

IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE

ANTIGUA AND BARBUDA

CLAIM NO.ANUHCV2007/0187

BETWEEN:

PETER BENJAMIN

Claimant

AND

WILMOTH DANIEL

Defendant

Before:

Master Cheryl Mathurin

Appearances:

Sir Clare Roberts QC with him, Ms Tracey Benn for the Claimant

No appearance of or for the Defendant

2008: October 7th, 13th

ASSESSMENT OF DAMAGES

- [1] **MATHURIN, MASTER:** This is an assessment of damages for a claim in defamation. The issue of liability was resolved on the 29th June 2007 when Judgment in default of Defence was entered for the Claimant (Mr Benjamin) entitling him to damages to assuage his character. Mr Benjamin seeks general damages as well as interest and costs.
- [2] Mr. Benjamin is an engineer who at the material time was General Manager of the Public Utilities Authority. The Defendant (Mr Daniel) was at the material time, the Minister responsible for Public Utilities Authority and Deputy Prime Minister of Antigua and Barbuda. On or about the 7th June 2004, Mr. Daniel made the following false statements which referred to Mr Benjamin on a radio program.

“ However, later on I was able to speak to one of the managers and they told me that they had signed contracts so I realized that the General Manager, in a way was, you know, attempting to deceive me in terms of for me to do

something of having managers there working and they don't have signed contracts ”

“But what I am saying, you would think that a manager could just sit down and decide to give himself substantial increase both himself and other managers without somebody as it were being involved in the decision making”

“But the fact of the matter is, Mr. Benjamin brought Mrs. Paige, who I understand is some far relative of his via his wife side, her brought her in as Legal Officer for the company and that time I understand that Ms Hill who was Personnel Manager, because she to retirement age and was asked to go off, so instead of hiring a personnel manager he added that personnel manager to the position to Mrs. Paige”

[3] I agree that the words, in their natural and ordinary meaning, meant that Mr. Benjamin was a liar and was arbitrary, capricious and a bad manager. I also agree that the words could mean that Mr. Benjamin was involved in nepotism and corruption.

[4] On the 25th June 2008, Master Kelvin John (Ag) ordered that the Claimant file evidence and submissions in support of the assessment of damages which he did on 15th September 2008. There was no appearance of or for the defendant on the date of the hearing on the 7th October 2008. The only issue that the court faces is to determine how much should be awarded to the claimant to compensate him for the injury to his reputation because of the false accusations published by the defendant.

[5] In assessing the quantum of damages in a case like this, the following words of Lord Reid in **Cassell & Co v Broome** (1972) 1 AER 801 must be borne in mind

“Where the injury is material and has been ascertained it is generally possible to assess damages with some precision. But that is not so where he has been caused mental distress or where his reputation has been attacked – where to use the traditional phrase, he has been held up to hatred, ridicule or contempt. Not only is it impossible to ascertain how far other people’s minds have been affected, it is almost impossible to equate the damage to a sum of money. Any one person trying to fix a sum as compensation will probably find in his mind a wide bracket within which any sum could be regarded by him as not unreasonable – and different people will come to different conclusions. So in the end there will probably be a wide gap between the sum which on an objective view could be regarded as the least and the sum which could be regarded and the most to which the Plaintiff is entitled as compensation”

Mr Justice Singh, as he then was, in the case of **Simmonds v France et al** Civil case No 34 of 1984 opined that *“the court must make an award that will go some way towards palliating the effect of the wrong and also act as a solatium to the particular Plaintiff”*.

- [6] In support of the assessment of damages, evidence was provided by Mr. Benjamin in his affidavit dated the 31st July 2008. Mr. Benjamin states that the radio station has a wide audience in Antigua and neighboring islands and can be heard worldwide on the internet. Mr. Benjamin states that he was refused work in his field despite his stellar record and he attributes this to the comments made by Mr. Daniel in his influential position as Minister of Government.
- [7] The law in relation to slander actionable per se (as in the instance of disparaging a person in his profession) presumes that some damage will flow in the ordinary course of things from the invasion of a person's absolute right to reputation. Mr. Benjamin has asserted however, that he has been working as a freelance Engineering Management Consultant from 2005 so it appears that some regard is still to be had for his professionalism and the words of the Minister were not as debilitating as they could have been. This is contrary in the absence of evidence, to the submissions of Counsel that the slander had a severe impact on his ability to find work in his profession or at all.
- [8] Mr. Benjamin also tells of the effect of the slander. He talks of persons telling him that they had heard what the Minister said about him and states that he recognized some prominent persons who publicly ridiculed him on the radio following the slander. Mr. Benjamin also states that people would come up to him when he walked the streets of St John's saying "tek that now" and "you get it now", which he took to be further ridicule.
- [9] In support of the submissions for the assessment of damages in this matter, Counsel has referred me to two cases decided by the Court of Appeal of the Eastern Caribbean, **Keith Mitchell v Steve Fassih**; Court of Appeal No 22 of 2003 and **Vaughn Lewis v Kenny D. Anthony**; Court of Appeal No 2 of 2006. Regrettably, I find them to be of little assistance as the award in both of these matters were assessed to accommodate aggravating factors which is not an issue in this matter as aggravated damages were neither pleaded nor claimed.
- [10] Counsel also referred to the Privy Council case No 86 of 2001, **The Gleaner Company Limited and Dudley Stokes v Eric Anthony Abrahams**. I will rely on the words of Gordon JA in the **Keith Mitchell** matter where he considered the same case and stated as follows;

"I found neither case helpful in setting a range of damages in our jurisdiction. I am of the view that economic and social circumstances are valid and necessary considerations for a court in arriving at a figure for general damages in cases of defamation. Neither the economic nor the social conditions of Jamaica or Trinidad are, in my opinion sufficiently parallel as to provide any assistance."

Gordon JA however did identify a the case of **France and another v Simmonds (1990)** 38 WIR 172 in Saint Kitts in which he found several parallels, which would be based on the fact that the **Keith Mitchell** case was also a case where the Prime Minister of that state had been wrongly accused of corruption. This case can not, in my opinion be considered as parallel and would not attract therefore the same kind of quantum of award.

[11] Taking into account all the circumstances of this matter, I find that an award in the sum of \$20,000.00 would be reasonable. This award would attract interest at the rate of 5% from the date of the filing of the claim and thereafter the statutory from the 13th October 2008 until payment. Prescribed costs are calculated in the sum of \$3,600.00.

**CHERYL MATHURIN
MASTER**