided by the judge. If it is a legal duty which is relied upon (for example, the duty of a citizen to report the commission of a crime to the police), the judge’s task will normally be straightforward; but where the defendant pleads a moral or social duty, it is more difficult. In deciding whether such a moral or social duty exists he must ask himself the question: ‘would the great mass of right minded men in the position of the defendant have considered it their duty, under the circumstances, to make the communication? It is an objective and not a subjective test which is applied. Thus, if the judge decides that a reasonable, right minded person would not have recognized a duty to communicate the defamatory matter, it will be no defence for the defendant to plead that he believed honestly and in good faith that there was such a duty.”

[131] In **Mirchqandani v Barbados Rediffusion Service Ltd [1992] 42 WIR 38**, the question arose as to whether defamatory words contained in three calypsoes broadcast over the radio during the Crop-Over festival in Barbados were protected by qualified privilege. The calypsoes alleged that the plaintiffs had processed diseased chickens and offered them for sale to the public. It was held, on a preliminary point of the pleading, that the calypsoes were not privileged because the defendant had no legal, moral or social duty to communicate the defamatory words to the general public.

[132] Very similar allegations concerning the same plaintiffs were in issue before the Barbados Court of Appeal in **McDonald Farms Ltd v The Advocate Co Ltd [1996] 52 WIR 64**, where a newspaper published a report alerting the public to certain allegations concerning food contamination at the plaintiff’s chicken farm, which, the report stated, were under investigation by the public health authorities. In an action for libel brought against it, the newspaper pleaded qualified privilege. The trial judge rejected the defence and the Court of Appeal upheld that decision. Williams CJ explained the court’s approach to the issue

thus: "There is no doubt that the general law of qualified privilege is available to newspapers; see Stephenson LJ in **Blackshaw v Lord** [1983] 2 All ER 311, p 326. The law was summarized by Cantley J in **London Artists Ltd v Littler** [1968] 1 All ER 1075 after he had extracted passages from a number of earlier cases. The judge said:

"The cases to which I have referred show a uniformity of approach. In my view, the privilege for publication in the press of general public interest is confined to cases where the defendant has a legal, social or moral duty to communicate it to the general public, or does so in reasonable self defence to a public charge, or in the special circumstances exemplified in **Adam v Ward** [1917] AC 309"

[133] A duty will thus arise where it is in the interest of the public that the publication should be made, and will not arise simply because the information appears to be of legitimate public interest. It is well recognized that public interest and public benefit are not enough without more. There must be a duty to publish to the public at large and an interest in the public at large to receive the publication.

[134] The House of Lords in **Reynolds** quite clearly held that here was no automatic and separate privilege for political speech; nor was there a separate 'circumstantial test' in addition to the traditional requirement of reciprocal duty and interest; but widespread publication might be privileged in the public interest, depending on the nature of the material and all of the circumstances in which it was published. In short, the House of Lords denied that there was any blanket or 'generic' protection by way of qualified privilege for misstatements of fact in the course of dissemination of 'political information', that is, 'information, opinions and arguments concerning Government and political matters that affect the people of the United Kingdom. According to Lord Nicholls, "in the absence of any additional safeguard for reputation, acceptance of the blanket defence would mean that a newspaper which was anxious to be the first with a 'scoop' would 'be free to publish seriously defamatory mis-statements of fact based on the slenderest of materials, and it would be unsound in principle to distinguish political discussion from discussion of other matters of serious public concern.'" As stated earlier, Lord Nicholls further suggested a non exhaustive list of matters which a court ought to take into account when deciding whether a defamatory statement, which misstates facts, was published in the public interest and on

an occasion of qualified privilege. These matters included: the nature of the information and the extent to which the subject matter was a matter of public concern; the seriousness of the allegation (because the more serious the charge, the more the public is misinformed and the plaintiff harmed, if the allegation is untrue); the source of the information; the steps taken to verify the information and the status of the informant; the urgency of the matter, because news is a 'perishable commodity'; whether comment was sought from the plaintiff; whether the article contained the gist of the plaintiff's side of the story, and the overall tone of the article.

[135] More recently the English Court of Appeal in **Loutchansky v Times Newspapers Ltd (No 2)** [2001] 4 All ER 115 emphasized that, in the light of **Reynolds**, when a court is deciding whether there has been a duty to publish defamatory words to the general public, the standard to be applied was that of 'responsible journalism'. The standard of "responsible journalism" should not be set too low, as that would encourage newspapers to publish untruths, which was not only against the interests of defamed persons but also contrary to the interests of the media themselves, in that the public would eventually cease to believe much of what they read in the newspapers. On the other hand, the standard should not be set too high, as this would deter newspapers from discharging their proper function of keeping the public informed.

[136] Applying the above legal principles, I am satisfied that Mr. Rose had a social and moral duty to report on the fiscal policies of the Government of Antigua and the public has a corresponding interest to receive that information. However, I have already found the entire thrust of Mr. Rose's words and those of the caller's words did not have as their foci the policies of the Government of Antigua rather there foci were on the Mansoors . I am not satisfied that the great mass of right minded persons in the position of the defendants would have thought it was their duty to communicate, under the circumstances as the defendants did (and which I have earlier ruled was the ordinary and natural meaning of the words) and neither did the public have any legitimate interest in receiving the false information about the concessions the Mansoors received. There is no social or moral duty in communicating untruths about persons. I find the cases of **Mirchagandi v**

**Barbados Rediffus Service** *ibid* and the High Court judgment of Her Ladyship Justice Edwards in **Kenny Anthony v Vaughn Lewis** very instructive.

[137] Further, in **Bristol v St Rose** *ibid* Justice Rawlins JA quite helpfully stated that the “rules of **Reynolds** privilege were thus made to meet the reasonable demands of freedom of speech in a modern democracy, by recognizing that there may be a wider privilege dependent on the particular circumstances. Lord Cooke therefore said that it was for this purpose that all the circumstances of the case including the precautions taken by the defendant to ensure accuracy of fact, should be open to scrutiny. Lord Nichols list is peculiarly applicable to cases of publication to the world. There is no test to determine precisely, the relevant criteria for moral ethical or social duty or interest. This determination is within the province of the judge who must decide it objectively from the circumstances.”

[138] Applying the above principles, I am buttressed in my view that none of the defendants had a moral, social or legal duty to publish the defamatory words about the Mansoors. In **Loutchansky v Times Newspapers Ltd [2001] EWCA Civ 536** it was held that to talk of a public right to know, without more, was facile and misleading. The public had no right to know untrue defamatory matter about which a newspaper made no sufficient inquiry before deciding to publish it. It is for the defendants to prove that the publication was in the public interest and this is not accomplished by merely showing that the subject matter was of public interest. I find these pronouncements very helpful and instructive in the case at bar.

[139] The defendants in publishing statements are obliged to adhere to standards of “responsible journalism”. Applying all of the principles stated above to the facts of this case. It is clear to me that the defendants did not adhere to the standards of “responsible journalism.

[140] Utilising the list that Lord Nicholas recommended, not as an exhaustive one: given the seriousness of the allegation the nature of the information, the extent of the public that was informed, “responsible journalism” required that the content of the publications should have

been balanced by first obtaining the Mansoors' views and publishing them, the tone of the publication particularly that of the callers' left much to be desired.

[141] Based on the totality of circumstances, I am of the respectful opinion that the defendants cannot avail themselves of defence of qualified privilege.

[142] To reinforce my position, I state that it is the law that the defence of qualified privilege would fail if the claimant can prove that the defendant was actuated by malice. Gately on Libel and Slander *ibid* states that malice in its popular sense signifies spite or ill will. In the law of defamation it includes those states of mind but it is rather broader: a person may be guilty of malice, for example, if he publishes a statement out of a love of gossip or for a purpose other than that for which the law permits publication. Malice becomes relevant to liability if the defendant contends that the words were published on an occasion of qualified privilege or were fair comment. Then it is incumbent upon the plaintiff to prove malice (sometimes known as "express malice") in order to rebut the defence. Of course the presence or absence of malice may have a great effect upon the quantum of damages.

[143] In the case at bar, there was express malice inhering in the defendants, in publishing the impugned words. In coming to the conclusion that there was express malice, I took into consideration that Mr. Rose is an intelligent and experienced social and political activist and commentator; the Mansoors have satisfied me that he did not seek to ascertain from them what exactly had transpired in relation to their losses nor the circumstances of the grant of the concessions; there is no credible or reliable evidence that the Mansoors campaigned for the UPP; there is no evidence that they padded the list in fact the evidence reveals that the same list of items was transmitted to the police who were investigating the fire; there is evidence that other persons who were similarly circumstanced also received duty free concessions. Mr. Rose provided the Court with no evidence that he believed that the impugned statements were true. I have no doubt that Mr. Rose had express malice towards the Mansoors; he had an improper motive for saying those words. Alternatively, I find that he was reckless or indifferent to the truth of the defamatory statements. It is insufficient for Mr. Rose to simply rely on a Cabinet decision and to ask persons whether

any investigation or verification was done. He ought as a responsible journalist to have enquired of the Mansoors to at least ascertain their side of the story in relation to the losses suffered and he could even have enquired from Mr. Bird who clearly indicated that under the previous administration (the Antigua Labour Party Government) persons who suffered similar losses in fires as the Mansoors, were likewise granted duty free concessions.

[144] I am also satisfied that neither Mr. Bird nor Mr. Simon honestly believed the impugned statements were true. They too were actuated by an improper motive in publishing the words since they were up set with Dr. Edmond. They had express malice towards the Mansoors based on the hurtful words Dr Edmond is alleged to have said.

[145] Based on the overwhelming evidence presented by the Mansoors, I am therefore satisfied that all of the defendants were motivated by an improper purpose in publishing the defamatory words spoken by both Mr. Rose and the caller. In my respectful view, it is a combination of love of sensation and the need to settle political scores with Dr Edmond falling very sort of any enmity that motivated the publication of the words by the defendants. This is also a clear case of the defendants targeting the relatives of a political rival, Dr Edmond; as stated earlier this is an improper motive which the law will not sanction and this is particularly so where as in the present case I have found that none of the defendants honestly believed the imputations of dishonesty that were leveled against the Mansoors and which were known to the defendants to be untrue.

[146] Accordingly, the defendants' defence of qualified privilege cannot prevail.

#### **Issue No 5**

#### **Reliefs**

[147] The Mansoors have claimed damages including exemplary and aggravated damages. Sir Thomas Bingham MR. in **John v MCM Ltd [1996] 2 All ER 36 146** said:

"The successful plaintiff in a defamatory action is entitled to recover, as general compensatory damages, such sum as will compensate him for the wrong he has suffered. That sum must compensate him for the damage

to his reputation, vindicate his good name, and take account of the distress, hurt and humiliation which the defamatory publication has caused.”

- [148] Compensation is the usual basis for defamation. In determining the quantum of damages I could either take into account other person’s attitude to the Mansoors – whether they shunned or avoided them or whether they were in fact lowered in the estimation of right thinking members of society.
- [149] Generally, in defamation, the compensation that is awarded is to console the claimant for the distress he suffers from the publication due to injury to his reputation; and as a vindication of his reputation.
- [150] On the evidence presented, I am satisfied that the Mansoors have suffered no pecuniary losses; accordingly they are only entitled to be compensated for the losses suffered. Once the defamation is proved the law presumes that the claimant has suffered loss.
- [151] I now turn to address the Mansoors’ claim for exemplary damages. Exemplary damages are awarded where the conduct of the defendant in publishing the defamatory statement was calculated to make a profit which may well exceed the compensation. See: **Rookes v Barnard [1964] 1 All ER 367** and **Manson v Associated Newspaper Ltd [1965] 2 All ER 58**. There is not a scintilla of evidence before on which I could properly conclude that in publishing the words the defendants calculated to make a profit which would exceed the likely compensation against them. Accordingly, I have no basis in law for awarding the Mansoors exemplary damages.
- [152] In the case at bar the award of damages should be to assuage the injury to the Mansoors’ feelings. I am not satisfied that the Mansoors’ reputation was injured in any way whatsoever and to the contrary the Mansoors continue to be very successful business persons. Indeed, the greater part of any award of damage must of necessity be for the injury, hurt and embarrassment caused to the Mansoors’ feelings. In **Fielding v Variety Incorporated** in which the plaintiff had suffered no injury to his reputation because it was

the fact that a play that the defendant had described as a disastrous flop continued to play to packed houses so that no one could have believed the defamatory statement. However, it was accepted that the conduct of the defendant had greatly injured the plaintiff's feelings and it was for that element alone he was compensated.

[153] I turn now to examine whether the claimants are entitled to receive aggravated damages. It is the law that in defamation the damages may be aggravated by the manner in which, or the motives with which the slanderous words were published. Aggravated damages are awarded by the Court to vindicate in the eyes of the public where the defendants have conducted the case in a manner to further hurt the claimants. During the trial I did not form the view, at all, that the defendants had any deep seated acrimony towards the Mansoors. On the evidence presented, I am not satisfied that the defendants persisted in the publishing other defamatory statements about the Mansoors. Even though they quite improperly pleaded justification as a defence as stated earlier at no time during the trial did any of the defendants seek to justify the slanderous words about the Mansoors. Throughout the entire matter they sought to rely on the defence of justification in so far as it related, in their view to the failure of the UPP to adhere to proper 'fiscal policies'. This approach was misconceived but it does not have the effect of inflating the quantum of damages to be awarded

[154] Taking the totality of the circumstances into consideration, I am therefore not of the view that this is a matter which is appropriate for an award of aggravated damages since I have not found that there was any conduct by the defendants that aggravated the original injury to the claimants' feelings.

[155] However, I am cognizant of the fact that in determining the quantum of damages to be awarded, I must consider the gravity of the slander, the extent and manner of its publication, the relationship between the claimants and the persons who received; the presence of malice; the defendants refusal to apologize; the persistence of the slander; the defence run by the defendants; whether there is any loss of earnings; whether the

defendants have prosecuted a defence of justification (even though I reiterate they have never sought to justify the defamatory imputations).

[156] In addition, in determining the appropriate quantum of damage I must also take into consideration all of the relevant factors which include both the negative and positive factors. On the negative side the factors are:

- (1) The publication of the defamation was very wide;
- (2) There was no apology;
- (3) The presence of malice at the time of the publication;
- (4) The allegations were serious; and
- (5) The Mansoors were hurt and embarrassed by the publication.

On the positive side the factors are:

(1) Absence of malice after the publication. Mr. Bird, Mr. Rose and Mr. Simon appear to have no animosity towards the Mansoors;

(2) During their testimony in court, the witnesses who are defendants professed their admiration and respect for the Mansoors;

(3) The fact that the Mansoors businesses have thrived despite the publication indicates that people could not have believed that they were dishonest businessmen. (They are in the process of even further expanding their business); and

(4) The relationship between the parties does not appear to be strained. During the viva voce evidence Mr. Bird, Mr. Rose and Mr. Simon were fulsome in their praise and admiration, of the Mansoors, this was particularly so of Mr. Rose and Mr. Bird and the responses from the Mansoors were to my mind pleasant and positive.

[157] Reviewing the above, it seems to be that the positive and negative factors just about balance themselves out.

[158] In seeking to determine the appropriate quantum of damages, I have been very helpfully referred to comparable cases of defamation from other jurisdictions, even though in my view the facts of those other cases are different from the case at bar. Each case turns upon its own facts. However, I find very instructive our Court of Appeal decisions in **Bristol**

v **St Rose** *ibid* in which a medical doctor who was defamed when words were published that he had caused the death of persons and there were other imputations of incompetence, improper treatment and lack of care in those circumstances. As if not enough at the trial the defendant sought to justify the defamatory statements he had made about the doctor and sought to provide the names of persons whose death the doctor had caused. In those circumstances our Court of Appeal awarded the doctor \$40,000 for damages.

[159] I also find very helpful our Court of Appeal decision in **Vaughn Lewis v Kenny D Anthony** *ibid* in which a former Prime Minister slandered the defendant who at that time was the Prime Minister of Saint Lucia by imputing that he was guilty of taking a bribe; had fraudulently diverted public funds for his personal benefit contrary to law; was wrong; was guilty of a serious criminal offence punishable by imprisonment and was dishonest in the discharge of his office as Prime Minister and Minister of Finance including the allegation of being associated with drug lords. In those circumstances our Court of Appeal awarded the Prime Minister the sum of \$40,000 as compensation.

[160] Also instructive is the judgment of **Civil Suit No 151 of 1998 Mario Drucille v Robert Hoffman, Antigua Sun and Nation Publishing Company Limited** an attorney at law in private practice, who was a former magistrate was defamed by a publication that he was doing time for peddling drugs. In those circumstances he was awarded compensation in the sum of \$20,000.00

[161] Taking into account all the relevant circumstances of the case to which I have alluded together with the very helpful authorities to which I have referred, I am of the considered opinion that damages in the sum of \$20,000 is an appropriate figure to award to each of the Mansoors as compensation for the injury suffered.

#### **Injunctive relief**

[162] The Mansoors have sought injunctive relief which prevents the defendants from further defaming them.

[163] It is the law that the Court will not grant an injunction to restrain the defendants in the absence of credible and reliable evidence that the slanderous words will be republished or other slanderous words will be published by them about the claimants. On the evidence before me, I am not satisfied that the defendants unless restrained by the Court would continue to publish defamatory remarks about the Mansoors. I accept Mr. Simon's comments about 'letting go' of the past and his intimation that he will not publish any other defamatory words about the Mansoors.

[164] I am also satisfied that the defendants are now aware of the serious consequences of their defamatory publications and there is no evidence before me on which I could properly conclude that they are likely to publish again defamatory words about the Mansoors. In the circumstances, I have no basis to grant the injunctive relief sought.

### **Conclusion**

[165] It is hereby ordered as follows:

- (a) I give judgment for Mr. Abraham Mansoor, Mr. Edward Mansoor and Mr. Esau Mansoor against Grenville Radio Station, Mr. Ivor Grenville Theophilus Bird, Mr. James "Sly J" Simon and Mr. James Tanny Rose jointly and severally;
- (b) Damages in the sum of \$20,000 awarded to Mr. Abraham Mansoor against Grenville Radio Station, Mr. Ivor Grenville Theophilus Bird, Mr. James "Sly J" Simon and Mr. James Tanny Rose jointly and severally;
- (c) Damages in the sum of \$20,000 awarded to Mr. Edward Mansoor against Grenville Radio Station, Mr. Ivor Grenville Theophilus Bird, Mr. James "Sly J" Simon and Mr. James Tanny Rose jointly and severally;
- (d) Damages in the sum of \$20,000 awarded to Mr. Esau Mansoor against Grenville Radio Station, Mr. Ivor Grenville Theophilus Bird, Mr. James "Sly J" Simon and Mr. James Tanny Rose jointly and severally;
- (e) Prescribed costs are awarded in accordance with Part 65 of CPR 2000;

- (f) Interest at the rate of 5% is awarded on the damages from the date of the judgment until payment.

[166] The Court gratefully acknowledges the assistance of all learned counsel.

Louise Esther Blenman  
**High Court Judge**