COMMONWEALTH OF DOMINICA

DOMHCV2003/0424

BETWEEN:

KIERON PINARD-BYRNE Claimant

and

LENNOX LINTON Defendants

ISLAND COMMUNICATIONS CORPORATION LTD

RAGLAN RIVIERE

Before: The Hon. Justice Brian Cottle

Appearances:

Mrs. Hazel Johnson & Mrs. Lisa De Freitas for Claimant

Mr. Duncan Stowe & Mr. Roysdale Forde for Defendants 1 and 2

Dr. William Riviere for Defendant 3

[2010: September 27th]

[2011: March 22nd]

JUDGMENT

[1] COTTLE J: The claimant is a chartered accountant by profession. The first defendant is an investigative journalist. The second defendant operates a radio station, over which the first defendant made certain broadcasts. The third defendant

operates a website, styled Sir Raglan Presents, which reproduced and posted on the World Wide Web an article written by the first defendant. The claimant says that the defendants published material which defamed him.

The words complained of.

[2] The text of the article, entitled Professional Conduct Procedure – The KPB Version, is reproduced here:

> *Self styled Owners Representative Keiron Pinard-Byrne must know that the record of squandermania and crass deception presented in the Layou 5 star hotel accounts as at December 31, 1999 speaks for itself. It was audited by KPB Chartered Accountants of which Mr. Keiron Pinard-Byrne is chairman and CEO. It formed part of the Directors Report to the shareholders which Mr. Pinard-Byrne signed as Secretary to the Board. As Owner's Representative, Mr. Byrne confirms in the audited statements that he received over 300 thousand dollars for his services to the shareholders of Oriental Hotel (Dominica) Ltd. His actual share of the audit payment and "administrative expenses" of Oriental Hotel have not been disclosed. The hundreds of thousands of dollars he must have cashed in from Dominican passport money siphoned through International Development & Management (IDM) have not been disclosed either.*
>
> *This paragon of great Irish virtue has said publicly that he became involved with the Layou River Economic Citizenship Programme as Owner's Representative of the shareholders of Oriental Hotel in 1995. At that time he claims, he was merely acting on behalf of Coopers and Lybrand. He also disclosed that the last shareholders meeting of Oriental Hotel was held in 1994. How then was Mr. Byrne appointed owner's representative? And who made the appointment? Keep in mind that shareholders of Oriental Hotel resident in Dominica have publicly expressed their dissatisfaction with the conduct of this gentleman and have rejected suggestions that he represents them.*
>
> *Notwithstanding Mr. Bryne's assurances that he only became involved in 1995, Government records indicate that as far back as 1993 he was*

having audiences with shareholders in his Roseau office and traveling to Hong Kong to clarify issues of concern.

What he would love to hide from the public is the fact that he was up to his ears in service to the Grace Tung group of companies at the very same time that he was liquidator of the Fort Young Hotel whose operating assets were sold to the Chinese immigrant in a web of intrigue."

[3] The radio broadcast was made on 26th February 2002. In it the first defendant said of the claimant:

" So no one will challenge him face to face even as he plays the race card to perfection he talks in a phobia to perfection, he mercilessly insults the intelligence of Dominicans from whose passports he has become a major beneficiary. Tonight he is doing it again…"

"When you go back to the record of deception in the 1999 Report and Accounts where they tell you all sorts of stories about the reengineered citizenship Programme of the Government that caused problems for Dominicans in Canada and so on, all these statements are not borne out by the facts."

"What Mr. Byrne and Company must do is present to the people of Dominica incontrovertible evidence of a revenue stream and you asked the question to IDM that is independent of economic citizenship investment. That is important because I will put it to the promoters that the company IDM was set up specifically to find some clever way of purchasing the Layou River Hotel property in the name of a company owned and operated by Grace Tung. That is what I am putting on them,"

"In other words they got a cheque and it was time to distribute the money to the shareholders who had invested in that company. But interestingly, when the statement of account was presented by Coopers and Lybrand it did not carry 1st of February as the Chairman of Fort Young claimed as the date of the sale. It carried the 4th of February. Again the significance of the 4th of February date is that, that is the date

on which International Development and Management was incorporated in Dominica. Therefore the 1st of February did not exist and they could not have bought anything on the 1st of February.

[4] A little background assists in understanding the matrix out of which this matter arises. In 1993, the then Government of the Commonwealth of Dominica entered into an agreement with one Grace Tung to develop and build a hotel on the bank of the Layou river, an area of great natural beauty. Ms Tung undertook to procure investors from Pacific Rim countries to purchase shares in the undertaking. In return for their investment these persons would be accorded citizenship in the Commonwealth of Dominica and passports of Dominica. A company was incorporated to realise the project. This company was Oriental Hotels (Dominica) Ltd (OHDL).

[5] For reasons which remain disputed, the project failed entirely and many shareholders lost their investment. The claimant was a partner in the accounting firm KPB Chartered Accountants who were the Auditors of OHDL. He also signed the 1999 report and accounts of OHDL as Secretary to the company. It is disputed whether he was secretary in his personal capacity or whether his firm supplied services as corporate secretary.

The WWW article

The claimant's position

[6] The claimant argues that the words complained of mean and can only mean that he acted unprofessionally, unethically, and with a view to personal gain. As Auditor, he permitted to be published accounts (the 1999 accounts of OHDL) which are calculated to deceive readers of those accounts and conceal the "record of sqandermania" at the Layou River Hotel project. The article points out that the claimant signed the accounts as secretary to the board and the accounts reveal that as "owners' representative" the claimant received over $300,000 for his services to OHDL.

[7] The first defendant goes on to add that the actual share of the audit payments to the claimant have not been disclosed nor have the "hundreds of thousands of dollars he

must have cashed in from Dominican passport money siphoned through International Development & Management". As Auditor, the claimant dishonestly and unprofessionally allowed these facts to be omitted from the OHDL accounts. These words, the claimant says can only have the effect of lowering him in the esteem of other citizens.

[8] The claimant also complains that the words mean that he wished to hide from the public the fact that he was in service to the Grace Tung group of companies at the same time that he acted as liquidator of the Fort Young Hotel Limited whose operating assets were sold to Ms Tung "in a web of intrigue". The clear implication is that the claimant acted in a manner inconsistent with his professional obligation as liquidator of Fort Young Hotel Limited and permitted the sale of their assets to his employer MS Tung to the detriment of the shareholders of Fort Young Hotel. It is this disgraceful action that he wished to hide from the public.

The First Defendant's position

[9] The first defendant admits that he wrote the offending article. He admits that he emailed it to several persons including the third defendant but not to the claimant. He says that the claimant's case is bad for want of jurisdiction as it fails to state where the publication takes place. It is a fundamental principle that defamation takes place where and when the defamatory material is read not where it is created. In the absence of proof of publication the claim must fail.

[10] The first defendant cites that case of Dow Jones and Company Inc v Gutnick [2002] HCA 56. At paragraph 44 of that judgement the court held:

> *"It is only where the material is in comprehensible form that the damage to reputation is done and it is damage to reputation which is the principal focus of defamation, not any quality of the defendant's conduct. In the case of material on the World Wide Web it is not available in comprehensible form until downloaded onto the computer of a person who has used a web browser to pull the material from the web server."*

[11] The first defendant argues that the claimant has failed to show that any person saw or read the offending article on the website and there is no evidence on which the

court could draw any inference as to the extent if any of visits to the website. Further there is no evidence that anyone from Dominica accessed the website and read the article. The first defendant also adds that the evidence revealed a variance between the actual words pleaded and the words allegedly published on the website. The claimant was bound to apply for amendment to his pleadings to remove the variance. He failed to do so. I find any variance to be de minimis and likely to have been the result of typographical error.

[12] The first defendant contends that the claim as set out at paragraphs two and three are misconceived and bad in law. Counsel argues that the claim should have been grounded in slander instead of libel as the words complained of are words spoken over the airwaves and not written or printed. The other offending words were published electronically. The first defendant argues that there has never been any judicial determination that electronic publication constitutes libel but notes that the authors of Defamation- Law Practice and Procedure by David Price and Korieh Duodo, 3rd edition, opine that it has been generally assumed that electronic publication does constitute libel. I am content to conclude that electronic publication does constitute libel. The law must take cognizance of the fact that electronic publication is fast becoming the primary means of publication.

[13] The First defendant also requires the claimant to establish that a large but unquantifiable number of persons read the offending article. He cites the case of Amoudi V Birsard et al [2007] 1 WLR 113 where Gray J reminds us that the claimant bears the burden of proving that the words complained of were read by a third party. Additionally in the present case the claimant must also show that persons in Dominica read the article in question.

The Second Defendant's Case

[14] The second defendant merely adopts the arguments of the first defendant. It is admitted that the second defendant owns and operates the radio station over which the first defendant spoke the words complained of.

THE EVIDENCE

[15] The article published on the website of the third Defendant is stated to have been authored by the first Defendant. The first Defendant admits he wrote the article and sent it to the third defendant. It is clear that he hoped that it would be published on the Third defendant's website. The Third defendant admits receiving the article by email and he admits publishing it on his website. He also admits that he made no effort to verify the truth of the contents of the article. The article remained on the website for more than one year. After the present claim was filed it was removed.

[16] The witness Parry Bellot testified that he resides in Dominica and he read the article posted on the third defendant's website. The third Defendant under cross examination admitted that his website was accessible the world over. It is accepted that the words complained of refer to the Claimant. This court considers that the adduced evidence shows publication of the offending articles. The article on the World Wide Web was available for all the world to access freely on the site of the second defendant.

[17] The first defendant says that his article was based on facts and his analysis of those facts. He admits that he has no training in accountancy or auditing. He has not been trained in investigations. No one commissioned him to conduct his investigation which led to the article. He took it upon himself to pontificate upon the accounts of OHDL without troubling himself to acquire any expertise in accounting or auditing or availing himself of advice from an accountant or auditor. This was a course of action always fraught with peril. The task which the court now faces is to determine whether the words complained of are in fact defamatory of the claimant and if they are found to be so, whether there exists any lawful defences which might excuse the defendants' actions.

Natural and Ordinary Meaning

[18] In this case the claimant relies on the natural and ordinary meaning of the words. No innuendoes have been pleaded. The defendants say that the claimant is really seeking to rely on extended meanings or legal or genuine innuendo without any such extended meaning or innuendo having been specifically pleaded. The failure to plead any innuendo results in the court being confined to examine only the meaning which the ordinary reasonable man to whom the publication has been made would ascribe to the words. The court must have reference only to the literal and universally accepted meaning of the words, the context and intrinsic circumstances or

environment of the publication, and general knowledge. This was made clear by then Chief Justice Floissac in the case of Nabarro V. Thomas Civil Appeal No 8 of 1994.

[19] The defendants say that the words complained of do not bear the defamatory meanings the claimants contend and that such meanings are the product of strained, forced or utterly unreasonable interpretation. I cannot agree with the defendants view. The article published on the World Wide Web says that the claimant as auditor of the accounts of OHDL permitted the publication of accounts calculated to conceal from the public the sqandermania of OHDL and also the fact that he benefited personally to the tune of hundreds of thousands of dollars of Dominican passport money siphoned through International Development & Management.

[20] It is an accusation of professional dishonesty and can only be regarded as meaning that the claimant dishonestly acquired property that belongs to the people of Dominica and failed to disclose this fact in the accounts either as auditor of the accounts or as owner's representative. The article goes on to add that the claimant also dishonest in concealing that he was 'up to his ears in service to the Grace Tung Group of companies at the very same time he was liquidator of the Fort Young Hotel whose operating assets were sold to the Chinese immigrant in a web of intrigue".

[21] The only meaning I can reasonably ascribe to this is that the claimant was involved in professionally discreditable behaviour to the detriment of the shareholders of Fort Young Hotel Ltd and he wished to hide this from the public. It is telling that no shareholder of Fort Young Hotel limited has come forward to say that he or she was at all disadvantaged by the way in which the claimant performed his duties as liquidator.

[21] The radio broadcast by the first defendant has to be considered in the context in which it was made. Byron J.A put it this way in Carasco V Cenac. SLU Civil Appeal 6 of 1994

> *"... the contexts of the words are relevant for their meaning to be understood, and it is permissible for the context to be proved to explain the meaning of words complained of."*

Against the backdrop of the continuous publicity occasioned by the first defendants' publication of the results of his investigative journalism into the entire Layou River

Hotel affair and the economic citizenship program, to accuse the claimant of having become a major beneficiary of the passports of Dominicans must be taken to mean that the claimant has benefited personally from the sale of Dominican passports.

[22] The first defendant went on to add that the claimant was involved in the dissemination to the public of the 1999 accounts of OHDL and that those accounts are a record of deception proffering "all sorts of stories" which "are not borne out by the facts." This again is a clear defamation of the claimant by way of his profession. Even the title of the website article indicates that it is aimed at disparaging the claimant by way of his profession.

Defences

[23] The defendants all deny that the words complained of are defamatory. They also plead fair comment and qualified privilege. As I have indicated, I find that the words in their natural and ordinary meanings are defamatory of the claimant. They would have the effect of lowering him in the esteem of the public. They ascribe to the claimant criminal and professionally discreditable conduct. The defences now stand to be considered.

Fair Comment

[24] The first and second defendants say that the words complained of constitute fair comment. This defence applies only to statements of opinion and not statements of fact .In Tse Wai Hun Paul V Cheng [2001] EMLR 777 Lord Nicholls helpfully lists the ingredients of the defence of fair comment at pages 782 to 783. The comment must be on a matter of public interest. The comment must be recognizable as comment as distinguishable from an imputation of fact. The comment must be based on facts which are true or protected by privilege. The comment must indicate at least in general terms what are the facts on which the comment is being made and the comment must be one that could have been made by an honest person and be germane to the subject matter criticized.

[25] The absence of any of these ingredients means that the defence of fair comment is not made out. Counsel for the claimant argues that the words complained of are statements of fact rather than comment. I agree. A perusal of some of the statements made by the first defendant and published by the other defendants

shows this clearly. The claimant is said not to have disclosed to the citizens of Dominica "the hundreds of thousands of dollars he must have cashed in from Dominican passport money siphoned through IDM." This is a factual imputation of being involved in criminal behaviour. The claimant is said to "mercilessly insult the intelligence of Dominicans from whose passports he has become a major beneficiary."

[26] The claimant is also accused of having been "up to his ears in the service to the Grace Tung Group of companies at the very same time he was liquidator of FYH whose operating assets were sold to the Chinese immigrant in a web of intrigue". Again these are statements of fact. The defendants have not been able to demonstrate that the statements are true. No evidence of money siphoned through IDM has been presented and certainly there has been no evidence before this court that the claimant has personally benefited from the illicit diversion of the proceeds of sale of Dominican passports.

[27] The defendants have also not been able to show that the audit done by the claimant was less than professionally done or that it failed to reach generally accepted audit standards. The defendants did not call any experts in accounting or audit to give evidence to that effect. The defence of fair comment must therefore fail. I will examine the issue of public interest when I consider the defence of qualified privilege below.

Qualified Privilege

[28] Reynolds privilege

In Reynolds V Times Newspapers Lord Nicholls listed ten matters to be taken into account in order to determine whether a plea of qualified privilege is available or can be relied on by the defendants. As put by Counsel for the Claimant in his written closing submissions

> *"If the Defendants' defences of qualified privilege are to have any chance of surviving, they must satisfy the Court, that there exists on the pleadings, documentary evidence, and witness statements, a sufficient plea and/or evidence that they acted RESPONSIBLY and had a DUTY to publish and broadcast the allegations made against the Claimant to the*

public, and that their plea or defence of qualified privilege meets and passes the litmus test set out in Reynolds v Times Newspaper Ltd. In Reynolds v. Times Newspaper Ltd, Lord Nicholls of Birkenhead, at page 22-23, set out 10 matters, which must be taken into account in order to determine whether a plea of qualified privilege is available or can be relied on by a Defendant. The 10 matters are;

> *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 committee*
>
> *7. Whether comment was sought from the Claimant or some other person with knowledge of the facts.*
>
> *8. Whether the publication contained the gist of the Claimant's side of the story*
>
> *9. The tone of the publication*
>
> *10. The circulation of the publication, including the timing.*

[29] In Bristol V St Rose Saint Lucia Civil appeal No 16 of 2005 Rawlins JA as he then examined the circumstances of the impugned communication and held that Reynolds privilege only applies to cases of publication to the whole world. In this

case the radio broadcast was to the public at large and while the article was published by the first defendant only to a limited number of persons he sent it to the third defendant intending it to be published to the world at large. The third defendant did so immediately upon receipt of the article.

[30] I have no difficulty in coming to the conclusion that the failure by the first defendant to make any enquiries of the claimant and the third defendant's failure to make any enquiries at all are factors which weigh heavily against them being able to rely on privilege in the sense of the Reynolds case.

[31] In Hurst V Great Northern Railway (1891) 2 QB 189 Lord Esher put it this way;

> *"A privileged occasion arises if the communication is of such a nature that it could fairly be said that those who made it had an interest in making such a communication and those to whom it was made had a corresponding interest in having it made to them. When those two things co-exist the occasion is a privileged one"*

[32] Counsel for the first and second defendants argues that this case revolves around a matter of considerable public interest. As such there was a duty to communicate and a corresponding interest in the public to receive the communication. Counsel goes on to remind the court of the surrounding political scenario. He cites the case of Panday V Gordon Civil Appeal 175 of 2000 from Trinidad and Tobago.

> "*Apart from this, there is also the class of persons who are not politicians in the strict sense but nevertheless "thrust themselves into the vortex of political controversy." These "public figures" have less protection for their reputation than private individuals. This is a necessity because of the greater accountability demanded of those entrusted with power and with the public's confidence. The effective functioning of any democracy requires public officials and politicians to be held up to public scrutiny and these persons must be taken to have accepted this as one of the difficulties of public life. In addition, public figures often play an influential role on ordering society. They often have access to mass media communicating and have ability and resources to*

influences policy and counter criticism of their views and activities. Citizens have legitimate interest in the conduct of public figures and the right guaranteed by section 4 (e) extends to engaging in uninhibited debate about the involvement of public figures in political issues."

He views the claimant as having thrust himself into the vortex of political controversy. I have no difficulty in agreeing that the issue of the economic citizenship program and the Issue of the Layou River hotel project were matters of public importance. Indeed they were the subject of hot political controversy. But that is not what the present case concerns. This is a claim that the defendants have made and published statements defamatory of the claimant by way of his profession and by way of accusing him of criminal conduct.

[33] The evidence is that the first defendant has no professional expertise to evaluate the claimant's work and that no reports of criminal conduct were made to the authorities. The conduct of the claimant was not referred to any body with responsibility for oversight of the conduct of chartered accountants in their profession. In those circumstances can it be fairly said that there was a duty on the defendants to publish their assertions of wrongdoing by the claimant? The case of Vickery V Mcclean, Court of Appeal 125 /2000, points the way to an answer.

[34] The court was of the view that it was demonstrably not in the public interest to have criminal allegations, even if bona fides and responsibly made ventilated through the news media. That would only encourage trial by media and associated developments that would be inimical to the criminal justice processes. Society has mechanisms for investigation and determination of guilt or innocence and it was not in the public interest that such mechanisms be bypassed or subverted. That is a view which I, too, share and commend to all local media practitioners.

[35] From the foregoing I conclude that there was no duty on the defendants to communicate the words complained of and no public interest in receiving them.

The Constitutional question

[36] Counsel for the first and second defendants submitted that the constitution has modified the common law of defamation by extending the defence of privilege to

political information. He suggests that the public interest is served by treating the occasion as one of qualified privilege. Counsel points out that the evidence in this case reveals many instances of the claimant making what can be viewed as political utterances or involving himself in political controversies. Without listing these instances I am prepared to accept that there could well be a political complexion to some of the statements made by the claimant. The dictum of Brenna CJ in the case of Bellino V Australian Broadcasting Corporation (1996) 185 CLR 183 appeals to me.

> *"No narrow view is taken in considering whether the publication containing the defamatory matter is published on an occasion of qualified privilege. The universal principle on which qualified privilege is founded, as Willes J said in Heywood V Harrison, is that the public convenience is to be preferred to private interests, and that communications which the interests of society require to be unfettered may be freely made by persons acting honestly without actual malice, notwithstanding that they involve relevant comments condemnatory of individuals."*

[37] The Constitution of Dominica in common with the constitutions of most Caribbean states affords protection to certain fundamental rights and freedoms. Section 10 (1) gives an individual the freedom to communicate ideas and information without interference (whether the communication be to the public generally or to any person or class of persons). Subsection (2) subjects that freedom of expression to any law reasonably required for the protection of the reputations of other persons. The constitution allows for freedom of expression but that does not permit the abuse of that freedom to damage the reputation of other individuals.

[38] I have already concluded that the common law does not permit the public dissemination of untrue statements defamatory of another. Can the constitutional provisions now be prayed in aid to excuse otherwise impermissible conduct on the grounds that such behaviour is in the public interest? I think not. Lord Rodger of Earlsferry, in the judgement of the Privy Council in Worme and Grenada Today V Commissioner of Police PCA 71 of 2002 from Grenada puts it this way.

> "*Reputation is an integral and important part of the individual. It also forms the basis of many decisions in a democratic society which are fundamental to its well being: whom to employ or work*

for, whom to promote, whom to do business with or to vote for. Once besmirched by an unfounded allegation in a national newspaper, a reputation can be damaged forever, especially if there is no opportunity to vindicate one's reputation. When this happens, society as well as the individual is the loser. For it should not be supposed that protection of reputation is a matter of importance only to the affected individual and his family. Protection of reputation is conducive to the public good. It is in the public interest that the reputation of public figures should not be debased falsely. In the political field, in order to make an informed choice, the electorate needs to be able to identify the good as well as the bad. Consistently with these considerations, human rights conventions recognize that freedom of expression is not an absolute right. Its exercise may be subject to such restrictions as are prescribed by law and are necessary in a democratic society for the protection of others. The protection of good reputation is conducive to the public good. It is also in the public interest that the reputation of public figures should not be debased falsely."

I conclude that the provisions of Section 10 of the constitution do not operate to extend the defence of qualified privilege to these defendants and that they are liable to the claimant for the defamatory statements they have made and published respectively.

[39] For the purpose of completeness I will examine the position of the third defendant and the arguments addressed on his behalf. As can be readily understood from what I have said before the defence of qualified privilege does not avail the third defendant. He had no interest in publishing statements alleging professional misconduct and criminality in the defendant. He made no efforts to check the accuracy of the statements before publishing them on his website for the whole world to access free of charge.

[40] Counsel for the third defendant argues that this shows at most negligence on the part of the third defendant and no malice can be ascribed to him. He also points to the disclaimer appearing on the third defendant's website. Firstly, the disclaimer is of no effect. As Blenman J did in the case of Mansoor et al V Glenville Radio Ltd

ANUHCV2004/0408 I hold that the disclaimer does nothing to protect the third defendant from liability for defamatory statements that he has published. In this case it is even worse. The disclaimer says that every effort will be made to identify the authenticity of reports published but the evidence of the third defendant is that he made absolutely no efforts to authenticate the statements in the article before he published.

[41] Secondly the issue of malice is immaterial where there is no duty to publish the statement. And lastly even if there had been such a duty to publish, the indifference to the truth or falsity of the article demonstrated by the immediate publication without any effort at verification amounts to malice. To adopt the words of Rawlins JA (as he then was), in the Bristol V St Rose case, "he failed to do so, and, accordingly lost the defence of qualified privilege".

Damages

[42] The defendants, especially the first defendant, remain unapologetic. He continues to insist that his statements were based on facts, revealed by his very "thorough" investigation, although at the trial no evidence was led to establish the truth of those statements. His demeanour in the witness box was more consistent with personal animosity towards the claimant rather than an unbiased search for truth. The overall tone of the offending publications also reeked of rancour rather than even handed reporting.

[43] The court also cannot be blind to a growing disturbing tendency of the part of some local media practitioners to make reckless and very unfortunate statements without any factual foundation. In societies such as ours there is a tendency to conclude that statements made in the media are to be believed. The mass media is largely trusted and consequently wields much influence. With such great power should also come commensurate responsibility.

[44] The second defendant was content to rely on the case of the first defendant. The third defendant has removed the offending article from his website albeit late in the day. The website was not a profit making venture. He was not the author of the article but he opted to publish it unchecked.

[45] In arriving at an appropriate award I must look at the gravity of the libel, the extent and manner of its publication as well the relationship of the claimant to those to whom the defamatory material was published. I must also consider the defendants' refusal to apologize and the first defendant's persistence with the defence of justification. Other factors to be born in mind include the probability of loss of earnings by the claimant. The defamatory statements are also of the claimant by way of his profession and impute criminality to him.

[46] When I take these into account and I consider awards in other recent defamation matters before these courts the award to the claimant is as follows. The first and second defendants will pay damages to the claimant in the sum of $50,000.00 each The award against the third defendant is in the amount of $10,000.00. The first and second defendants will pay prescribed costs in the sum of $14,000, each while the third defendant will pay costs of $3,333.33.

I close by expressing my gratitude to all counsel involved for their assistance in this matter and an apology for the delay in delivering this judgement.

Justice Brian Cottle

High Court Judge