

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
SAINT VINCENT AND THE GRENADINES
HIGH COURT CIVIL CLAIM NO: 64 OF 2007



BETWEEN:

DR. RALPH GONSALVES

Claimant

V

**MATTHEW THOMAS
BDS LIMITED**

Defendants

Appearances:

Mr. Grahame Bollers for the Claimant
Dr. Linton Lewis for the Defendants

2009: November 16

RULING

- [1] By Claim form filed on the 22nd. February 2007, the Claimant sought among other things damages and costs against the Defendants for slander, claiming that he was slandered by words spoken by the First Defendant broadcast to persons in St. Vincent and the Grenadines and St. Lucia on Nice Radio 96.7 FM, owned by the Second Defendant.
- [2] In his Statement of Claim, the Claimant pleaded that he is a Barrister-at-Law and Solicitor of the Eastern Caribbean Supreme Court in St. Vincent and the Grenadines, that he is the political leader of the United Labour Party in this State, a Member of Parliament for the North Windward Constituency and is the present holder of the Office of Prime Minister and Minister of Finance of the State of Saint Vincent and the Grenadines.

[3] The words complained of by the Claimant are set out in paragraph 5 of his Statement of Claim and are reproduced:-

" Caller, the dismissal of Junior Bacchus is a joke you know, is assassination next and it surprise me that the Comrade ain't learn by history. In Trinidad, Randolph Barrow, outstanding Commissioner of Police, in the 60's and 70's they say he played with the pups and he got bitten by fleas. After him, Selwyn Richardson a former Attorney General in Trinidad was gun down, just entering or leaving his garage something like that. Sometime in December a Counsellor was gunned down. You know and the wind is blowing. "So you calling, they are not safe." The Governor General home trembling, the Prime Minister frantic up and down the place talking a whole set of nonsenseCaller before you go you mentioned going to Mount St. Benedict, he came back with a huge pascal candle parading all over in the newspaper pages and several rosaries. Suppose is this turn around because any intelligent political activist becoming a politician knows this is no the way to go.

So he is haunted. He has to fire Junior, this will not satisfy him, he will now have to resort to assassinations. Expect it!!!! So is his visitation to Mount St. Benedict haunting him."

"Quickly Junior I want to end the way I begin. The setting free of Lawrence is no accident. The drug lords have now shown us that they are in control. And I say it is no accident, since Ralph come to office he has renegade the Post Mistress General because she call in the police in the Post Office to investigate drugs; she pay the penalty for that. He gave Reuben Morgan a diplomatic passport to traffic in drugs. That's how we know he had a diplomatic passport after he was found caught with drugs..... Here is a fellow Prime Minister in the region saying, "Boy the amount of drugs coming from St. Vincent is really a problem to us in Barbados. You pick a fight with him, you say, "look, you control your own backyard and don't worry with me and my drug man in St. Vincent." So, basically the point I am making is that, we are not making up these things of Dr. Ralph Gonsalves these are incidents of his performance."

[4] In Paragraph 7 of his Statement of Claim, the Claimant pleaded that:-

"By reason of the premises, the consequences of the Defendants by the slander represented that the Claimant, in relation to his profession and office, is a person:

- a. Unfit to be a member of the Bars of Saint Vincent and the Grenadines, Antigua and Barbuda, Anguilla, the British Virgin Islands, Dominica and St. Christopher and Nevis and thereby ought to be disbarred from practicing his profession as a Barrister-at-Law and Solicitor.
- b. Unfit to hold the high office of Prime Minister of St. Vincent and the Grenadines or of Minister of Finance of St. Vincent and the Grenadines or to be a Member of Parliament or to hold any other public office in the

State of St. Vincent and the Grenadines and has betrayed the trust of the people of St. Vincent and the Grenadines by committing criminal offences whilst in office for which he is in jeopardy of criminal prosecution and liable to penal sanction.

[5] In Paragraph 8 of his Statement of Claim the Claimant pleaded that, by reason of the publication of the said words the Claimant has been gravely injured in reputation as a Barrister-at-Law and Solicitor of the Eastern Caribbean Supreme Court as well as his office as Prime Minister and has been brought into public scandal, contempt and ridicule and has suffered loss and damage.

[6] The Claimant claimed the following reliefs against the Defendants jointly and severally:-

1. General damages for slander committed on the 29th January 2007.
2. Aggravated damages.
3. Exemplary damages.
4. An injunction preventing the Defendants whether by themselves, their respective servants and/or agents or howsoever otherwise from further speaking or publishing the said or similar words defamatory of the Claimant.
5. Costs.
6. Any further or other relief as the Court thinks fit.

[7] By his Amended Defence filed on the 6th July 2007, the 1st Defendant pleaded that the Claimant is a non-practising Barrister-at-Law and Solicitor. He denies paragraphs 6, 7, 8, 9, 10 and 11 of the Statement of Claim and in particular denies that the words complained of could bear the meaning ascribed to them by the Claimant. He contends that the words complained of constituted fair comment and expressions of opinion made in good faith without malice upon matters of public interest. Further, that the said words were published in the exercise of freedom of speech on the conduct of the Claimant in his public capacity of Leader of the "Unity Labour Political Party" and as Prime Minister and Head of Cabinet of the government of Saint Vincent and the Grenadines.

[8] The 2nd Defendant, in his Defence filed on the 23rd March 2007, pleaded:-

- (i) in paragraph 5 that the words complained of were not understood to bear or were capable of bearing any of the defamatory meanings alleged by the Claimant,
- (ii) in paragraph 6, that the statements were published on an occasion of qualified privilege.

[9] By Notice of Application filed on the 8th August 2009, the Claimant applied to the Court for an Order pursuant to Part 26.3 of the Civil Procedure Rules 2000 (CPR) for an Order that the Defendant's defences as filed do not establish reasonable defences to the action and should be struck out and Judgment entered for the Claimant for the payment of an amount to be decided by the Court and costs.

[10] That application came up for hearing in Chambers on 30th September 2009. On that date, the Court made an Order that Counsel were to file written submissions and copies of the legal authorities on which they relied, on or before the 16th day of October 2009. The matter was then adjourned to the 11th November 2009.

[11] Counsel for the Claimant filed his submissions on the 14th October 2009. No submissions were filed by Counsel for the Defendants up to the time of the writing of this decision, namely the 9th November 2009. Accordingly, this ruling is based on the submissions of Counsel for the Claimant and on the Court's own inherent knowledge of the law.

APPLICATION TO STRIKE OUT THE DEFENDANTS' DEFENCE

[12] The Court has power to strike out a statement of case under Rule 26(3) of the Civil Procedure Rules (CPR 2000). The relevant provision for so doing is found in Rule 26.3 (1) which provides as follows:-

"In addition to any other power under these Rules, the Court may strike out a statement of case or part of a statement of case if it appears to the Court that –

- (a) there has been a failure to comply with a rule, practice direction, order or direction given by the court in the proceedings;
- (b) the statement of case or part to be struck out does not disclose any reasonable ground for bringing or defending a claim;

- (c) the statement of case or the part to be struck out is an abuse of the process of the court or likely to obstruct the just disposal of the proceedings.”

[13] Additionally, Rule 26.1 (2) (i) empowers the Court to dismiss or give judgment on a claim after a decision on a preliminary issue.

PUBLICATION

[14] The 1st Defendant pleaded at paragraph 2 of his Amended Defence as follows:-

“The First Defendant denies paragraphs 6, 7, 8, 9, 10 and 11 of the Statement of Claim and in particular that the said words could not bear the meaning ascribed to them in paragraph 6.”

[15] The 2nd Defendant pleaded at paragraph 4 of his Defence as follows: –

“Save that the Second Defendant admits that the call-in programme “Stay Awake” was broadcast on its radio station on 29th January 2007 paragraph 5 of the Statement of Claim is denied.”

[16] The Claimant’s first ground of the application to strike out the Defence is as follows:-

“The Defendants have pleaded non-admissions of publication of the words used and give no reasons why they are unable to admit the same as they are required to do pursuant to Part 10.5 (5) of the Civil Procedure Rules.”

[17] Part 10.5 of the Rules sets out the Defendant’s duty to set out his/its case.

Part 10.5 (3) provides:-

In the defence the defendant must say which (if any) allegations in the Claim form or statement of claim-

- (a) are admitted;
- (b) are denied;
- (c) are neither admitted nor denied, because the defendant does not know whether they are true; and
- (d) the defendant wishes the claimant to prove.

Part 10.5 (5) of the Rules provides:-

“If, in relation to any allegation in the claim form or statement of claim the defendant does not –

- (a) admit it; or
- (b) deny it and put forward a different version of events;

the defendant must state the reasons for resisting the allegation.

[18] Counsel for the Claimant submits that the Defendants' pleas of non-admission do not constitute a proper defence on the issue of publication because they have not complied with Rule 10.5 (3) and (5) of the CPR. Further, Counsel submits, there is nothing in the defences, witness statements or documentary evidence that raises triable issues of fact as to whether the words were spoken or not. The effect of the rules, he continues, is that the Defendants failure to comply with the Rules means that this defence should be struck out.

[19] Counsel relied on the unreported case of Dr. Ralph Gonsalves v. Edwardo Lynch & BDS Limited SVGHCV 406/2002, in which Madam Justice Gertel Thom stated as follows:-

"The effect of Part 10.5 (3) and Part 10.5 (5) when read conjointly is that a Defendant could only plea a non-admission when he is genuinely unable to admit the allegation and he must state his reasons. The defendants in this case pleaded a bare non-admission of publication.

They stated no reasons for the non-admission as they are required to do pursuant to Part 10.5 (5). It cannot be said that the Defendants were genuinely unable to admit or deny the allegation of publication of the words complained of. The first Defendant is the host of the radio programme it is alleged he spoke the words complained of. The Second Defendant is the owner of the radio station that broadcasted the said programme. Further there was an order for discovery."

[20] Counsel also relied on Civil Appeal No.18 of 2005 – Edwardo Lynch v Ralph Gonsalves in which Barrow J.A., commenting on the ruling of Justice Thom in the above case stated, "Unsurprisingly, the judge held that the defence was a violation of the rule because the defendant could not claim that he did not know whether it was true that he had published the words alleged."

[21] I agree with Counsel's submission. In his Witness Statement the 1st Defendant has admitted to being the "co-host , along with Mr. Junior Bacchus of the 'Stay Awake' programme which is broadcast on the radio Station 96.7 F.M. " The 2nd Defendant is the owner of the radio station . In his Witness Statement, Douglas Defreitas stated "I am the principal shareholder and managing director of BDS Ltd., the company that owns Nice radio 96.7 F.M." Accordingly, the Defendants cannot be heard to say that they are

unable to admit or deny whether the words complained of were spoken. I therefore find that Counsel has succeeded on the first ground of his application.

MEANING OF THE WORDS

[22] The 1st Defendant at paragraph 2 of his Amended Defence pleaded as follows:-

“The First Defendant denies paragraphs 6, 7, 9, 10 and 11 of the Statement of Claim and in particular the said words could not bear the meaning ascribed to them in paragraph 6.”

At paragraph 4, he pleaded as follows:-

“The First Defendant says further and in the alternative that the words complained of in the Statement of Claim do not and cannot be understood to mean what is alleged in paragraph 6. The said words meant and could only have been understood to be meant as a “warning.”

[23] The 2nd Defendant at paragraph 5 of his Defence, pleaded as follows:-

“If, which is not admitted, the said words were expressed it is denied that they bore, or were understood to bear or were capable of bearing the natural and ordinary meanings pleaded in paragraph 6 of the Statement of Claim or any other defamatory meaning of the Claimant.”

[24] Counsel for the Claimant states that the Defendants have pleaded a general denial that the words are not capable of the meanings which the Claimant has attributed to them, in breach of Part 10.5 (4) (a) of the Civil Procedure Rules requires Defendants to state the reasons for denying the allegations and they have failed to do so. Additionally, Counsel continues, this issue has already been decided by the Honourable Master Cheryl Mathurin by Order dated the 12th day of February 2009, whereby she held that the words are capable of the set forth therein. The Defendants, not having appealed the said judgment, are estopped from raising this general defence.

[25] In Civil Appeal No.2 of 2006 Vaughn Lewis v. Kenny Anthony, Barrow J.A. reviewed the learning on the meaning of words in defamation cases, and the proper method to be adopted by the Judge in considering and determining the issue. In paragraph 5 of the Judgment, the Learned Judge outlines the “proper two-step method” to be used.” That

approach requires a judge first to consider the questions whether the words were capable of bearing any defamatory meaning and, if so, what was the permissible range of meanings.”

[26] In paragraph 6, the Learned Judge stated:-

“ When the trial is by a judge sitting without a jury the judge is still required to first decide the question what, if any, defamatory meanings the words were capable of bearing. Rule 69.4 of the Civil Procedure Rules 2000 puts on statutory footing the procedure of applying to a judge in chambers, at any time after the service of the statement of claim, for an order determining whether or not the words complained of are capable of bearing a meaning or meanings attributed to in the statement of claim. It is only if the Judge is so satisfied (whether she makes the ruling in chambers or at the trial) that she can then go on to consider the second question, whether in fact the words bore the alleged or any defamatory meanings.”

[27] The Claimant pleaded that the natural and ordinary meanings of the words complained of meant and were understood to mean that :-

- (i) The Claimant intends to resort to assassination, or will conspire with others to assassinate or instruct the assassination of Junior Bacchus in order to silence him;
- (ii) The Claimant has used the office of Prime Minister of Saint Vincent and the Grenadines to victimize public officers and has granted diplomatic passports to persons in order to facilitate the traffic of illegal drugs for his own personal gain.
- (iii) The Claimant in his capacity as Prime Minister has conspired with and/or assisted one Reuben Morgan to traffic in illegal drugs
- (iv) The Claimant wrongfully and with improper and corrupt motives used the powers of his office as Prime Minister to secure the release of one Alex Lawrence, a person convicted of drug offences, from prison because of some alliance, subjugation or control of him and his office by drug traffickers including the very Lawrence.
- (v) The Claimant is prepared to tarnish and has tarnished the reputation of the sovereign State of St. Vincent & the Grenadines in the region by openly protecting “his drug man in St. Vincent.”

- (vi) The Claimant has, in relation to the above, committed serious criminal offences relating to conspiracy and the trafficking of illegal drugs and the common law offence of Misbehaviour in Public Office; all of which are punishable by imprisonment."

[28] The 1st Defendant in paragraph 4 of his Amended Defence pleaded that the words complained of in the Statement of Claim do not and cannot be understood to mean what is alleged in paragraph 6. He pleaded that "the said words meant and could only have been understood to be meant as a warning to the Claimant."

[29] In the case of *Jones v Skelton* (1963) 3 ALL ER 952, at page 958, Lord Morris stated as follows:-

"The ordinary and natural meaning of words may be either the literal meaning or it may be an implied meaning or an inferred or indirect meaning; any meaning that does not require the support of extrinsic facts passing beyond general knowledge but is a meaning which is capable of being detected in the language used can be a part of the ordinary meaning of words (see *Levis v Daily Telegraph Ltd.*) The ordinary and natural meaning may therefore include any implication or reference which a reasonable reader, guided not by any special but only by general knowledge and not fettered by any strict rules of construction, would draw from the words."

[30] As mentioned above, Master Mathurin had earlier held that the words were held to be capable of bearing the defamatory meanings ascribed to them in the Statement of Claim. The question before the Court is therefore, is whether the words did in fact bear a meaning defamatory of the Claimant. I find as a fact that the words: "He has to fire Junior; this will not satisfy him, he will now have to resort to assassinations. Expect it!" do in fact convey such a defamatory meaning namely that the Prime Minister intends to assassinate Junior Bacchus or to conspire with others to assassinate him. No fair-minded listener would come to any other conclusion.

[31] Similarly, the words "He gave Reuben Morgan a diplomatic passport to traffic in drugs. That's how we know he had a diplomatic passport after he was found caught with drugs" could only have conveyed to the ordinary reasonable listener that the Prime Minister has conspired with and / or assisted Reuben Morgan to traffic in illegal drugs. I further find that

the words "Here is a fellow Prime Minister in the region saying 'Boy the amount of drugs coming from St. Vincent is really a problem to us in Barbados. You pick a fight with him, you say, "look, you control your own backyard and don't worry with me and my drug man in St. Vincent", to the ordinary, reasonable, fair-minded listener could only have conveyed the meaning that the Prime Minister is not only protecting those engaged in the drug trade in St. Vincent but that is himself involved in drug trafficking.

- [32] To conspire to assassinate or to assassinate, to conspire with and/or to assist a person or persons to traffic in illegal drugs and to be engaged in the trafficking of illegal drugs are all criminal offences in the State of Saint Vincent & the Grenadines.

FAIR COMMENT

- [33] The 1st Defendant at paragraph 3 of his Amended Defence pleads that the words alleged in paragraph 5 of the Statement of Claim are fair comments and expressions of opinions made in good faith without malice upon matters of public interest to the people of the State of Saint Vincent and the Grenadines namely the prevalence of illegal drugs in the population of St. Vincent and the Grenadines, the state of crime in the country, especially murder and the general administration of law and order and the governance of the State.

- [34] The Claimant states as his third ground of the application to strike out the defence as follows:-

"In order to rely on the Defence of Fair Comment as pleaded in paragraph 3 of his defence, the First Defendant must show (a) that the words are comment and not statements of facts (b) that there is some substratum or basis of fact for the comment contained or referred to in the matter complained of (c) that the comment is fair in the sense of honest comment and (d) that the comment is on a matter of public interest. The defamatory statements complained of are statements of fact and not comment. Additionally, a plea of fair comment in a matter of public interest cannot be used as a defence to false statements of fact. Additionally the Claimant contends that the defence of fair comment is not properly pleaded in accordance with Part 69.3 of the Civil Procedure Rules."

- [35] The basis of the defence of Fair Comment is stated in *Gatley on Libel and Slander* – 11th edition at page 335 as follows:-

"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.' (per Scott L.J. in *Lyon v Daily Telegraph* (1943) 1 K.B. 746 CA at 753.)

The right is a "bulwark of free speech" and is one of the means by which the common law attempts to comply with the guarantee of freedom of expression found in art. 10 of the European Convention on Human Rights. 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.'"

[36] According to Gatley at page 336, "to succeed in the defence (of fair comment) the defendant must show that the words are comment and not a statement of fact. However, an inference of fact from other facts referred to may amount to a comment. He must also show that there is a basis for the comment, contained or referred to in the matter complained of, at least to the extent of indicating that what is being stated is comment. Finally, he 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 Claimant can show that the comment was actuated by malice (which for this purpose means that the defendant was not expressing his genuine opinion) he will defeat the plea. It is not enough, however, to show that the comment was prejudiced or exaggerated or "unfair" in the ordinary sense of that word."

[37] In Civil Appeal No. 2 of 2006 – **Vaughn Lewis v Kenny D. Anthony**, Barrow J.A. stated that "a cardinal requirement that must be met for the defence of fair comment to succeed is that the words complained of must be comment and not fact. If they are statements of fact and not comment the defence fails."

[38] Further, at page 1012 of Gatley, "The Defendant should not, however, enter a plea of fair comment unless he is satisfied that the facts which are relied upon in support of the plea are true and he has reasonable evidence to support them or reasonable grounds for

supposing that sufficient evidence to prove them will be available at the trial, at which he intends to support the defence.

- [39] Counsel for the Claimant submitted that the statements made by the First Defendant are statements of fact and are not comment . Additionally, that no evidence is adduced in the witness statements and the pleadings whereby he can establish any of his stings against the Claimant are true. Further, the First Defendant has not pleaded any facts or substrata of fact to justify the charges which he has leveled against the Claimant.

PUBLIC INTEREST

- [40] At page 1013 of Gatley, "where a Defendant alleges that the words complained of are fair comment on a matter of public interest, he must specify the defamatory meaning which he seeks to defend as fair commentThe defendant should specify, usually at the start of his pleading of the defence of fair comment, the comment in the words complained of, which he will contend falls within this defence." Continuing at page 1014, "the Defendant must give details of the matters on which he relies in support of the allegation that the words complained of are fair comment on a matter of public interest. He must give particulars of all the facts upon which the comment is legitimately based 'that is, of the facts which go to the pith and substance of the matter.' He must make the issue clear and unmistakable, stating what are the facts which are alleged to be true and what expressions of opinion are the subject of fair comment."

- [41] Part 69.3 of CPR 2000 puts the above requirement on" statutory footing."

Part 69.3 provides:-

"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 fact; and

- (ii) the facts and matters relied on in support of the allegation that the words are true.

[42] The 1st Defendant at paragraph 3 of his defence pleaded that the words complained are fair comments and expressions of opinions made in good faith without malice upon matters of public interest to the people of St. Vincent and the Grenadines. He has, however, as submitted by Counsel for the Claimant, failed to identify the words which he alleges to be statements of fact on which the comments were based and has failed to give particulars of the facts which he relied on in support of the allegations that the words are true. Accordingly, the 1st Defendant is in violation of the rule.

[43] Based on the above legal principles and the submissions of Counsel for the Claimant and applying the same to the instant case, I am satisfied that the 1st Defendant's defence of fair comment is utterly insupportable. The statements made by the 1st Defendant are statements of fact and are not comment. The following statements namely:-

- (a) He has to fire Junior, this will not satisfy him, he will now have to resort to assassinations. Expect it."
- (b) The setting free of Lawrence is no accident. The drug lords have now shown us that they are in control.
- (c) Since Ralph came to office he has renegade the Post Mistress General because she call in the police in the Post Office to investigate drugs; she pay the penalty for that.
- (d) He gave Reuben Morgan a diplomatic passport to traffic in drugs. That's how we know he had a diplomatic passport after he was found caught with drugs.
- (e) Here is a fellow Prime Minister in the region saying, "Boy the amount of drugs coming from St. Vincent is really a problem to us in Barbados. You pick a fight with him, you say, "look, you control your own backyard and don't worry with me and my drug man in St. Vincent."

cannot be construed as anything other than statements of facts. Additionally, the 1st Defendant's purported plea of fair comment is not supported by particulars or a sufficient substratum of fact.

Finally, the purported plea of fair comment in a matter of public interest cannot be used as a defence to false statements of fact. As Cockburn C.J. succinctly puts it in R v Carden (1879) 5 Q.B.D.:-

“To say that you may first libel a man and then comment upon him is obviously absurd.”

QUALIFIED PRIVILEGE

44. The 2nd Defendant pleads in paragraph 6 of its Defence as follows:-

“Further or alternatively, if and in so far as the words set out in paragraph 5 of the Statement of Claim were published by the Second Defendant, they were published on an occasion of qualified privilege.

PARTICULARS

- a. At all material times the Claimant was Prime Minister and Minister of Finance of St. Vincent and the Grenadines and a Member of Parliament for the Constituency of North Central Windward.
- b. At all material times the First Defendant was the host of a radio programme called “Stay Awake” which was broadcast on the radio station 96.7 FM , owned by the Second Defendant the said programme deals primarily with current social, political, religious and health issues.
- c. The “Stay Awake” programme is interactive in that listeners are encouraged by the hosts of the programme to call in and either make suggestions or give their opinions on the topic being discussed or on any other related matter. These discussions provide a platform for assessing the performance and conduct of public officers in St. Vincent and the Grenadines and occasionally public figures in other countries.
- d. As a result of the prevalence of criminal conduct in St. Vincent and the Grenadines and with the recent spate of drug offences being committed the Claimant in his capacity as Prime Minister has made numerous public statements about improving the criminal justice system to effectively combat crime and secure speedy convictions.
- e. In spite of the Claimant and the Unity Labour Party’s administration constant pronouncements on being tough on crime and the causes of crime criminal conduct in St. Vincent and the Grenadines is still at an unacceptable level.
- f. There have been reports of drugs being discovered in the mails at the Post Office.
- g. Illegal drugs were found in the possession of a non-resident who was carrying a St. Vincent and the Grenadines’ diplomatic passport and was arrested at an airport in the United Kingdom.
- h. A convict who was imprisoned for drug offences was alleged to have been released by the Mercy Committee for reasons of national security. His early release prompted a public outcry.

- i. Together with constant lamentations of political victimization, polarization, police brutality and other social ills in the country. Persons have taken to the call in radio programmes to express their dissatisfaction with the poor state of affairs in the country including the manner in which the country is governed.
- j. It is widely accepted that persons who hold high office in Government and those who are responsible for public administration should be subject to criticisms by their political opponents.
- k. Unless the performances of those who are responsible for public administration are opened to scrutiny and criticisms there is very little scope for assessing the stewardship of those who are elected to lead and govern.
- l. If, which is not admitted, the said words were published the First Defendant had always demonstrated that he based his opinions, criticisms and expressions on facts and the Second Defendant could not have entertained the belief or suspicion that there was no factual foundation for the publication of the said words.
- m. In all the circumstances if and in so far as the words complained of were expressed by the First Defendant (which is not admitted) the Second Defendant was under a moral and social duty to publish to those listening the radio broadcast since they had a corresponding interest and/or were entitled to receive same."

[45] The Claimant states as his fourth ground of the application to strike out the defence, that this defence is without legal foundation as the defamatory statements were made on the second-named Defendant's Call-In Radio programme which is not an occasion which attracts the defence of qualified privilege. Further, in his submissions, he submits that the Defendant's plea of qualified privilege is incurably bad, incapable of proof and has no prospect of succeeding at trial and ought to be struck off.

[46] The law as it relates to the concept of qualified privilege is stated by Lord Atkinson in the leading case of **Adam v. Ward** (1917) A.C. 309 at page 334:- "An occasion is privileged where the person who makes the 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 so made has a corresponding interest or duty to receive it. This reciprocity is essential."

[47] The case of **Reynolds v Times Newspapers Ltd.** 2001 A.C. provides that, the test of what amounts to qualified privilege in "media" cases is whether the Defendant conformed to the standards of "responsible journalism."

"Theduty on the journalist (and equally his editor) is to behave as a responsible journalist. He can have no duty to publish unless he is acting responsibly any more than the public has an interest in reading whatever may be published irresponsibly. That is why in this class of case the question whether the publisher has behaved responsibly is necessarily and intimately bound up with the question whether the defence of qualified privilege arises. Unless the publisher is acting responsibly the privilege cannot arise."

[48] Lord Nichols in the above Reynolds case set out a "non-exhaustive list of circumstances which would be relevant to the privilege issue in a 'media case.'"

1. The seriousness of the allegation. The more serious the charge, the more the public is misinformed and the individual harmed, if the allegation is not true.
2. The nature of the information, and the extent to which the subject-matter is a matter of public concern.
3. The source of the information. Some informants have no direct knowledge of the events. Some have their own axes to grind, or are being paid for their stories.
4. The steps taken to verify the information.
5. The status of the information. The allegation may have already been the subject of an investigation which commands respect.
6. The urgency of the matter. News is often a perishable commodity.
7. Whether comment was sought from the plaintiff. He may have information others do not possess or have not disclosed. An approach to the plaintiff will not always be necessary.
8. Whether the article contained the gist of the plaintiff's side of the story.
9. The tone of the article. A newspaper can raise queries or call for an investigation. It need not adopt allegations as statements of fact.
10. The circumstances of the publication, including the timing.

[49] The 2nd Defendant in order to bring itself within the ambit of this defence must show that it has satisfied the above test.; namely, that having passed the duty / interest test, that "the steps taken to gather and publish the information were responsible and fair;" in other words, that it has complied with the standards of responsible journalism.

[50] It is settled law that where privilege is claimed on the ground that there was a duty on the defendant to make the communication and an interest in the party to whom it was made to receive it, such duty and such interest must have existed in fact. It is not sufficient that the defendant honestly believed he was under a duty to make the communication and that the person to whom he made it had an interest in the subject matter.

[51] The 2nd Defendant pleaded that he was under a moral and social duty to publish to those listening to the radio broadcast since they had a corresponding interest and/or were entitled to receive same.

[52] Applying the Reynolds test to the present case, I am of the view that the 2nd Defendant has not satisfied the test for the following reasons:

- (a) The allegations made against the Claimant are serious in nature. Given the Claimant's position as Prime Minister, these allegations are "hugely damaging."
- (b) That no steps were taken to verify the information.
- (c) That no steps were taken to seek the Claimant's version.
- (d) That there was no duty to communicate damaging allegations which are unsubstantiated and no public right or interest in receiving it.

[53] I therefore accept the submission of Counsel for the Claimant that the Second Defendant's pleaded defence of qualified privilege is incurably bad, incapable of proof and has no prospect of succeeding at trial and ought to be struck out.

[54] In my view, therefore, when the second Defendant published the words complained of, it "stripped (itself) of the cloak of privilege" (to adopt a phrase of Lewis C.J. in the Court of Appeal decision **A.G. of Grenada et al v Milne**).

[55] I therefore find that the defence of qualified privilege does not avail the Second Defendant.

CONCLUSION

[56] In conclusion, it is my considered opinion in this case it is clear that the Defence of the 1st and 2nd Defendant has no reasonable chance of success, is incurably bad, wholly unsustainable, without merit and is an abuse of the process of the Court and should be struck out.

ORDER

[57] My Order is as follows:-

1. The defence is therefore struck out
2. Judgment is hereby entered for the Claimant as follows:-
 - (a) Defendants are liable jointly and severally to the Claimant for damages to be assessed.
 - (b) An injunction is granted preventing the Defendants whether by themselves, their respective servants and/or agents or howsoever otherwise from further speaking or publishing the said or similar words defamatory of the Claimant.
 - (c) Prescribed costs to the Claimant based on the quantum of damages awarded.


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JENNIFER REMX
High Court Judge