

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

IN THE COMMONWEALTH OF DOMINICA
[CIVIL]

SUIT NO. DOMHCV2013/0015

BETWEEN:

DR. PHILBERT AARON

Claimant

and

ABEL JNO. BAPTISTE

A.K.A. "CHECKO"

Defendant

Appearances:

Ms. Noelize Knight-Didier of Harris and Harris, Counsel for the Claimant

Mr. J. Gildon Richards of J. Gildon Richards' Chambers, Counsel for the Defendant

2013: December 12th

2014: March 28th

DECISION ON ASSESSMENT

- [1] **THOMAS, J. (Ag.):** On 16th January 2013, Dr. Philbert Aaron filed a claim against Abel Jno. Baptiste, the defendant, alleging libel and slander with respect to a song which was written and sung by the defendant. The song was dubbed "Bug Her".
- [2] The claimant claimed: damages for libel and slander, aggravated damages, exemplary damages, an injunction restraining the defendant from further publishing the offending words or any other words defamatory of the claimant and costs.
- [3] The defendant filed an acknowledgment of service on 13th February 2013, but no defence was filed within the time prescribed for such filing. Thus, on 6th March 2013, the claimant requested an entry of judgment in default. This was obtained on 13th March 2013. And the order was in these terms: "Judgment is hereby entered for the Claimant for damages in an amount to be decided by the Court, prescribed costs on same and judgment interest." A subsequent application to set aside the judgment in default was denied.

Evidence

- [4] The evidence on behalf of the claimant is given by him as well as Vincent Etienne, Nadia McDowell and Shermaine Bique.
- [5] All witnesses gave evidence about hearing a song on radio in February 2012 entitled "Bug Her" and because of the lyrics they understood it to reference to the claimant and his involvement in buggery. Apart from hearing the song on radio, three witnesses, namely, Vincent Etienne, Nadia McDowell and Shermaine Bique gave evidence of hearing the said song in the Calypso Tents. Vincent Etienne and Nadia McDowell also gave evidence that they heard Checko, the defendant, on the road on the carnival days.
- [6] In accordance with directions given by the court on 18th October 2013, submissions were filed by both sides.
- [7] On 6th November 2013, submissions were filed on behalf of the claimant. The following is a summary thereof : Awards of \$85,000.00 for general damages, \$30,000.00 for aggravated damages and \$5000.00 for exemplary damages are fair and reasonable in all of the circumstances; there is no evidence that the Claimant did any negative act to deserve or call upon himself such an unnecessary and ugly attack on his reputation by the Defendant; the Claimant has given evidence that he felt hurt by the defamatory publications; the Claimant holds significant positions of public standing; the words complained of impute a criminal act and which is generally frowned upon by Dominican society; the synchronised video with the written words did amount to libel and the other publications over the internet are sufficiently permanent as to attract the same type of award as a traditional libel and even higher; the offending words were part of a calypso, which was aired on radio and played 'on the road' during carnival for all to hear; the refusal by the Defendant to apologise, change his lyrics or altogether cease the publication of his song, even up to this date, are matters that aggravate the injury to the claimant; and the defendant's continued performance and publication of the song, even after being asked not to by the claimant was clearly because the defendant sought to make financial gain.
- [8] The following is a summary of the submissions filed on behalf of the defendant: the Claimant and his solicitor were the only persons who published on radio and on the internet, the derogatory meaning which the Claimant applied to the words complained of; the Claimant has not shown that he suffered any distress or diminution of the public's estimation of him in social, professional or political affairs; the

Claimant and his wife, published their denial that the Claimant possessed the sexual orientation which the Claimant published in the meaning he applied to the words; in respect of the extent of the publication the Claimant has not provided any verifiable evidence that the Defendant did post the song on the internet; the Defendant explained his reason why he did not offer an apology upon receipt of the Claimant's letter because he did not intend, nor did he believe that he defamed the Claimant; and the Defendant has shown that his performance of the song was not intended for profit and that he has not profited.

Libel and slander

[9] Before the court embarks on the journey to assess damage in light of the judgment in default, it is necessary to determine whether what the defendant admitted is in law libel or slander, or both.

Libel

[10] In **Gatley on Libel and Slander** the following learning appears¹: "Any publication of a defamatory matter in permanent form is a libel at common law. Thus it is a libel to publish printed or written words, or a picture or effigy, or a combination of these, if they convey a defamatory sense." In close proximity is **Clerk & Lindsell on Torts** in which the following is to be found²: "Libel generally indicates something printed or written, but it includes also anything in a more or less permanent form..."

[11] At issue is a song which the defendant admitted he wrote and sang, but for purposes of libel it must be in more or less permanent form.

Permanent form

[12] At paragraph 17 of his statement of claim the following is pleaded:

"17. After publication of same, the Defendant caused and/or allowed a video to be published the "Youtube" website with the lyrics of the song written and displayed, and synchronised with an audio performance of it. To date, that video has received over 7,000 views. The Claimant states that the publication of such a video was in any event a natural and probable result of the original publication."

[13] The claimant in his witness statement, filed pursuant to the order of the court for the assessment of damages, the evidence at paragraphs 14, 15 and 16 is as follows:

¹ 7th ed. at para. 41

² 19th ed. at para. 23-21

- “14. He also published or caused the publication of the song on other websites on the internet, such as the Dominica Calypso Association website, and the website numusiczone.com. The Defendant admitted same in his draft defence filed with his application to set aside judgment.
15. He also caused his said song to be available for purchase and download in mp3 format, on the said website, numusiczone.com. It appears to me that the cost of downloading it works out to about US\$0.40 (based on that site’s membership plan.)
16. After publication of the song, the Defendant caused and/or allowed a video to be published on the “Youtube” website with the actual lyrics of the song written and displayed, and synchronised with an audio performance of it. To date, that video has received over 7,000 views.”

[14] In submissions on behalf of the claimant, learned counsel submits that:

- “22. While it is arguable whether the defamation via radio and over the internet amount to a libel, it is our submission that (i) the synchronised video with the written words did amount to a libel and (ii) the other publications over the internet, that is, on Numusiczone.com and on the Dominica Calypso Association Website, are sufficiently permanent as to attract the same type of award as a traditional libel and even higher. The song is available for download on these websites even as we write, and can be distributed and/or made available far and wide to millions for so long as the internet exists. Based on the authorities cited above, the internet publication is one of the most hardening nails in the coffin of the Claimant’s ruptured caused by this song.
23. Additionally, the evidence is that the offending words were part of a calypso, which was aired on more than one radio station, more than one time. The offending words were played ‘on the road’ during carnival for all to hear, and sung during the calypso finals to a huge crowd of patrons.”

[15] On the other hand, learned counsel for the defendant submits that³:

“In respect of the extent of publication the Claimant has not provided any verifiable evidence that the Defendant did post the song on the internet. Further, the Claimant has not produced any evidence, that in the absence of the derogatory meaning published in the media by the Claimant, the Claimant’s reputation would have been injured by the song without that meaning being placed on the internet or in the media generally.”

[16] The permanent form emanating from the pleadings and the witness statement and cross-examination is the internet by way of the websites identified and related variations of access to the internet.

[17] The case of **Marina Marshall v Lenisha Augustine and Cressida Raymond**⁴ concerned an action for libel and malicious falsehood. At the centre of the case was a certain publication on the internet. The

³ At paragraph 4.2 vi of his submissions

⁴DOMHCV2001/0319

evidence in the case included that of an "Internet Specialist" who, *inter alia*, gave evidence as to path of the email⁵.

[18] The trial judge was the Hon. Mr. E. Anthony Ross, Q.C. in this connection, after outlining the path of the email, continued at paragraphs 16 and 17 of his judgment as follows:

"16. This court accepts the evidence of the claimant and McCarthy Marie that the defendant, Lenisha Augustine, admitted to publishing and forwarding the email with the file attachment and that she had in fact used Domlec's computer, during working hours, to publish and forward the said email.

17. This court finds that the facts as set out above have been fully supported by the evidence and that the dissemination on the World Wide Web is sufficient publication to ground the claimant's action in defamation."

[19] The difficulty the court faces is that evidence concerning the internet and the song comes entirely from the claimant; and even then it is not clear if he saw the publication, if any, or he was told. In other words, it has not been shown that the defendant published the song on the internet in the manner in which it was proven to the satisfaction of the court in the **Marina Marshall** case cited above.

[20] On this account the court, in agreement with submissions on behalf of the defendant in this regard, rules that the permanent form of the song has not been established to satisfy the law. In this connection the court notes that the claimant was not cross-examined on internet aspects of his evidence.

Slander

[21] In so far as slander is concerned, the rule is that "where a defamatory sense is communicated by spoken words or in some other transitory form, whether audible or visible, such as significant sounds, looks, signs or gestures, there is publication of a slander". The further rules are that "the claimant must in his statement of case be able to set out with reasonable certainty the alleged defamatory words their alleged meaning and if necessary, factors relied upon as identifying the claimant as the subject of the allegations. The claimant need not allege that the imputation published is false or that it was published maliciously. Since it is not to be assumed that anyone is of bad character, defamation of an individual is taken to be false until it is proved to be true."⁶

⁵ See paragraphs 15-25 of his witness statement

⁶ Gatley on Libel and Slander, (7th ed.) para. 142

[22] The foregoing is simply intended to put the claimant's case in its proper legal context in light of the defendant's acceptance of the claimant's case by failing to file a defence in accordance with Part 10.3 (1) of CPR 2000.

Quantum

[23] The claimant's prayer in his statement of claim is for : damages for libel and slander; aggravated damages, exemplary damages, an injunction restraining the Defendant from further publishing the offending words or any other words that are defamatory of the Claimant and costs.

[24] In the case of **Murio Ducille v Robert Hoffman et al**⁷, Mr. Justice Mitchell enunciated the following guidelines to be applied in the determination of quantum of damages to be awarded as compensation:

1. the gravity of the allegation;
2. the extent of the publication;
3. the extent and nature of the claimant's reputation;
4. the effect of the publication;
5. the conduct and behavior of the defendant.

Gravity of the allegation

[25] It is not contested that the claimant is the National Co-ordinator of ALBA, Dominica's Ambassador to Venezuela and Public Relations Officer of the Dominica Labour Party which presently form the Government of the Commonwealth of Dominica.

[26] In his statement of claim the claimant pleads that the words complained of, being "He does bug her" by innuendo, meant and were intended and understood to mean that the claimant is someone engaged in buggery, which is a crime in Dominica, punishable by imprisonment; and is still viewed by society in general as immoral and sinful. It is further pleaded or in the alternative that by their plain meaning the words suggest that the claimant is engaged in some activity or other in relation to his wife that would cause his wife to report him to the police. And further still that the words used were intended to and did disparage the good name and character of the claimant and lower the good income and character of the claimant and lower the claimant in the esteem of right thinking members of society.

⁷ ANUHCv1998/0151. These guidelines were followed in the Marina Marshall case, supra.

Extent of publication

- [27] The evidence is that the defendant's song, "Bug Her", started being played on radio in February 2012 at the start of the national carnival season in Dominica which runs from December⁸ to the first week in March each year.
- [28] Vincent Etienne in his witness statement gave evidence that he heard the song several times on the radio and at calypso tents and that he heard a faster version of the song being sung by Checko (the defendant) in the days leading up to the actual carnival days and 'on the road' on the carnival days. The evidence in this regard of Nadia McDowell and Shermaine Bique are similar.
- [29] At another level, Nadia McDowell in her witness statement said she also saw a Youtube video of the song with the lyrics displayed on the screen and the song being played in the background.
- [30] Under cross-examination, the defendant's testimony is that he took part in the calypso final, that he wanted to win and he also wanted to win the road march.

Extent and nature of the claimant's reputation

- [31] As noted above, the claimant is a prominent citizen of the Commonwealth of Dominica. He is married, is his country's Ambassador to Venezuela, is the public relations officer of the ruling political party and hold a Doctor of Philosophy degree.
- [32] In this context, Shermaine Bique, Nadia McDowell and Vincent Etienne all gave evidence that they never knew the claimant to be a homosexual or bi-sexual.

Effect of the publication

- [33] In his evidence-in-chief part of the claimant's evidence is that passengers in vehicles were shouting insults at him and individuals would confront him on the street and accused him of being a homosexual, gay and a bugger.
- [34] Under cross-examination the claimant testified, in part, that:

"I like calypso. I did not attend all the calypso shows in 2012. The shows I did not attend were the semi-final and the grand final. I did not attend because I was

⁸ Witness statement of Abel Jno. Baptiste, the defendant, at para. 4

absolutely terrified that I might be confronted and something improper may happen if I happen to be in public when my name is being scandalized.”

Conduct and behavior of the defendant

[34] From the defendant’s witness statement the following must be highlighted⁹:

- “ 1. I am a police constable in the Commonwealth of Dominica Police Force.
4. ...I wrote and sang the song entitled ‘Bug Her’. I chose that title mainly in order to address the issues of electronic and other forms of eavesdropping and issues of harassment in the workplace and elsewhere.
5. At the time I wrote and sang the song I did not intend to and did not believe that I had made particular reference to the Claimant. I used a number of characters with made-up names to highlight popular concerns about the current issues which I raised in my song. I did not intend, either expressly or otherwise, to refer to the Claimant as a homosexual... To the best of my knowledge, information and belief, no other person besides the Claimant claimed an identity of any of the other characters mentioned in the song. To the best of my knowledge, information and belief, songs of that nature are part of the tradition of calypso and carnival in Dominica and the region.
6. I was very surprised to receive a letter from the Claimant’s solicitor alleging that I had defamed the Claimant requesting an apology. ...I did not offer an apology to him. If I had that belief or even the intention I would have humbly apologized. Since the court refused my application to set aside the default judgment [I] believe my apology to the Claimant is appropriate and I humbly offer it to the Claimant.
7. ...In an article entitled ‘Lies and Innuendoes’...the Claimant informed all Dominicans and the world that: ‘For the record, I am not a homosexual.’
10. ...my song represented a fair comment on matters of public interest, without any malice or intention to injure the Claimant’s reputation.”

[35] In cross-examination the defendant gave testimony, in part as follows:

“After I received the letter I did not make changes to my song. I am part of the Calypso Association. I am a calypsonian. No senior calypsonian cautioned me about the song. I never looked at the claimant and apologized. I never wrote to him to apologize. Since the judgment I never asked the radio stations to stop playing my song. My song is available in mp3 format. I believe so. I did not authorize that.”

[36] In further cross-examination about a new song which the defendant said he wrote, the defendant went on to admit that the song contained the words: ‘You write so I must be right. Now the public know you bugging for true.’ “I wrote the song after I was served with the letter from the claimant’s attorney.”

[36] Further consideration must now be given to the different types of damages, namely, damages for

⁹ The numbers in brackets are references to paragraphs in the affidavit of the defendant

slander, aggravated damages and exemplary damages.

General damages

- [37] Contextually, part of the learning in **Clerk & Lindsell on Torts** in respect to aggravation, extent of publication and state of mind of the defendant is:

“General damages may be aggravated by evidence of circumstances of the publication of the motives and conduct of the defendant and of the effect which it has actually produced... The extent of the damage which defamatory matter may cause must clearly depend to a great degree upon the extent of the publicity given to it. It is one thing for a person to be libeled in a private letter read by a single correspondent, another for him to be held up to the hatred, contempt and ridicule of the general public in a newspaper or placard. It is more generous to be defamed out of personal spite and ill-will than through mere lack of proper care and consideration. The malice which aggravates damages is not merely the absence of right motive as in the case of privilege but the presence of some bad motive.”¹⁰

- [38] A number of cases were cited to the court in this regard: **Dr. Edmond Mansoor v Eugene Silcot**¹¹, **Marina Marshall v Lenisha Augustine et al**¹², **Edwardo Lynch and DDS Ltd v. Dr. Ralph Gonsalves**¹³, **Roxanne Linton v Louisiana Dubique & Attorney General of Dominica**¹⁴, and **Victoria Alcide v Helen Television System**¹⁵.

- [39] Some of these cases turn on publication on the internet and as such cannot be in the equation. But in the **Dr. Mansoor**¹⁶ case the court awarded damages of \$10,000.00 since the court determined that the claimant did not adduce evidence to show what right thinking people felt about the song but the defendant could not prove what he sang in his calypso. In the **Kathleen Higgins**¹⁷ case the Dean of the claimant's church had to pay the claimant damages of \$20,000.00 for word delivered from the pulpit to a congregation of some 400 persons. The allegation was that the claimant sold pornography. In the **Dr. Gonsalves'** case for an allegation on radio concerning the use of public funds for private purposes, the award was \$140,000.00. And it is common knowledge that Dr. Gonsalves was at the time, and still is, the Prime Minister of St. Vincent and the Grenadines.

¹⁰ 19th ed. at paras. 23-228,23-230 and 23-231

¹¹ ANUHCV2010/0209

¹² DOMHCV2001/0318

¹³ HCVAP2009/002

¹⁴ DOMHCV2011/0062

¹⁵ SLUHCV2011/0398

¹⁶ Loc. Cit.

¹⁷ St. Vincent and the Grenadines. Civil suit no. 146 of 1992

Conclusion

[40] The court takes the claimant and the defendant, *talem qualem*, and in this regard learned counsel for the claimant contends that there is an absence of evidence to suggest or prove that the claimant did anything wrong to cause such an unnecessary attack upon himself.

[41] It is already the uncontradicted evidence that the claimant holds the highest academic degree from University, Doctor of Philosophy, he is married, is the National Co-ordinator of ALBA, Dominica's Ambassador to the Republic of Venezuela and the Public Relations Officer of the Dominica Labour Party which now forms the Government of Dominica.

[42] On the other hand, the defendant is a full time Police Officer, he is also a calypsonian and a member of the Dominica Calypso Association and of full age and carries the stage name "Checko".

[43] The evidence is that the subject song "Bug Her" was seen being performed in the calypso tents during the carnival season which started in December and ended in the first week of March following. The song was played on radio and the defendant performed the song at the semi-final and the calypso final. Additionally, the song was in contention for road march, which implies that it would have been played on the road during the two big carnival days. After the defendant received the letter from the claimant's attorney rather than sending an apology, he did a new version of the song (a re-mix) which now contained the words: "you write so I must be right. Now the public know you bugging for true."

[44] Thus, rather than offering an apology the defendant made bad matters worse by, in effect, ridiculing the letter sent to him. The re-mix in the mind of the court gives rise to the reasonable inference that the defendant was motivated by personal malice, spite and ill will. This is evidenced especially by the words: " Now the public know you bugging for sure." But it does not end there as there is other evidence of the defendant's performance at the calypso final. The evidence is provided by Vincent Etienne at paragraph 8 of his witness statement:

"8. I went to the Calypso finals that year. During Checko's (the Defendant's) performance of the song, there was a male and female on the stage with him, who by their looks and

dress, bore a clear resemblance to the Claimant and his wife. It was obvious to me and to the persons around me that they were meant to represent the Claimant and his wife.”

- [45] But while it is not open to say what the others around him felt, it must be open to the court to make a reasonable inference in the circumstances to say that the defendant’s objective can be gleaned from the context.
- [46] It cannot be contested that from December to the first week in March constitutes a very long period of slander at different fora in Dominica. Indeed, the claimant’s evidence is that despite his love for calypso he did not attend either the semi-final or final calypso shows “because I was absolutely terrified that I might be confronted and something improper may happen if I happen to be in a place where my name is being scandalized.” This feeling cannot be considered to be an unreasonable or irrational conclusion given the public attendance at such national shows coupled with the claimant’s public profile.
- [47] The calypso artform is part of the culture of the peoples of the Caribbean societies with firm grounding in Dominica. But in some instances the singing of a calypso is viewed as an occasion to hide behind poetic licence to settle scores with political rivals or other opponents, rather than commenting of current or past social issues this raises slander rather than fair comment. Further, it is a given that the constitutional rights of freedom of expression in all its dimensions is not licence to defame anyone. The fact that the defendant is a police officer does not enlarge his right of freedom of expression so that he sings what he wants. Instead, he is deemed to know his constitutional rights and by extension the like rights of others and the law. In particular that buggery is a criminal offence in Dominica which carries a penalty to ten years imprisonment if committed with another adult¹⁸; and for which he can arrest anyone whom he reasonably suspects of committing the crime.
- [48] It has already been concluded that the aggravation in the publication of the slander; the slander was published for the entire calypso season of 2011-2012; and that the defendant was motivated by malice having regard to what he did to the song after he received a letter from the claimant’s attorney.

¹⁸ Sexual Offences Act 1998 No. 1, section 15 (1)

[49] Of the cases cited to the court involving the transient publication, there is none in which the extent of the publication matches that of the claimant in this case. And unlike the claimant in the **Mansoor**¹⁹ case, the claimant has evidence from persons who knew him and worked with him.

[50] All of the witnesses testified that they understood 'Bug Her' to be a referral to buggery and that they never knew the claimant to be a homosexual or bi-sexual, and they were quite scandalized by the suggestion in the song. Shermaine Bique went further by saying: "After hearing the song, I felt differently about the Claimant and I was embarrassed for his wife. Every time I held interviews with the Claimant for work purposes, I always felt uncomfortable with him because of the allegation made in the song. I could never completely shake the feeling of the possibility that the song is true."

The awards

[51] In **Clerk and Lindsell on Torts**²⁰ the following is stated:

"The damages awarded in defamation must be proportionate to loss suffered by the claimant. In **Carson v John Fairfax & Sons Ltd**, the High Court of Australia described the three purposes to be served by damages for defamation, namely:

1. Consolation for the claimant's personal distress and hurt;
2. Reparation for the harm done to the claimant's reputation (including where relevant business reputation; and
3. Vindication of reputation.

[52] Given the foregoing guidance and having regard to circumstances of what the claimant had to endure, and the period involved, the award of general damages is in the amount of \$75,000.00.

Aggravated damages

[53] A.I. Ogus in his book: **The Law of Damages** under the heading 'Loss of Social Esteem' says that:²¹

"The dogma of defamation has it that the defendant's statement should expose the plaintiff to hatred, contempt or ridicule and the law holds it that be a valuable asset that a man should be held in esteem by others. The first type of loss, therefore, depends on nothing which happens to the plaintiff himself but on how others react to the tort. A paradigm case is **Cook v Ward**²².

'P was represented by D in a local newspaper as a hangman. At a parish meeting which he attended in his capacity as the assistant overseer of the parish, P was made the object of a joke which played on his being represented as a hangman. Evidence of P being subjected to the humiliation of 'a general roar of laughter' was admitted as being relevant to the issue of damages.'

¹⁹ Loc. cit

²⁰ [19th Edition] at para. 23-227

²¹ At page 234

²² [1830] 6 Bing 409

Clearly the wider the publication of the statement the greater the likelihood of substantial loss in this sense, and therefore the greater the tendency to award a larger sum. Another relevant factor will be the reputation of the plaintiff as it stood at the time of tort."

[54] Lord Justice Pearson in **McCarey v Associated Papers**²³ in this context addressed injured feelings in this way:

"The natural grief and distress which he may have felt at having been spoken of in defamatory terms, and ... any kind of high handed, oppressive, insulting or contentious behavior ... which increases the mental pain and suffering ... and may constitute injury to the plaintiff's pride and self-confidence: those are proper elements to be taken into account."

[55] Most of those operative words were again uttered by Lord Scott in **Joseph Horsford v Lester Bird et al**²⁴ when he said that aggravated damages should be awarded where the defendant's conduct is high handed, insulting and oppressive. Before that in **Cassell v Broome**,²⁵ Lord Hailsham said this:

"In awarding aggravated damages the natural indignation of the court at the injury inflicted on the plaintiff is a perfectly legitimate motive in making a generous rather than a more moderate award to provide an adequate stratum. But that is because the injury to the plaintiff is actually greater and, as a result of the conduct exciting the indignation, demands a more generous stratum."

[56] The defendant's conduct before and after he received the letter from the claimant's attorney has been noted. But what has not been highlighted is that the defendant offered an apology - not after he received the said letter, but in his witness statement filed on 25th November 2013 for the purposes of assessment of damages. To say the least, such an apology goes against the historically accepted method of offering an apology. It does more harm than good, as it is woefully late, not humble, improper, indirect and meaningless after the calypso semi-final and final shows plus after the song has been played on the road for carnival, with new lyrics.

The award for aggravated damages is \$50,000.00.

Exemplary damages

[57] One of the circumstances in which exemplary damages may be awarded is where the defendant aims to make a profit out of his conduct in the circumstances. The clear evidence that one of the reasons for

²³ [1965] 2 QB 86, 104-105

²⁴ [2006] UKPC 3 @ paras. 12-16

²⁵ [1972] AC 1186

the new version of his song is that with the up-tempo the defendant wanted to win the prize of \$5000.00 for the carnival road march. That exact amount is awarded as exemplary damages.

Costs

[58] The claimant is entitled to his costs based on the total award of damages .

ORDER

[59] IT IS HEREBY ORDERED as follows:

1. The claimant is awarded general damages in the amount of \$75,000.00 for slander contained in the song "Bug Her" published by the defendant during the period December 2011 to the first week in March 2012 in the calypso tent, on radio, at the semi-final and final calypso shows and on the road during carnival.
2. The claimant is awarded aggravated damages in the sum of \$50,000.00.
3. The claimant is awarded exemplary damages in the sum of \$5000.00 on account of the re-mix of the song because of his desire to win the road march title.
4. The claimant is entitled to prescribed costs based on the total award of damages.

.....
ERROL L. THOMAS
High Court Judge [Ag]