

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
ANTIGUA AND BARBUDA

CLAIM NO: ANUHCV 2010/0209

BETWEEN:

DR. EDMOND MANSOOR

Claimant

and

EUGENE SILCOTT

Defendant

Appearances:

Sir Gerald Watt Q.C. and Dr. David Dorsett for the Claimant
Mr. Steadroy Benjamin for the Defendant

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2011: October 4
2012: March 1
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JUDGMENT

[1] **MICHEL, J.:** The Constitution of Antigua and Barbuda - like the Constitutions of the other Commonwealth Caribbean countries - guarantees to every resident of the country the right to the enjoyment of his freedom of expression, which includes "freedom to hold opinions without interference, freedom to receive ideas and information without interference, freedom to

disseminate information and ideas without interference (whether the dissemination be to the public generally or to any person or class of persons) and freedom from interference with his correspondence or other means of communication." The modes of dissemination of information and ideas protected under the Constitution include dissemination in the form of speeches, dramatic productions and songs.

[2] The mode of dissemination directly relevant to the present case is through the medium of song and, in particular, through calypso.

[3] Calypso - a style of Afro-Caribbean music that originated in Trinidad among the enslaved Africans in the eighteenth and nineteenth centuries - had by the 1930s become the primary medium of political and social commentary by the working classes in Trinidad and Tobago and increasingly in the territories of the Eastern Caribbean. When the British colonizers started to feel the sting of the calypso commentaries on the authoritarian colonial culture imposed on the people of these islands by their British colonizers, efforts were made by them to stifle and stamp out the calypso art form. These efforts never succeeded, however, and calypso continued to push the boundaries of free speech and to find a variety of ways to slip past the scrutinizing eyes of the colonial establishment.

[4] This brief historical exposition on the calypso art form was researched and related so as to place in context the present case in which a Minister of Government in Antigua and Barbuda has sued a local calypsonian as a result of certain words used in a calypso which the Minister alleges has defamed him. The style of writing employed in that exposition will be used throughout this judgment, instead of lacing the judgment with quotations and extracts from decided cases. To be sure, the learning from the cases will be applied in the judgment, only that the quotations and

extracts from the cases will not be deployed in the judgment. The intention here is that this judgment will be readable to and intelligible by the body of persons likely to be impacted by it.

[5] The Claimant's suit is based on the qualification to the earlier-quoted provision of the Constitution, which qualification is expressed in the following words: "Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision ... that is reasonably required... for the purpose of protecting the reputations, rights and freedoms of other persons". The law in question here is the law of defamation, which covers the common law torts of libel and slander.

[6] "Defamation", according to Gately on Libel and Slander, "is committed when the defendant publishes to a third person words or matter containing an untrue imputation against the reputation of the claimant. Broadly speaking, if the publication is made in permanent form ... it is libel; if in some transient form, it is slander. The most important distinction between the two is that libel is actionable per se – the law presuming that some damage will flow from it; for the publication of a slander to be actionable, on the other hand, some special damage must be proved to flow from it, unless it falls within certain specified categories."

[7] On the facts of the present case, the Claimant – by a Claim Form and Statement of Claim filed by him on 9th April 2010 - alleged that on or about the 12th day of June 2009, the Defendant sang a calypso to hundreds of spectators at a calypso tent (and on other diverse dates, occasions and shows and on all radio stations in Antigua and Barbuda) which calypso included the following words defamatory of the Claimant: "Mansoor bribing Ministers, imagine how much he got for computers, we need an inquiry on taxpayers money dealing with the renting of property."

[8] At case management of the matter by Master Cheryl Mathurin on 6th April 2011, the words “we need an inquiry on taxpayers money dealing with the renting of property” were deleted from the claim by the Master, as being incapable of conveying a defamatory imputation against the reputation of the Claimant and, as much as the Claimant sought (after the fact) to complain that the Master’s action in so doing was “unlawful, unreasonable and irrational”, the fact is that she did so and the Claimant never appealed her decision to do so. The only words of the Defendant’s song, therefore, which this Court will concern itself are the words “Mansoor bribing Ministers, imagine how much he got for computers”.

[9] As to these words, which will from now on be referred to in this judgment as “the words complained of”, the Claimant alleged that in their natural and ordinary meaning, they “meant and were intended to mean that the Claimant as the Minister with special responsibility for information and broadcasting and known by the general public to be responsible for the setting up of computers within schools and community centres throughout the State of Antigua and Barbuda, was involved in bribing of other Ministers of Government.”

[10] In response to the claim made against him in the Claim Form and Statement of Claim, the Defendant filed a Defence on 27th May 2010 in which he admitted that he is a calypsonian with the stage name of “Kaseba” and that he has been performing on stage and in calypso competitions for several years. He also admitted that he did perform at the calypso tent referred to by the Claimant in the Statement of Claim and that he did render a song entitled “Divine Intervention”, but he denied that he sang the words complained of. He alleged that he used the word “Mansure” and not “Mansoor”. The Defendant went on to allege in his Defence that, in any event, the words complained of did not, in their natural and ordinary meaning, in their proper context at a calypso

tent where calypsonians - "critically analyse and sing about social, political, economic and religious issues in calypso with its accompanying music in commentary", bear or were capable of bearing the meanings attributed to them by the Claimant or that the words referred to the Claimant in any capacity whatsoever. He alleged that, alternatively, in so far as the words made or contained any comment or expression of opinion, the words constituted - "fair comment on a matter of public interest, namely, accountability for and the manner in which the public's and/or taxpayers' money was being spent and/or used." The Defendant also alleged in his Defence that, in any event, the Statement of Claim filed by the Claimant "discloses no cause of action."

[11] In response to the Defendant's Defence, the Claimant filed a Reply, taking issue with most of what is alleged in the Defence.

[12] Based on these statements of case (the Claim Form, Statement of Claim, Defence and Reply) it is for the Claimant – as the person who brought the case against the Defendant – to prove that the words complained of were published by the Defendant (by singing a calypso containing these words), that the words referred to the Claimant, that they bore or were capable of bearing the meaning attributed to them by the Claimant, that they contained an untrue imputation against the reputation of the Claimant, and that they were not "fair comment on a matter of public interest."

[13] The evidence in this case came from the Claimant and the Defendant only, neither of them called any witnesses in support of their respective cases.

[14] The Claimant filed a witness statement on 21st July 2011 which constituted his evidence in chief in the case. Apart from the witness statement, the remainder of the Claimant's evidence was the

playing by him, with the permission of the Court, of an audio-video recording of the Defendant performing the calypso containing the words complained of, and then the cross examination of the Claimant by Mr. Steadroy Benjamin, who represented the Defendant in this case. There was also a single question put by me to the Claimant.

[15] Instead of trying to summarize the Claimant's evidence contained in his witness statement, the summary of which might amount to nothing more than a paraphrasing in the judge's own words of the words used by the Claimant, I will simply reproduce the evidence contained in the Claimant's witness statement -

"I DR. EDMOND MANSOOR of Paradise View, St. John's, Antigua, state as follows:

1. I am the Claimant in this matter and a medical doctor by profession. I have been appointed and serve as a Senator in the Upper House of Parliament. I also currently serve as a Minister of State in the Office of the Prime Minister with special responsibility for Information and Broadcasting.
2. As Minister with Responsibility for Information and Broadcasting, I am charged with outfitting public schools and with setting up and outfitting Community Centres throughout the nation as computer centres by outfitting the said schools and centres with computers for the purpose of teaching young and old alike the necessary computer skills thereby enabling them to compete in the global environment of modern technology.
3. Mr. Eugene Silcott, the Defendant, is a calypsonian with the stage name of "Kaseba". He has been performing on stage and in calypso competitions for several years. Mr. Silcott is also a public servant employed by the Government of Antigua and Barbuda as a Senior Air Traffic Control Officer.

4. On or about 12th June 2009, in a performance at a Calypso Tent at the Palm Restaurant, the said calypso tent known as "The Golden Eye Review", and before hundred of spectators, Mr. Silcott sang the following defamatory words of me:

Mansoor bribing Ministers

Imagine how much he get for computers.

5. The words speak for themselves. The words meant and would be understood by the hearers of the calypso that I, the Minister of State with special responsibility for outfitting schools and community centres with computers, was involved in the bribing of other Ministers of Government. The offending words of the calypso bearing the title "Divine Intervention" make the allegation that I am involved in bribing public officials, namely, other Ministers of Government.
6. This allegation has absolutely no basis in fact. I do not and have not engaged in bribery of any sort. The allegation is a serious allegation and an allegation that I flatly and emphatically deny.
7. I am deeply hurt and offended by the allegation of bribery that has been made against me. My personal and professional reputation has suffered serious injury. My reputation as a Minister of Government has been gravely tarnished. I have suffered considerable embarrassment and distress. The allegation conveyed by Mr.Silcott in his calypso has exposed me to public scandal and contempt.
8. The publication of the offending words took place during the carnival season when calypsos, including that of the Defendant, would have been receiving maximum airplay on the local

radio stations, some of which simulcast over the internet and the World Wide Web. Mr. Silcott is well aware of these facts.

9. After the first publication of the calypso, my attorneys, upon my instructions, wrote to Mr. Silcott drawing to his attention the offending words and warning him from further publication. The letter went unheeded and there was no response.
10. The publication of the offending words was not intended to be truthful political and/or social commentary. The offending words are not commentary at all. The offending words state as a fact that "Mansoor bribing Ministers".
11. I have noted that Mr. Silcott in his defence has put forward the position that the words he sang were "Mansure bribing Ministers". The words as spoken and as heard by me are "Mansoor bribing Ministers". The notion that it is "Mansure" and not "Mansoor" that is the word used is an incredible assertion. In any event, even if the word is "Mansure" the ordinary and any sensible listener of the calypso would readily draw the inference that the calypso is referring to me. The calypso, more particularly, the offending words, could not make any sense if the hearer did not understand them to refer to me. Mr. Silcott was a competitor in a calypso competition in which an important judging criterion is lyrical content. To my mind, it would have been absolutely preposterous for Mr. Silcott to be singing nonsense lyrics in a serious competition.
12. All of these circumstances point to malicious intent on the part of Mr. Silcott and a naked intention to smear my name, to hurt me politically, and by extension the United Progressive Party Government, of which I am proud and prominent member.

13. The circumstances and the action of Mr. Silcott, which was designed to inflict the maximum possible damage to me and my party, entitle me to aggravating and exemplary damages. The offending words are in every way unwholesome and were not and could not serve any good purpose. A stern message must be sent to Mr. Silcott so that others may take note that the kind of conduct and recklessness of Mr. Silcott is not a light matter and those who err in the way of Mr. Silcott shall not escape severe and sizeable sanctions.”

[16] The audio-video recording of the Defendant's performance of his calypso appeared to have contained the words “Mansoor bribing Ministers” as alleged by the Claimant and not “Mansure bribing Ministers” as alleged by the Defendant, but the case need not and will not be decided on the basis of what was heard in a recording, the words of which were not clearly discernible.

[17] The Claimant's evidence in cross examination was largely a confirmation and affirmation of his evidence in chief, in addition to providing information (in response to questions from Mr. Benjamin) about his practice as a medical doctor until 2004/2005, his appointment as a Senator in 2004, and his engagement from then until 2005 as the President of the Senate and from 2005 until now as the Minister of State in the Office of the Prime Minister with special responsibility for Information and Broadcasting.

[18] Of significance is the fact that the Claimant testified under cross examination that the Prime Minister who appointed him has not cautioned him or complained to him about his conduct as a Minister as a result of the singing of the Defendant's calypso, nor has any member of the public complained to him.

[19] The question put to the Claimant by me produced a response from him to the effect that he has not presented to the Court any evidence as to the views of other persons about him, following the publication by the Defendant of the words complained of. Publication, to be clear, refers to the dissemination to any person or persons (other than the claimant or the defendant) of the offending words, which in the present case was done by using the words in a calypso performed in public.

[20] A witness summary was filed on behalf of the Defendant which constituted his evidence in chief. The remainder of the Defendant's evidence was derived from his cross examination by Sir Gerald Watt QC, who was lead Counsel for the Claimant in this case. There was also a single question put by me to the Defendant.

[21] I will not reproduce the witness summary filed on behalf of the Defendant as I did with the witness statement of the Claimant, because the Claimant's witness statement is three pages long while the Defendant's witness summary is ten pages long and contains a lot of detail not material to the issues to be determined by the Court. I will instead extract and reproduce (not necessarily in the precise language of the witness summary) the material elements of the Defendant's witness summary -:

1. The Defendant admits that he is a calypsonian with the stage name of "Kaseba" and that he did sing a calypso entitled "Divine Intervention" to a listening audience at a calypso tent on 12th June 2009.
2. He alleges that he did not sing the words "Mansoor bribing Ministers" but that he sang the words "Mansure bribing Ministers".

3. He asserts that, in any event, he denies that those words (which one must assume from the context refer to the words "Mansoor bribing Ministers") - in their natural and ordinary meaning – bore or were capable of bearing the meaning attributed to them by the Claimant.
4. He denies that the words referred to the Claimant.
5. He alleges that he never intended to communicate to the public what the Claimant interpreted the words to mean, because that was never the focus of the calypso and that the intent of the words in the calypso has to be construed according to his original intent at the time of the calypso's creation.
6. He alleges that he never had any malicious intent whatsoever and was commenting fairly and honestly on matters of public interest.
7. He alleges that the words complained of deal with an issue that occurred in November 2008 at Mount Saint John Medical Centre where it was publicly known that prominent businessmen were vying for the contract to supply computers to the medical facility and that the term "Mansure" was used to describe individuals in the society who had money and power and were able to ensure that deals were made which enabled them to make huge commissions from such contracts.
8. He alleges that when the calypso is examined in its entirety (and he did reproduce it in its entirety) it is incomprehensible that the Claimant could attribute the meaning which he did to the words "Mansure bribing Ministers, imagine what he got from computers".

9. He alleges that (additionally or alternatively) in so far as the words made or contained any comment or expression of opinion, they constituted fair comment on a matter of public interest.
10. He alleges that, in any event, the words complained of are not actionable without proof of special damage, and the injury, embarrassment and distress as claimed by the Claimant are too remote to sustain the action and (additionally or alternatively) the Statement of Claim discloses no cause of action.
12. He denied that the Claimant suffered the damages alleged or any damage or that the Claimant had been impaired in his personal, political and professional reputation or in his occupation or employment.

[22] As if the evidence in chief of the Defendant (as contained in his witness summary) was not already scattered, his evidence under cross examination can best be described as nomadic, going hither and thither and never quite finding a resting place. It also strayed a long way from the Defence filed on his behalf and ended up with admissions about things strenuously denied in his Defence.

[23] In his Defence, the Defendant had said that he “denies most emphatically that he sang the words attributed to him”; that he “never sang the words Mansoor bribing Ministers” and; that he used the word “Mansure”. Under cross examination, the Defendant admitted that he used the word “Mansoor” and not “Mansure” when he sang the calypso in the calypso tent, so that (according to him) the audience can relate to what he is trying to bring out.

[24] Under cross examination, the Defendant said that when he sang the words "Mansoor bribing Ministers, imagine how much he got for computers", he was referring to the Mansoor at Megastore and not to Dr. Edmond Mansoor. This did not however find expression anywhere in his Defence or, for that matter, in his witness summary. When questioned about this significant omission, the Defendant testified that he believed that if this had been expressed in his Defence or his witness summary, he would have been taken to court by the other Mansoor. The fallacy in this explanation is, however, borne out by the fact that, by the time of the filing of the witness summary by a senior legal practitioner representing the Defendant, the limitation period for the filing of a defamation action in respect of a libel or slander published in June 2009 or at any time during the calypso/carnival season of 2009 had already set in and so the Defendant could not have been sued for any libel or slander published at that time.

[25] Then the Defendant, having denied in his Defence that the words complained of bore or were capable of bearing the meaning attributed to them in paragraph 5 of the Statement of Claim - which essentially was that the Claimant was involved in the bribing of other Ministers of Government - testified under cross examination that the words complained of were intended to convey that Mansoor was bribing Ministers and he (the Defendant) wanted to know how much Mansoor got from computers. He did however say that the Mansoor he was talking about was a Mansoor from Megastore, but this issue has already been addressed in this judgment.

[26] The question put to the Defendant by me produced a response from him to the effect that he was of the understanding that one can speak disparagingly of another person in a calypso in words that one may not be able to use in an article or speech.

[27] This was the evidence in the case on the basis of which the Court will make its findings and determinations.

[28] The Court's findings are as follows:

1. The words complained of, to wit, "Mansoor bribing Ministers, imagine how much he got for computers" were published by the Defendant, Eugene Silcott, whose stage name is "Kaseba", by singing a calypso containing the offending words at a calypso tent on or about 12th June 2009 and thereafter. The Defendant so admitted under cross examination when he said that "in the writing I say 'Mansure' but in the tent I say 'Mansoor' so that they can relate."
2. The words complained of refer to the Claimant. The Defendant admitted that the Claimant was the person with ministerial responsibility for the provision of computers to schools and community centres in Antigua and Barbuda; that he was always on the media speaking about computers; that he is the only Mansoor who is involved in government and computers; that there is no other person in the public eye who deals with computers in government; that the calypso is a political commentary in which the names of several politicians are mentioned, including the Prime Minister and other Ministers of Government, other Parliamentarians and other politicians from the Government and the Opposition; and that he does not know any other Mansoor, apart from the Claimant, who is a Minister of Government, a Parliamentarian or a politician. Moreover, it was never averred by the Defendant at any time prior to his being cross examined on 4th October 2011 - which was over two years after he was written to by the Claimant's lawyers accusing him of defaming

the Claimant by the use of the words complained of in his calypso and one and a half years after he was sued by the Claimant for the same reason - that the words complained of referred to another Mansoor and not to the Claimant.

3. The words complained of did bare and were capable of bearing the meaning attributed to them by the Claimant. In paragraph 5 of the Statement of Claim, the Claimant alleged that - "In their natural and ordinary meaning the words meant and were intended to mean that the Claimant as the Minister of Government with special responsibility for information and broadcasting and known by the general public to be responsible for the setting up of computers within schools and community centres throughout the State of Antigua and Barbuda, was involved in the bribing of other Ministers of Government." Once it is accepted that - as the Court has found - the words complained of refer to the Claimant, then it is not possible to reach any other conclusion than that they meant and were intended to mean that the Claimant was involved in the bribing of other Ministers of Government. In fact, the Defendant clearly stated in cross examination that the person to whom the words referred was bribing Ministers and that he (the Defendant) wanted to know how much the person in question got from computers. The Defendant also said under cross examination that he knows for a fact that the Mansoor to whom the calypso referred was bribing Ministers.
4. The words complained of do contain an untrue imputation against the reputation of the Claimant. The finding has already been made (in subparagraphs 1 and 2 above) that the words complained of contained an imputation against the Claimant. That the imputation is against the reputation of the Claimant arises from the fact that an allegation of bribery

against a person is one which can affect the way in which a person is perceived by others, in other words, his reputation. As to the untruthfulness of the imputation against the Claimant, in his witness statement the Claimant stated that the allegation of bribery has absolutely no basis in fact, that he did not and has not engaged in bribery of any sort, and that he flatly and emphatically denies the allegation. The Defendant never disputed the Claimant's evidence on this, which thus becomes the indisputable evidence in the case.

5. The publication of the words complained of - although constituting slander and not libel, because (on the evidence before the Court) they were published in a transient and not a permanent form - are defamatory, since they are actionable per se, because they impute that the Claimant had committed a crime for which he could suffer punishment by way of imprisonment.

6. The words complained of were not fair comment on a matter of public interest. Before a determination can be made as to whether a comment is fair or as to whether it is on a matter of public interest, there must first be a comment. The words complained of were not comment at all, but were statements of fact made by the Defendant which contained an imputation against the reputation of the Claimant and which imputation has been found to be untrue, since its untruthfulness was asserted by the Claimant and never denied by the Defendant.

[29] When one adds up 1, 2, 3, 4 and 5 above, the result is defamation, with the finding at 6 being really the negating of a defence to the bifurcated tort of defamation. None of the other substantive defences to defamation – justification and privilege (whether absolute or qualified) – were pleaded

or pursued by the Defendant. The virtual postscript to the Defence - that the Statement of Claim discloses no cause of action, is devoid of any foundation whatsoever and was justifiably not seriously pursued by Counsel for the Defendant. The conclusion therefore is that the Defendant has defamed the Claimant and is liable to him as a result.

[30] The question then becomes – what remedy is the Claimant entitled to for the defamation of him by the Defendant?

[31] A good place to find the answer to this question would be in *Gatley on Libel and Slander* - the authoritative treatise on defamation in England and in the countries (like Antigua and Barbuda) which received and applies English common law. At paragraph 9.1 of the 11th edition, the authors of *Gatley on Libel and Slander* wrote:

“Since defamation is an injury to a person’s reputation, it might be thought that the primary remedy would be an order declaring the calumny false or requiring the defendant to undo the injury by a corrective publication, all the more so when proof of loss measurable directly in financial terms is not required by the law and is anyway rarely obtainable. In fact, however, the primary remedy of the common law is not correction but damages and there is no general power either to require the defendant to correct or for the court to declare that the statement was false.”

[32] In paragraph 9.2 the authors wrote:

"The purpose of general damages is to compensate the claimant for the effects of the defamatory statement, but compensation here is a more complex idea than it is in the case of injury to person or property by negligence. General damages serve three functions: to act as a consolation to the claimant for the distress he suffers from the publication of the statement; to repair the harm to his reputation (including, where relevant, his business reputation); and as a vindication of his reputation."

[33] The next question would be – what is the evidence on the basis of which the Court can assess the damages, in accordance with the three functions which – according to Gately on Libel and Slander - an award of general damages for defamation is intended to serve?

[34] The only evidence there is in this case on the basis of which damages can be assessed, comes from the Claimant's witness statement, in which he states at paragraph 7 that: "I am deeply hurt and offended by the allegation of bribery that has been made against me. My personal and professional reputation has suffered serious injury. My reputation as a Minister of Government has been gravely tarnished. I have suffered considerable embarrassment and distress. The allegation conveyed by Mr. Silcott in his calypso has exposed me to public scandal and contempt."

[35] No witnesses were called by the Claimant to give evidence of the Claimant being lowered in their estimation of him or of any injury whatsoever to the Claimant's reputation as a result of the Defendant's calypso. Since reputation is not what a person thinks of himself but what others think of him, the Court cannot in the circumstances make a finding of actual injury to the Claimant's reputation based only on the evidence of the Claimant himself. In fact, under cross examination, the Claimant admitted that, following the publication by the Defendant of the words complained of,

neither the Prime Minister who appointed him to the offices that he holds, nor any member of the public, has complained to him about his conduct.

[36] There being no evidence of actual injury or harm to the Claimant's reputation which an award of damages could repair, there can accordingly be no basis for an award of damages as vindication for his reputation so injured. The only one of the three functions identified in *Gatley on Libel and Slander* which an award of damages can serve in this case, therefore, is to act as a consolation to the Claimant for the distress he suffered from the publication by the Defendant in his calypso of the words complained of.

[37] There are occasions in the law of tort where a tortfeasor (the Defendant in this case) must take his victim (the Claimant in this case) as he finds him. So that if a person negligently causes physical injury to another person who (because of pre-existing frailties) is particularly susceptible to serious injury, then the tortfeasor must take his victim as he finds him (frailties and all) and compensate the injured person for the serious physical injury resulting from his particular susceptibility to serious injury. But this ought not to find its way into compensatory awards in defamation actions, with the consequence that if a claimant – by virtue of his over sensitivity - is particularly susceptible to being deeply hurt and offended and suffering serious embarrassment and distress by remarks made about him (as the Claimant said that he was) then the defendant must take his victim as he finds him and pay compensation to him on the basis of the deep hurt and offence and serious embarrassment and distress which he felt as a result of his particular susceptibility to such feelings.

[38] The reality is that we live in the calypso region of the world and in a country made famous as much by the cricketing exploits of Sir Vivian Richards (known in the cricketing world as the Master Blaster) as by the calypso exploits of Sir Mc Clean Emmanuel (known in the calypso world as King Short Shirt) and - against the background of the history and development of the calypso art form addressed at the beginning of this judgment - if a Minister of Government in Antigua and Barbuda finds himself unduly hurt, offended, embarrassed and distressed by two lines in a calypso which refer to him disparagingly, then the Court cannot provide consolation to him by way of a significant award of damages resulting from his particular susceptibility. One only has to recall the stinging political commentaries sang over the years by King Short Shirt and others about the governments led by Sir V. C. Bird - who was nonetheless returned election after election to the office of Chief Minister, Premier and Prime Minister of Antigua and Barbuda and was eventually named as the country's first national hero - to appreciate that words severely critical of political office holders (justified or unjustified) published through the medium of calypso, should not occasion such feelings of hurt and offence or embarrassment and distress by persons holding such office in Antigua and Barbuda and other countries in the calypso region. As it was with Sir V.C. Bird in Antigua and Barbuda, so it was with several other Caribbean leaders, and none more so than Dr. Eric Williams, who was the target of severe criticisms in calypsos throughout his long and unbroken tenure in office as Chief Minister and then Prime Minister of Trinidad and Tobago from 1956 until his death in 1981.

[39] The Court will not make an award to the Claimant based on his particular susceptibility to feelings of deep hurt and offence and considerable embarrassment and distress. The Court will instead treat the Claimant as a person holding political office in a country and a region accustomed to severely criticising its politicians in calypso, with no consequential lowering of the person so

criticised in the estimation of right thinking members of society generally or exposing of him to public hatred, contempt or ridicule or causing him to be shunned or avoided. This indeed is the essence of defamation and of what an award of damages for defamation is intended to compensate. The Defendant has slandered the Claimant by publishing to others (through the medium of calypso) words containing an untrue imputation against the reputation of the Claimant and is therefore liable to the Claimant in damages for defamation.

[40] The Claimant, not having established to the Court's satisfaction that his reputation had been harmed so as to require repair and vindication, is left only with his feelings of hurt, offence, embarrassment and distress to be compensated in damages. The Court, having determined that these feelings – at least to the degree expressed by the Claimant - were incongruous with the realities of the role and place of calypso and with the holding of political office in Antigua and Barbuda and other similarly-circumstanced countries, will make an award of damages to the Claimant in the sum of \$10,000, which amount the Court considers to be sufficient in the circumstances to compensate the Claimant for any hurt, offence, embarrassment or distress reasonably suffered by him as a result of the publication by the Defendant of the words complained of. The Claimant is also entitled to prescribed costs calculated on the amount of the damages awarded.

[41] In the statement of Claim, there was a claim for aggravated damages and an injunction to restrain the Defendant from further broadcasting or causing to be broadcast the words complained of or any similar slander.

[42] The fact that the Defendant did not respond to the Claimant's letter demanding a retraction of and apology for his publication of the words complained of and the fact that the words complained of contained an untrue imputation against the reputation of the Claimant, are precisely the factors which render the Defendant liable to the Claimant for defamation. These facts do not, in the circumstances, justify an award to the Claimant of aggravated damages. The claim for aggravated damages is accordingly denied.

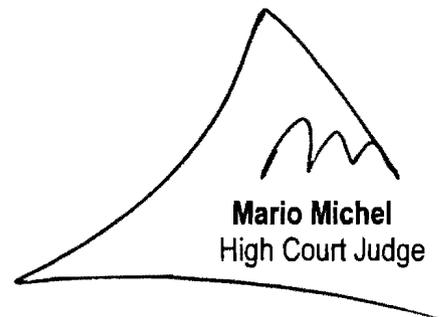
[43] The claim made in the Statement of Claim for an injunction against the Defendant was not pursued by the Claimant, either in his evidence or in the written submissions filed on his behalf, and the Court therefore declines to consider it.

[44] Before concluding this judgment, I should point out that I noted that in both the Defence and the witness summary filed on behalf of the Defendant, the position appears to be taken that, if the Defendant used the words complained of, he did so in a calypso sang at a calypso tent, with the implication that under these circumstances the calypsonian has some kind of immunity from being sued. In fact, in answer to the question which I put to the Defendant, he indicated that it was his understanding that one can make a disparaging statement about someone in a calypso which you cannot make in a speech, depending (he said) on how you craft the calypso.

[45] I want to take this opportunity to disabuse the mind of the Defendant and of any other calypsonian who might think that he has immunity from suit for defaming someone just because the defamatory words are contained in a calypso and not, for instance, in an article or a speech. The way in which a calypsonian avoids being sued for statements which he makes in song is by heeding the advice of the Mighty Chalkdust - the grand master of political commentary in calypso. Chalkdust has, for

over four decades, delivered biting political commentaries criticising every Prime Minister of Trinidad and Tobago, from Eric Williams to Kamla Persad-Bissessar, but none has sued him, because – according to him in his calypso entitled “the Art of Spin Bowling” – when you want to sing that type of calypso, you don’t bowl straight, but you have to learn to spin slow. He sang too in that song that you have to spin the ball from the back of your hand so that you don’t say what you really want to say but the audience know what you say. Kaseba - in his calypso entitled “Divine Intervention” - did not spin the ball, but bowled straight by singing that “Mannsoor bribing Ministers, imagine how much he got for computers”. You can only say that about someone – whether in an article, a speech or a calypso – if you can establish the truth of the statement. The Defendant could not do so and ought never to have written, said or sang it.

[46] For his defamation of the Claimant in his calypso, the Defendant shall pay damages to the Claimant of \$10,000 and prescribed costs of \$1,500. I so order.



Mario Michel
High Court Judge