THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
FEDERATION OF ST. CHRISTOPHER AND NEVIS
NEVIS CIRCUIT
(CIVIL)

SUIT NO: NEVHCV2009/0098

BETWEEN:

Beulah Mills - Claimant

vs.

Michael Perkins– 1st Defendant
Nevis Broadcasting Limited – 2nd Defendant

APPEARANCES:

Mr. Terrence Byron for the Claimant.

Mr. Michel Perkins the 1st Defendant, in person.

Mr. Theodore Hobson, Q.C with Ms. Farida Hobson for the 2nd Defendant.

DECISION

2014: May 20, May 23
2014: July 23
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[1] **WILLIAMS, J. (Ag)**: These proceedings are brought by way of Claim Form by the Claimant Ms. Beulah Mills against the Defendants Michael Perkins and Nevis Broadcasting Limited, a company

incorporated under the Laws of the Island of Nevis doing business and VON Radio for Damages for slander spoken and published by the 1st named Defendant and caused to be published by the 2nd named Defendant during the course of a VON Radio programme entitled "On the Mark" broadcasted on the 14th day of March 2007.

[2] The Claimant is a Civil Servant of more than 25 years standing and holds the position of Executive Officer in charge of the Electoral sub-office in the Island of Nevis.

[3] According to the Claim Form filed on the 30th June 2009 the Claimant states that she is also an Assistant Registration officer duly appointed by the Supervisor of Elections on the 15th day of August 2005 to assist the Registration Officers for the Electoral Districts of St. Georges, Gingerland of St. James, Windward and St. Thomas, Lowland and of St. John, Fig Tree, and St. Paul, Charlestown, and to have all the powers and to perform all the duties of the Registration Officers for the said Electoral Districts except the consideration of Claims and Objections.

[4] According to the Defence filed by the 1st Defendant on the 28th of December 2009, the 1st named Defendant is a Civil Engineer, a former Senator, a former Minister of Government, a former candidate for the

Concerned Citizens Movement (CCM) in the July 2006 local Election in which he lost the seat he had held. The 1st named Defendant was also a Member of the Nevis Island Administration.

[5] The 2nd named Defendants according to their Defence filed on the 28th of December 2009 are a limited liability company, which transmits radio programmes under the name and style of Voice of Nevis or VON. The VON is transmitted and heard not only in the Caribbean, but also globally via the Internet.

[6] On the 14th March 2007, the 1st Defendant, during the broadcast of a Radio programme over VON called "On the Mark" spoke and published words concerning the Claimant in her position as Executive Officer in charge of the Electoral sub-office of Nevis and also with regard to her functions and conduct as an Assistant Registration Officer.

[7] The words that the Claimant has complained of in this matter are set out in Paragraph 5 of her Statement of Claim and are as follows:

"Mark, good evening again, Michael Perkins here. Ahm, the matter of irregularities during the last election came up and I, it was interesting hearing from a caller, ahm where he identified a number of persons who clearly live in other constituencies and are now

transferring elsewhere. We gonna continue to have that problem in Nevis, Mark until, well two things happen, in my opinion this is my personal opinion right now. One, that the matter of electoral reform comes to fruition before the next Federal or local Election in Nevis, and having said that, on the local scene, until the Registration Officer in the person of Beulah Mills is removed from that office we will continue to have those problems. I'm gonna take the opportunity to go into some details, Mark or detail, as to some things that went on in Nevis and in that office to the, doing in my opinion of the Registration Officer, Ms. Beulah Mills and I will clearly indicate examples, evidence of what went on to her doing. I find her Mark to be an unfit person to be in that office, and I hope the Federal Authorities are listening because the matter needs to be addressed. She needs to be removed from that office, she's unfit, she's in my opinion indecent to be there, she is corrupt and she is one who worked hand in hand, day and night to help the change of Government come to this Island. So when I get on your programme, Mark I will go into more detail, but that's what I have to say for now.

The Registration Officer in the person of Beulah Mills needs to be removed from that office as quickly as possible and we get someone in there who both parties can have confidence in and the people of Nevis can have confidence in. I look forward to that day."

[8] These are the words that the Claimant has alleged were calculated to disparage her in the office of Executive Officer in charge of the Electoral sub-office and as Assistant Registration Officer.

[9] The Claimant alleges that the words in their natural and ordinary meaning meant and were understood to mean that the Claimant is;

(a.) A reprobate, unprincipled and rotten, of a crooked and depraved character and is motivated generally in her approach to her duties in the Electoral sub-office for the Island of Nevis, of which she is in charge, by evil feelings and is actuated in the performance of her duties as an Assistant Registration Officer by an intention to do what is contrary to the Law. According to the Claimant the publication of the words also conveyed the meaning that the Claimant was guilty of dishonest practices, conspiracy and worked overtime in a biased and partial way to help bring about the change in the Government of Nevis in the Elections of 10th July 2006. The Claimant also complained that the words meant that, she was bungling, incompetent and inept,

and incapable of carrying out her functions as a Public servant in an appropriate manner. The false words she contends has caused her to be disparaged in her office and she has been brought into public scandal, odium and contempt, and were published out of Malice and spite towards her.

[10] Accordingly the Claimant Ms. Mills, seeks Damages including exemplary and aggravated Damages against both defendants for the alleged Defamation. She also seeks an Injunction to restrain the Defendants from further speaking or publishing those words or any words that are defamatory of her.

[11] The 1st Defendant Mr. Perkins and VON Radio in their Amended respective defences deny that they defamed Ms. Mills as alleged to, or at all. VON Radio admits that Mark Brantley hosts a programme styled "On the Mark" on which the public airs its views, and admits that the words were spoken by Mr. Perkins the 1st Defendant. However it denies that they were falsely or maliciously spoken. Further the 1st and 2nd Defendants deny having any Malice towards the Claimant Ms. Mills, and they take issue with the ordinary and natural meaning ascribed to the words.

[12] Additionally the 2nd Defendant VON Radio claims that the radio station during and at the end of the programme "On the Mark" clearly gave disclaimers on behalf of the station, its management and/or Mr. Brantley for any views expressed. The 2nd Defendant therefore contends that they cannot be held responsible for the publication of any words by the 1st Defendant, which although uncomplimentary of the Claimant in her position as a public servant, did not reach the threshold of slander.

[13] The 2nd Defendant admits that after the publication of the words complained of by the Claimant on the live "On the Mark" show, the 2nd named Defendant and the host of the show made the following statement **"Let me say here for my part that I have no evidence of any other practices by Ms. Beulah Mills at the Electoral office there. There have been a number of accusations made publicly, quite publicly about allegations about certain events that should have transpired. But I, speaking for my part I have no evidence of it. I want to make that clear to the listening public because I think that is only fair."**

[14] Further the 2nd Defendant on receiving the Claimant's Solicitor's letter of the 10th April 2007 responded with a letter of apology dated 14th April 2007 for the statement made by the 1st Defendant.

[15] In his Amended Defence filed on the 28th December 2009, the 1st Defendant Mr. Perkins admitted that he spoke the words complained of by the Claimant on the said Radio programme "On the Mark" hosted by Mark Brantley on the VON radio station, but denies that the words were spoken falsely or maliciously. The 1st Defendant contends that the words he spoke were in relation to the Irregularities, lack of transparency, malpractices, bias, inconsistent procedures, fraudulent voter registration and transfer of votes at the Electoral Office in Nevis. Further in his Defence, he contends that the words amounted to Fair Comment on matters of Public Interest and the words were not meant or understood to have the meaning attributed to them.

The 1st Defendant also states that the Claimant is not entitled to the relief she claims as his comments were made honestly and without Malice.

ISSUES

[16] The Issues that arise for the Court's determination are:

1. Whether the words complained of by the Claimant are capable of being Defamatory.
2. Whether the words are defamatory in the circumstances they were spoken.
3. Whether the words were defamatory of the Claimant Beulah Mills.
4. Whether the 1st and 2nd Defendants can avail themselves of the Defence of Fair Comment on a matter of Public Interest.
5. Whether the 1st and 2nd named Defendants were actuated by Malice.
6. Whether the Claimant Ms. Mills is entitled to any remedies.
7. Whether the Claimant has suffered special Damage or any Damage.
8. Whether the Defendant's failure to comply with Part 69 (3) (b) of the CPR is fatal to the case for the Defendants.

Mr. Byron's submissions

[18] Learned Counsel for the Claimant Mr. Terrence Byron stated that this was a case of Defamation and one of Slander not Libel. Counsel referred to the Judgment of Octave-J given in June 2012 on a preliminary issue and the Court

ruling, that Ms. Mills the Claimant could maintain her action for Damages for Slander without having to prove that she has suffered special Damages. Counsel referred the Court to **Gatley on Libel and Slander 10th Edition paragraph 1:4 Page 7**, which states;

"In English Law, there is no actionable Tort (though there may be a crime) unless the words are "published" to at least one person other than the person defamed: the wrong is injury to reputation not insult. However publication to one person will do. It is not necessary that the Claimant is presumed to have and to enjoy an unblemished reputation, and it is up to the Defendant to rebut that, either by proving the truth of the Defamation or by establishing in mitigation of damages, that the Claimant has a general bad reputation."

[18] Learned Counsel, Mr. Byron contended that the 1st and 2nd named Defendants have admitted Publication.

[19] Next, Mr. Byron invited the Court to find that the offending words referred to the Claimant as the 1st named Defendant repeatedly made reference to the Claimant by name. Further the 2nd Defendant Evered Herbert admitted that he met the Claimant a few days after the Statement was made and apologized to her therefore Counsel contends that the Claimant was identified as the person to whom the offending words were directed at.

[20] Mr. Byron then addressed the issue of whether the words spoken by Mr. Perkins the 1st named Defendant were defamatory of Ms. Mills and referred the Court to paragraph 6 of the Amended Statement of Claim where the words complained of

were defined in detail by the Claimant in their natural and ordinary meaning and what they were understood to mean.

[21] Learned Counsel Mr. Byron then adverted the Court's attention to Part 69 of the Civil Procedure Rules 2000 and the requirement to adhere to the Rules and directions in particular Part 69 (3) (b) and 69.3 (i) (ii).

Part 69:3 states;

"A Defendant who alleges that-

(a.) In so far as the words complained of consists of Statements of facts they are true in substance and in facts; and

(b.) In so far as they consists of expressions of opinion, they are fair comment on a matter of Public Interest; or

(c.) Pleads to like effect must give particulars stating

i. Which of the words complained of are alleged to be statements of fact and

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

[22] Counsel contended that both 1st and 2nd Defendants have failed to comply with Part 69.3 of the CPR and this non-compliance was fatal to their Defences.

[23] Mr. Byron argued that at once there is Evidence of Malice, the Claimant does not have to prove Damage as this was Slander actionable per se. Counsel also referred to **Gatley on Libel and Slander Chapter 33: The Defendant's Case** paragraph 33:19 to buttress his contention that: "Evidence to sustain the defence of Fair Comment will be largely if not exclusively directed to establishing the matters relied upon as the basis of the comment; Details of such matters have to

be included in the Defence. Clearly the Evidence will be confined to these particulars."

[24] Learned Counsel Mr. Byron then invited the Court's attention to the 1st and 2nd Defendants defence of Fair Comment and contended that the Defendant's pleadings did not identify with sufficient precision the statements that were Fair Comment and the Statements of Fact.

Counsel cited the case of **Control Risks Ltd. and others vs. New English Library and another C.A [1989] 3 A.E.R 577-581**

[25] Mr. Byron echoed the words of Nicholls L.J when he stated at Pg. 581 "In my view the starting point is to identify the comment the Defendants say is to be found in the words complained of and which they are seeking to defend as Fair Comment.

A Plaintiff is entitled to know what case he has to meet under a defence of Fair Comment just as much as he is entitled to know what case he has to meet when faced with a defence of justification. These are the so called **Lucas-Box** particulars. See **Lucas-Box vs. News Group Newspaper Ltd. [1986] 1AER 177.**

"In my view by parity of reasoning when Fair Comment is pleaded, the Defendant must spell out, with sufficient precision to enable the Plaintiff to know what case he has to meet, what is the comment which the Defendant will seek to say attracts the Fair Comment defence."

[26] Learned Counsel Mr. Byron argues that there is a fatal defect in the Pleadings of the Defendants and the defences of Fair Comment and Qualified Privilege are not available to them.

[27] Mr. Byron further argued that in **Gatley on Libel and Slander** Appendix I-Forms and Precedents, Form A122 sets out the form of Defence for among other things Fair Comment, and that Form reinforces the indispensable obligation of the Defendant clearly to identify the comment which he contends is "fair". Counsel contends that the 1st Defendant's pleadings do not identify the words and the offending words used are not words which speak to any public view of the Electoral Office.

[28] Mr. Byron submits that the Claimant relies on the natural and ordinary meaning of the offending words and cited the case of **Charleston vs. News Group Newspapers [1998] 2 AC 65** where it was held that no evidence of the meaning of the words or of the sense in which they were understood, or any facts giving rise to inferences to be drawn from the words used, is admissible. It is for the Judge in the absence of the Jury, to determine the sense in which the words would reasonably have been understood by an ordinary man in the light of generally known facts and meanings of words.

[29] Learned Counsel also submits that the 1st named Defendant stated in relation to his defence of Justification the following words;

"I have definitely pleaded it in my Witness Statement, and in my Defence even if I have not used the words "justify" or any variation of that, anything in my

Defence which speaks to the truth of what I said in any which way is part of my plea of justification. I refer to paragraph 13 of my Defence."

[30] Mr. Byron then recites paragraph 13, 18 and 11 of the 1st named Defendant's Defence as examples that the 1st Defendant had given to substantiate his plea of justification and contends that the Defence falls to the ground as this Defence was not specifically pleaded. The Court agrees with learned counsel's submission and holds that the 1st Defendant has not met the threshold to avail himself of the Defence of Justification.

[31] In relation to the 2nd Defendant, Mr. Byron submits that the Claimant had presented a CD containing the offending words to the Court and had stated that she bought the said CD from the 2nd named Defendant's radio station containing the two hour show "On the Mark" for the 14th March 2007.

He further contends that there was no challenge from the 1st and 2nd Defendants denying the contents of the envelope that was presented to the Court.

[32] Mr. Byron finally submitted in his written submissions that the Slander in the case at bar is actionable per se and that damages awarded should be at large. He argued that this was a flagrant defamation, conducted from start to finish in a hostile and hopeless fashion, thereby greatly aggravating damages and evidencing spite and ill-will on the part of the Defendants.

Mr. Byron also asks for Aggravated Damages, costs and an Injunction to restrain further publication of the slander. In further support of the Claim for aggravated Damages Mr. Byron referred the Court to the Judgment of His Lordship

Justice Belle in **Earl Asim Martin vs. The Democrat Printing Co. Ltd, Claim No. SKBHCV2004/0136** and the case of **Dwight Cozier vs. Kenneth Williams Claim No. NEVHCV2009/0116**- Judgment of Master Pearletta Lanns.

Mr. Perkins Submissions

[33] Mr. Perkins appearing in person contends that on the 14th March 2007 in speaking the words complained of by the Claimant, he was exercising his constitutional right to freedom of speech, and that the words spoken of the Claimant by him was Fair Comment on a matter of Public Interest. He further contends that the comment was expressed without any Malice and was done in an honest and frank manner, and thus it was justifiable. Mr. Perkins also argues that the Claimant has failed to prove Malice and such a failure is fatal to her case. Mr. Perkins referred the Court to the case of **Phillip Abott and Aziz Hadeed- Eastern Caribbean Court of Appeal HCVAP2010/041**

[34] Mr. Perkins urged the Court to consider his credibility and his behavior prior to, at the time of and after the occurrence of the alleged Defamation, all the way up to and including his behaviour during the Trial, and also to examine the behaviour of the Claimant.

The 1st Defendant Mr. Perkins contended that the Claimant has been caught up in a web of misrepresentation of facts, deceit and outright lies.

[35] In further support of his contention Mr. Perkins referred the Court in his written submissions to oral and written evidence of the Claimant. He provided instances of alleged dishonest acts of the Claimant namely;

(a.) That the Claimant pleaded in her Amended Statement of Claim filed on the 31st August 2009 that "a copy of the tape recording was sold by the 2nd Defendant to the Claimant", but under cross examination, she stated that she bought two copies of the tape recording before midday the day following the show for $40, for $20 each and gave one to the lawyer. The Claimant also stated that "before the day was over, I was given about three copies of the tape recording."

The 1st Defendant argues that the Claimant has given three different versions of how she obtained the tape recordings and this was incontrovertible evidence of her lies.

(b.) The 1st Defendant contends that when the Claimant said she listened to a replay of the tape recording the following night on the 2nd Defendant's radio station, this was another example of her dishonesty as the said show was repeated the next day from 1-2pm and by that time the alleged offending words were expunged from the tape and never rebroadcast on the 2nd Defendants radio station.

(c.) Mr. Perkins also made reference to the Claimant's assertion in her witness statement that she heard the first words spoken by the 1st Defendant, and her oral evidence where she stated that someone called her and said to her to put on her radio now, which must have been after the first set of words aired.

[36] Mr. Perkins also invited the Court to examine his assertions which the Claimant either admitted to or did not deny as follows:

(a.) The 1st Defendant referred to his witness statement at paragraphs 5 and 6 where he stated that there were widespread complaints about the Claimant and numerous calls for her to be removed as she was functioning in an unprofessional, bias and unscrupulous manner.

(b.) At paragraph 13 where he stated that the Claimant deliberately misled the Concerned Citizens Movement and one Mr. Albert Myers when she was asked and did offer assistance in the filling out of objection forms.

(c.) At paragraphs 14, 15, and 17 where the Claimant improperly facilitated a registration of a certain person from St. Kitts to Nevis even though the Claimant must have known that this voter lived in St. Kitts for over twenty five years.

(d.) At paragraph 16, the 1st Defendant had alleged that the Claimant had registered persons on the voters list despite the successful objections of the Defendant.

(e.) At paragraph 18 where the Claimant admitted to registering six identified persons, but claimed that it was a mistake and that she did not know that persons from the Dominican Republic who had residency status could not be registered.

(f.) At paragraph 31, where the 1st Defendant contended that the Claimant had abused her authority, compromised her office and corrupted the Electoral system.

(g.) At paragraph 36, 37, 38 where the 1st Defendant had made more assertions of irregularities including a particular incident whereby a certain named individual was transferred to the list in Nevis from St. Kitts, but had never applied to do so.

[37] The 1st Defendant contends that the cited examples were all known to the Claimant at the time the alleged defamation occurred, and asserts that these examples were all true and support his Defence that his comments were fair and justified.

[38] Mr. Perkins also makes reference to the Claimant's contention that the particulars of Malice and/or Justification were not specifically pleaded by the Defendant according to the Civil Procedure Rules and states that this was an Abuse of the process of the Court and asks the Court to reject the Claimant's contention.

[39] Mr. Perkins also referred the Court to the case of **Slim et al vs. Daily Telegraph Ltd. & Others [1968] 2 QB 157** and the pronouncements of that Court to buttress his argument that the Claimant was using legal technicalities. He echoed the view of the Court in that case and stated that "the right of Fair Comment is one of the essential elements which go to make up our freedom of speech. We must ever maintain this right intact; it must not be whittled down by legal refinements."

[40] Mr. Perkins stated that for the purpose of the defence of Fair Comment Ms. Mills the Claimant must show that he did not utter the words "honestly" or "truthfully". He contends that at no time during the trial did Counsel for the Claimant question the truth of the words spoken by him, or his honesty in speaking the words.

[41] Mr. Perkins also contended that the Claimant has not presented any evidence to prove Malice in relation to the 1st Defendant and that all references to Malice have been made with respect to the 2nd Defendant.

[42] The 1st Defendant submits that the Claimant admitted in her evidence that she knew him from the time he was a small boy in Primary school. And that he had never displayed any discourtesy or malice towards her prior to March 14th 2007.

[43] Mr. Perkins argues that the Claimant was claiming malice solely on the basis that he wanted to get her "fired from her job" by publicly calling for her removal on the radio, and also because he had said to her when he subsequently visited the Electoral office that he needed no favours from her when she offered to assist him.

[44] Mr. Perkins submitted that there was no evidence of Malice on his part and that the Claimant had said in her evidence that she could not prove that he had not honestly believed the views he had expressed about her.

[45] In relation to Damages, Mr. Perkins reiterated that he harboured no malice towards the Claimant and she suffered no Damage, and asked the Court to impose nominal damages if any if there was a finding of liability on his part.

Mr. Hobson's Submissions

[46] Learned Queen's Counsel for the 2nd named Defendant Mr. Hobson submitted that while this case was a case of Defamation, it was an opportunity to put a spotlight on the behaviour of an Electoral Official in the performance of her duty.

[47] Mr. Hobson Q.C further submitted that he considered that there were four issues which he considered most critical to this case. He stated as follows;

(a.) Whether the Claimant has satisfied the important element in the definition of Defamation that is publication to a 3rd party.

(b.) The Defence of the 1st named Defendant and on which the 2nd named Defendant relies that is "Fair Comment on a matter of Public Interest."

(c.) The Issue of Malice.

(d.) The measure and quantum of Damages if any.

[48] Mr. Hobson Q.C argued that the Claimant had not adduced any evidence that there was publication of the alleged offensive words except for her contention that she heard part of the 1st Defendant's statement on radio, and that persons had met her and spoken to her that they had heard the offending words.

[49] Next, Mr. Hobson Q.C stated that the main defence of the Defendants was that the words spoken by the 1st Defendant was **Fair Comment on a matter of Public Interest** and that there was no doubt that the matter of Electoral irregularities was a matter of public discussion, concern and interest. He referred to a speech given by Premier Joseph Parry (as he then was) in July 2006 which he said brought laughter and shame to the Country.

[50] Mr. Hobson Q.C also contended that the essential element of the Defence is whether the Statement was fair in all of the circumstances. He argued that the tapestry of irregularities and unprofessional conduct committed by the Claimant in the Electoral Registry was established by the Defendants. He claimed that Ms. Mills never denied that she registered all persons who registered to vote since

she took up her job in August 2005; and that as a result of the Electoral reform where persons who were registered before 2007 had to reconfirm their registration, this in effect meant that she had registered all persons on the Register of Voters.

[51] Learned Queen's Counsel submitted that the Managing Director of the 2nd named Defendant Company Evered Herbert in his evidence spoke to numerous problems with the Claimant in connection with her duties as Registration Officer and in each case her Senior Manager in Saint Kitts had to intervene to correct the irregularities.

[52] Mr. Hobson Q.C referred the Court to the evidence of Santa Isabel Palmer a national of the Dominican Republic who stated that she was assisting the 1st Defendant with Registration of persons for the Voters List. In her evidence in support of the 1st Defendant she stated that a number of persons from the Dominican Republic who should not have been registered were registered, although they were not citizens of St. Kitts and Nevis or Commonwealth citizens.

[53] Mr. Hobson Q.C also referred the Court to the evidence of the former Commissioner of Police who stated in his testimony that he had observed a pattern of bias by the Claimant in favour of the Nevis Reformation Party, and drew the Court's attention to an incident where a voter's address was changed by the Claimant although she was aware that the voter lived in another constituency.

[54] Learned Queen's Counsel also drew the Court's attention to a letter dated 12th April 2007 in response to a letter from the Claimant's solicitor regarding the significant increase to the voters list for the constituency of Nevis 1 St. Paul and a similar decrease in the voters list in the constituency of St. Thomas 5, a stronghold of the Nevis Reformation Party (NRP), which according to Mr. Hobson Q.C the Claimant could give no explanation.

[55] Mr. Hobson Q.C then referred the Court to the evidence of Mr. Mark Brantley who described the attitude and behaviour of the Claimant towards him. Learned Queen's Counsel contended that the Claimant had lied when she said that Mr. Brantley had spoken to her and said certain uncomplimentary words about the 1st Defendant at the Registration Office in Nevis.

[56] Learned Queen's Counsel dismissed the evidence of the Claimant as a tissue of lies and deceit and referred to the "Tape affair" as an attempt to corrupt and pervert the course of justice.

[57] Mr. Hobson, Queen's Counsel then addressed the Defence that is relied on by VON Radio and Mr. Perkins. He stated that both Defendants have admitted that the matter of irregularities at the Electoral Office was a matter of Public Interest that could rightly be discussed on the Radio.

[58] Mr. Hobson referred the Court to **Gatley on Libel and Slander** paragraph 12:1 and the words of Lord Denning in the case of **Slim vs. Daily Telegraph [1968] 2 Q.B 157**

"The right of Fair Comment is one of the fundamental rights of free speech and writing and it is of vital importance to the rule of Law on which we

depend for our personal freedom. The right is a bulwark of free speech and is one of the means by which the Common Law attempts to comply with the guarantee of freedom of expression found in Article 10 of the European Convention on Human Rights. These are matters on which the public has a legitimate interest or with which it is legitimately concerned, and on such matters, it is desirable that all should be able to comment freely and even harshly so long as they do so honestly and without malice."

[59] Learned Queen's Counsel also cited the following cases which he considered as important to the case at Bar.

See: **Silkin vs Beaverbrook Newspaper Ltd [1958] 1WLR**

Albert Chen et al vs Tse Wai Chen Paul [2000] HKCFA 35 Civil Appeal Hong Kong

Phillip Abbott vs Aziz Hadeed HCVAP2010/041 C.A ECSC

He submitted that the essential thread of honest expression and the concept of free speech was upheld in all the cited cases.

[60] Mr. Hobson Q.C submitted that if the Court made a finding of Fair Comment on a matter of Public Interest, and that the 1st Defendant uttered the words honestly and in his honest opinion, then the issue of Malice becomes irrelevant.

[61] In relation to the 2nd Defendant, Learned Queen's Counsel submits that it did all it could do to demonstrate that it was not in favour of the statement as it was personal and did not meet its standard of broadcasting. Mr. Hobson argued that after the statement was made, the host of the show Mr. Brantley made a Public

disclaimer of the offending words and this went some way in neutralizing the statement.

[62] Further to this disclaimer by Mr. Brantley the Managing Director of the 2nd Defendant, Mr. Evered Herbert also apologized to the Claimant. However according to Mr. Hobson Q.C the Claimant continued to accuse the Managing Director of the 2nd named Defendant Company of Malice although she said in her oral evidence, that before the publication, Mr. Herbert and herself were "good friends."

[63] In relation to the issue raised by Counsel for the Claimant and his argument on Part 69.3 of the CPR that the Defendants were not in compliance with that rule, Mr. Hobson's reply at Paragraph 50 of his Written Submissions was that the Claimant Counsel never raised that issue at a Case Management and Pre-Trial review and was therefore a desperate attempt to confuse the process.

Damages

[64] Learned Queen's Counsel Mr. Hobson contended that the Claimant did not disclose any tangible evidence of any Damage to her character and reputation and referred the Court to **Gatley on Libel and Slander 10th Edition paragraph 9.15- Exemplary Damages** and also the Judgment of Her Ladyship Justice Louise Blenman in her Judgment in **Abraham Mansoor et al vs Grenville Radio Ltd et al ANUHCV2004/0408.**

[65] Finally Learned Queen's Counsel asks the Court to dismiss the Claim against the Defendants in particular the 2nd named Defendant who he contends did nothing wrong.

Court's Analysis and Findings

[66] I have reviewed the evidence and carefully considered the written and oral submissions by both Learned Counsel and Mr. Perkins. I will not reproduce the evidence that was adduced by all parties.

[67] I have listened to Ms. Beulah Mills and observed her demeanour as she testified. Whilst she came across as a witness of truth for the better part of her testimony, I am disturbed by parts of her evidence in particular her evidence on registering persons who were non-nationals, where she said that she did not know that their residency status did not qualify them to be registered as voters and that she was new to the job at time and learning her duties. Further, under cross-examination, there was reference to Delfido Salvador Garcia and his Certificate of Citizenship which was granted on the 27th September 2006 while he was already registered as a voter on the 18th January 2006. I do not accept that explanation by Ms. Mills who also said in her evidence that she was trained for the job in St. Kitts, and that the Governor-General had appointed her as Executive Officer at the Electoral Office.

[68] Mr. Perkins was concerned with the illegal and fraudulent registration of persons who were not qualified to be registered as voters, and persons being

registered in constituencies where they did not reside and that there was a jump in the amount of registered voters in strongholds of the Nevis Reformation Party. He was critical of Ms. Mills the Claimant who he considered was working in a biased and partial way to benefit his political opponents.

Notwithstanding Mr. Perkins scathing criticism of the Claimant I am **not** of the view that Mr. Perkins harboured any hatred, spite or ill-will towards Ms. Beulah Mills and honestly held the views he expressed. In her own evidence, she states that "I cannot recall you being disrespectful to me prior to March 14th 2007." "I cannot prove to the Court that you were not honest in your views."

[69] I have listened and paid particular attention to the evidence adduced on behalf of the Defendants in particular the 1st Defendant.

Mr. Perkins appeared to me to be very intelligent, but he came across in delivering his evidence as being pompous and arrogant. He also came across as being very interested in engaging in public discourse on topical and political matters.

Be that as it may, I am satisfied that Mr. Perkins and Mr. Evered Herbert have no hatred or malice towards Ms. Mills and Mr. Herbert gave his evidence in a straight forward and honest manner and was contrite with the offending words spoke about Ms. Mills.

[70] I also gathered from the evidence that was adduced that Mr. Herbert and the Management of VON Radio took a serious interest in the politics of Nevis and St. Kitts and this shaped the programming that was aired on that radio station.

It was in that context that Mr. Perkins words were published about the Claimant who alleges that she was slandered in her personal and professional capacity and this had the potential to lower he in the estimation of right thinking members of the society in Nevis where the Defamatory words were published.

See: Lennox Linton et al vs. Kieron Pinard Byrne ECSC Court of Appeal DOMHCVAP2011/0017-

[71] The Court finds that the Claimant was slandered in her professional capacity as Executive Officer of the Electoral Office by the words spoken by the 1st Defendant Mr. Perkins. Ms. Mills claims she was humiliated and embarrassed as a result of the offending words and seeks to be compensated for injury to her reputation and seeks also Injunctive relief from the Defendants.

[72] The Court also finds that the various inconsistent versions of how the Claimant obtained the tape of the offending words was immaterial and did not interfere with her credibility, and the Court accepts her evidence on that issue.

Issue No. 1

Whether the words are capable of being Defamatory.

[73] In **Gatley on Libel and Slander 10th Edition** at paragraph 1:3, the definition of Defamation is stated as follows;

"Defamation is committed when the Defendant publishes to a 3rd person words or matter containing an untrue imputation against the reputation of the Claimant." At paragraph 1:5, is states "There is no wholly satisfactory definition

of a defamatory imputation. Three formulae have been particularly influential

(1) Would the imputation tend to "lower the Plaintiff in the estimation of right thinking members of a society generally. **See: SIM vs. Stretch [1936] 52 TLR 669 Lord Atkin**;

(2) Would the imputation tend to cause others to shun or avoid the Claimant? **See: Youssoupoff vs. Metro-Goldwyn-Mayer [1934] 50 TLR 581.**

(3) Would the words tend to expose the Claimant to hatred, ridicule or contempt?

The question "what is defamatory? relates to the nature of the statement made by the Defendant; words may be defamatory even if they are believed by no one, and even if they are true of course actionable.

Conversely, the mere fact that words are untrue does not make them defamatory, because they may not affect the Claimant's reputation. Non defamatory words may however be actionable as malicious falsehood or negligence."

[74] In the case of **Ramsahoye vs Peter Taylor Co. Ltd. [1964] LRBG 29** Bollers J. echoed the dicta of **Woolford vs Bishop [1940]** where he stated:

"On this aspect of the case, the single duty which devolves on this Court in its dual role is to determine whether the words are capable of a defamatory meaning and given such capability, whether the words are in fact libellous of the Plaintiff. If the Court determines the first question in favour of the Plaintiff, the Court must then determine whether an ordinary, intelligent and unbiased person reading the words would understand them as terms of disparagement, and an allegation of dishonest and dishonourable conduct. The Court will not be astute to find subtle interpretations for plain words of obvious and invidious import.

Where the words are clearly defamatory on their face, a finding that they are capable of being defamatory will almost inevitably lead to the conclusion that they are defamatory in the circumstances. But where the words are reasonably capable of either defamatory or non-defamatory meaning. The Court must decide what the ordinary reader or listener of average intelligence would understand by the words."

[75] In determining whether the words are capable of bearing any defamatory meaning this Court must determine what was the permissible range of meanings that the alleged defamatory words could carry. When the Court is satisfied that the words complained of are capable of a defamatory meaning, then the Court can consider whether in fact the words bore the alleged or any defamatory meanings.

The dicta of Lord Diplock in **Slim vs Daily Telegraph Ltd [1968] 2QB 157** is instructive; He stated:

"In deciding what meanings the words are capable of bearing, there is acknowledgment that the words are reasonably capable of bearing different meanings, but that after deciding what are the possible meanings, the decision maker must decide on one of those meanings, as being the only natural and ordinary meaning of the words."

[76] Also in determining the ordinary and natural meanings of the words, the criteria that the Court should adopt was succinctly stated by Nicholas L.J in the case of **Bonnick vs. Morris [2002] UKPC 31** ;

"The Court should give the article the natural and ordinary meaning it would have conveyed to the ordinary reasonable reader- reading the article once. The ordinary reasonable reader is not naive; he can read between the lines. But he is not unduly suspicious; he is not avid for scandal. He would not select one bad meaning where other non defamatory meanings are available. **The Court must read the article as a whole and eschew over elaborate analysis, and also too literal an approach. (My emphasis)**

[77] Again **in Lewis vs Daily Telegraph Ltd. [1964] AC 258,** Lord Reid stated

"There is no doubt that in actions for Libel the question is what the words would convey to the ordinary man. It is not one of construction in the legal sense. The ordinary man does not live in any ivory tower, and he is not inhibited by a knowledge of the rules of construction."

[78] In determining what are the ordinary and natural meanings of words, this Court cannot determine the sense in which the words would reasonably have been understood by an ordinary man in the light of generally known facts and meaning of words; It is for the Jury to determine this." **[Gatley on Libel and Slander 10th Edition.]**

[79] This Court is required by Law and cited authorities to read the words spoken by Mr. Perkins as a whole. The authorities on this matter indicate that other portions of an article or a speech that contains defamatory words are admissible to establish the context in which the offending words were published because context affects meaning. In determining the ordinary and natural meanings of the words, the Court must take into account all the words

used by Mr. Perkins in the entire Statement and endeavour to determine their ordinary and natural meaning to the reasonable person in the society.

[80] It is also the Law that the ordinary and natural meaning of the words may include implications and inferences which reasonable people in the society would draw from the words. If the implications and imputations tend to lower the Claimant in the estimation of right thinking members of society or expose her to public hatred, and ridicule, the words would be defamatory.

[81] In determining whether the words are capable of being defamatory, the intention of the Defendant is immaterial to the determination of the meaning of the words. See Byron J.A (as he then was) in **Learie Carasco (aka) Rick Wayne vs Neville Cenac- Civil Appeal No. 6 of 1994 (St. Lucia)**

[82] In relation to the words spoken by Mr. Perkins, the ordinary and natural meaning to a reasonable person would be that the words are capable of being defamatory, and that Ms. Mills was an unfit, corrupt and indecent person who was responsible for the irregularities occurring at the Electoral office, and who was instrumental in changing the Government on the Island.

[83] I am of the opinion that the words spoken by Mr. Perkins are defamatory on the face of them, and can only be interpreted by the average, objective listener as defamatory of Ms. Beulah Mills by saying she is indecent, unfit and corrupt.

Issue No. 2

Whether the words are Defamatory.

[84] The Court must examine the words and decide what ordinary reader or listener of average intelligence would understand by the words.

See: Ramsahoye vs. Peter Taylor and Co. Ltd. [1]

[85] It is established Law that for a statement to be defamatory, it must contain either expressly or by implication, statements of fact which would tend to lower the Claimant in the estimation of right thinking members of society generally or it exposes her to contempt, public hatred and ridicule. It is trite Law that a statement is defamatory if it imputes dishonesty to a person in the context of his **Trade, business or profession**. Again in determining whether the statement so imputes any such lack of quality, the test is that, of how the ordinary, reasonable man who is fair minded, to whom the words are published is likely to understand them.

[86] In applying the test, this Court is of the considered opinion that the ordinary reasonable man would come to the conclusion and understand that the words used by Mr. Perkins impute that Ms. Mills was a corrupt, unfit, and indecent person, who had committed gross irregularities at the Electoral Office and abused her position in order to illegally and fraudulently register persons on the Electoral list.

I am also therefore of the considered view of the view that the statements made by Mr. Perkins would likely to be understood by the right thinking members of society as defamatory of Ms. Mills.

[1] ibid

Issue No. 3

Whether the words defame Ms. Beulah Mills

[87] Mr. Perkins in his evidence has not denied that the words he used referred to Ms. Mills. Indeed his statement on the radio referred to her by name.

[88] One of the main requirements for a successful action in Defamation is that the defamatory words must be shown to have referred to the Plaintiff. In most cases the Plaintiff will be mentioned by name, but this is not a necessary requirement. The Test is whether a reasonable man might understand the defamatory statements as referring to the Plaintiff.

[89] In **Gatley on Libel and Slander 10th Edition Para 7:1,** it states "To succeed in an action of Defamation, the Claimant must not only prove that the Defendant published the words, and that they are defamatory, he must also identify himself as the person defamed. It is an essential element of the cause of action for Defamation that the words complained of should be published "of" the Plaintiff. That is to say, it must be capable of referring to him. Where the Plaintiff is expressly identified by name, it is not necessary to produce evidence or to provide evidence to prove that anyone to whom the statement was published did identify the Plaintiff. The question is not whether anyone

did identify the Claimant but whether persons who were acquainted with the Plaintiff could identify him/her from the words used.

[90] I will briefly refer in detail to the statement of Mr. Perkins to illustrate that a listener would conclude that the words referred to Ms. Mills.

The first paragraph of Mr. Perkins' statement refers to "The matter of irregularities during the last election and it was interesting hearing from a caller where he identified a number of persons who clearly live in other constituencies and are now transferring elsewhere."

The second paragraph states "that the problem will continue in Nevis until two things happen, in my opinion. One that the matter of Electoral reform comes to fruition before the next Federal or local elections in Nevis... until the Registration officer in the person of Beulah Mills is removed from that office."

The third paragraph again states "In my opinion the Registration Officer Miss Beulah Mills and I will clearly indicate examples, evidence of what went on to her doing. I find her to be an unfit person to be in that office... She needs to be removed from that office, she unfit, indecent to be there, she is corrupt."

I am satisfied that the ordinary fair minded listener could reasonably concluded that Mr. Perkins was referring to Ms. Beulah Mills, Executive Officer at the Electoral Office.

[91] I also conclude that persons hearing the words and the description of Ms. Mills would reasonably believe that it was the Claimant to whom Mr. Perkins was referring. I am of the opinion also the words spoken by Mr. Perkins

would lower her in the estimation of right thinking members of the Nevis society; they could expose her to hatred, contempt or ridicule, or cause other persons to shun or avoid her, or discredit her in her profession or trade as Executive Officer at the Electoral Office and are actionable per se as a Slander even in the absence of proof of actual Damage.

Issue No. 4

Can the Defendants plead Fair Comment in this matter.

[92] In **Gatley on Libel and Slander 10th Edition para 12: 1** it states "It is a defence to an action of Libel or Slander that the words complained of are Fair Comment on a matter of Public Interest. The right to Fair Comment is one of the fundamental rights of Free speech and writing, and it is of vital importance to the rule of law on which we depend for our personal freedom. The right is a "bulwark of free speech"... **These are matters on which the public has a legitimate interest or with which it is legitimately concerned, and on such matters it is desirable that all should be able to comment freely and even harshly. So long as they do so honestly and without Malice." (My emphasis)**

[93] For the Defence to be successful, the Defendants must show that the words are comment and not statements of fact. They must also show that there is a basis for the comment contained or referred to in the matter complained of.

The comment must satisfy the test of being "objectively fair" in the sense that an honest and fair-minded person could hold that view.

The Defence is not however inapplicable because the comment was prejudiced or exaggerated or "unfair in the ordinary sense of that word.

The Defendants must also show that a comment is on a matter of Public interest, one which has been expressly or implicitly put before the public for Judgment or is otherwise a matter with which the public has a legitimate concern. If the Claimant can show that the comment was actuated by malice, she will defeat the plea.

[94] The Defence of Fair Comment is a two stage matter. **First** there is the objective stage in which the issue to be determined is whether the words are capable of being Fair Comment. The burden of proof is on the Defendant on this issue. Secondly there is the subjective stage. If the words are fair comment, the defence will fail if the defendants were actuated by Malice; and the burden of proof is on the Plaintiff.

[95] In the case of **Kemsley vs. Foot [1952] A.C 34** Lord Porter stated that there are two circumstances where the plea of Fair Comment can operate.

1) In cases where the facts are fully set out in the alleged defamatory publication with comments.
2) In cases where there is a sufficient substratum of fact stated or indicated. He says further "In a case where the facts are fully set out in the alleged libel each fact must be justified, and if the Defendant fails to justify one, even if it be comparatively unimportant, he fails in

his defence. Does the same principle apply where the facts are found, not in the alleged libel, but in the particulars declared in the course of the action. In my opinion, it does not; where the facts are set out in the alleged libel, those to whom it is published can read them and may regard them as facts derogatory of the Plaintiff, but where, they are contained only in particulars, and are not published to the world at large they are not the subject-matter of the comment, but facts alleged to justify that comment."

[96] However the Defence of Fair Comment does not extend to misstatements of fact.

In **Albert Cheng vs Tse Wai Chun Paul- Hong Kong Final Appeal Court No 23 of 2000 (Civil)** Lord Nicholls of Birkenhead NPJ stated that the ingredients of the Defence of Fair Comment were fivefold.

(a.) First the comment must be on a matter of Public Interest.

(b.) Secondly the comment must be recognizable as comment, as distinct from an imputation of fact. If the imputation is one of fact, a ground of defence must be sought elsewhere.

(c.) Thirdly the comment must be based on facts which are true or protected by privilege.

(d.) Next the comment must explicitly or implicitly indicate, at least in general terms, what are the facts on which the comment is being made. The reader or hearer should be in a position to judge for himself how far the comment was well founded.

(e.) Finally the comment must be one which could have been made by an honest person, however prejudiced he might be, and however exaggerated or obstinate his views; **It must be germane to the subject matter criticized. But a critic need not be mealy mouthed in denouncing what he disagrees with. He is entitled to dip his pen in gall for the purposes of legitimate criticism. (My emphasis)**

[97] Again in **Reynolds vs Time Newspapers** ibid- Lord Nicholls stated that:

"Traditionally one of the ingredients of Fair Comment is that the comment must be fair; fairness being judged by the objective standard of whether any fair minded person could honestly express the opinion in question. Judges have emphasized the latitude to be applied in interpreting this standard. Comment must be relevant to the facts to which it is addressed. It cannot be used as a cloak for mere invective. But the basis of our public life is that the crank, the enthusiast may say what he honestly thinks as much as the reasonable person who sits on the Jury. The true test is whether the opinion however exaggerated, obstinate, or prejudiced was honestly held by the person expressing it."

Lord Diplock in **Silkin vs. Beaverbrook Newspaper Ltd. [1958] 1 WLR 743** also stated that:

"It is important to keep in mind that this defence is concerned with the protection of comment, not imputations of fact. If the imputation is one of fact, a ground of Defence must be sought elsewhere.

[98] In applying the principles of law outlined this Court is of the view that to the ordinary reasonable man, Mr. Perkins pronouncements on the radio were mostly comments in his honest opinion.

The material comments are as follows;

a) That the matter of Electoral reform must come to fruition before the next Federal or Local Elections.

b) That until the Registration Officer in the person of Beulah Mills is removed from the Electoral Office, there will be problems.

c) That Ms. Beulah Mills was an unfit person to be in that office, indecent to be there and corrupt.

d) That Ms. Mills worked hand in hand, day and night to help the change of Government come to the Island.

e) That someone who both Parties and the people of Nevis can have confidence in should be brought into that office.

[99] This Court is of the deliberate view that the words spoken by Mr. Perkins in relation to Ms. Mills are comments. In his evidence he insisted that he was not targeting Ms. Mills personally but making comments on her function as Registration Officer and the illegal and fraudulent registration of persons on the voters list. The words conveyed to the Court the meaning that Ms. Mills was not fit to be Executive Officer of the Electoral Office as she had corrupted the Electoral System by the registration of voters who were not qualified or legal to be on the Electoral list and it was indecent for her to occupy that office.

Ms. Mills as a public officer has to be held accountable and must be subjected to the most searching, scathing criticism of her performance in a public office. That criticism, once it is done by a person honestly and without Malice amounts to Fair Comment on a matter of Public Interest.

Mr. Perkins highlighted examples of the Claimant Ms. Mills registering six persons from the Dominican Republic who were ineligible to be registered in particular one "Pablo Ramirez" and "Delfido Garcia" and "Zenhastel Hector" who were nationals of the Dominican Republic who were registered on the Electoral list although they were not nationals of St. Kitts and Nevis, and a native Senior Police Officer from St. Kitts who did not live in Nevis.

[100] I am also of the view that the words spoken by Mr. Perkins were germane to the criticism of the functioning of the Electoral Office and that he honestly believed that there was a corruption of the Electoral system by Ms. Mills and that she was an unfit person to be in that office.

[101] In the Eastern Caribbean Court of Appeal case of **Phillip Abbott vs. Aziz Hadeed ANUHCVAP2010/041** the Learned J.A Carrington (Ag) stated inter alia;

"That the touchstone in determining whether a comment is fair, if objective, is namely, whether the maker of the comment had an honest belief in the view that he has expressed. Provided that the views expressed are honestly held and are germane to the subject matter on which it is made, it matters not how prejudiced or exaggerated they are. Although the learned trial Judge made no specific finding on whether the Appellant honestly held the views he had expressed, his

findings that there was no malice implies that he found that the views were honestly held as the test for malice is the lack of honesty. "

[102] Therefore after careful consideration of the Evidence and Authorties it is my view that the 1st Defendant Mr. Perkins can avail himself of the defence of Fair Comment. However Malice on the part of the 1st Defendant can defeat the defence of Fair Comment.

In the previously cited case of **Albert Cheng vs. Tse Wai Chun Paul** Nicholls L.J stated;

"Malice is subjective; it looks to the Defendant's state of mind. Secondly Malice covers the case of the Defendant who does not genuinely hold the view he expressed. In other words, when making the defamatory comment, the Defendant acted dishonestly. He put forward a view something which in truth was not his view; it was a pretence. The Law protects the freedom to express opinions, not vituperative make-believe."

[103] The Claimant has not proved with a scintilla of Evidence the malice that she alleges the 1st Defendant had towards her. Her Evidence was in fact that she could not prove malice although she was of the opinion that the 1st Defendant was malicious towards her.

[104] I am therefore satisfied that the 1st Defendant can avail himself of the Defence of Fair Comment on a matter of Public Interest and that this defence was not a hopeless or fanciful defence. Additionally I do not accept that the 1st Defendant was actuated by Malice when he spoke the words complained of by the Claimant; and that he honestly believed in the views he was expressing.

[105] With regard to the 2nd Defendant which also pleaded the Defence of Fair Comment. I have already found that the words spoken by Mr. Perkins were published to the Public. However it appears that VON Radio Mr. Herbert and host of the show in question Mr. Mark Brantley have adopted the position, that notwithstanding the words were stated by the 1st Defendant, they were not responsible for those words since they aired a disclaimer before and after the programme "On the Mark".

[106] Mr. Brantley had stated after Mr. Perkins had spoken the words complained of, the following:

"Let me say here for my part that I have no evidence of any corrupt or other practices by Ms. Beulah Mills at the Electoral Office. There have been a number of accusations made publicly quite publicly about allegations, about certain events that should have transpired. But speaking for my part, I have no evidence of it. I only want to make that clear to the listening public, because I think that it is only fair"

[107] The Learned authors of **Gatley on Libel and Slander 10th Edition paragraphs 8:29-8:32 Vicarious Liability** state that;

"Two principles were as much applicable to defamation as to any other Tort. First that where A procures or authorises B to commit a tort, A is liable with B as a joint tortfeasor. Secondly that where there is a relationship in the nature of employment, (i.e. Master and servant). However with regard to the 2nd category there has been in the context of defamation, a tendency to speak in the more general language of principal and agent. An independent contractor may be

described as an agent because he is engaged to bring about a result for the principal, but it is fundamental that his 'employer' is not liable for Torts committed by the contractor, but not authorized by the Employer."

In the case of **Maheod vs Jones [1977] 1 N2LR 441,** it was held by the Court that the operator of a "Talk Show" for a Radio Station was an Independent contractor who was liable for the malicious contribution of a caller to the Radio Station.

[108] Therefore all persons, the Managing Director of the Company, the Editor, the Broadcaster, the host of the programme can all be held liable for any defamatory remarks that are published or made by a caller maliciously. It is not a defence to a Claim for Defamation for the Defendants to assert that they gave a disclaimer to the words that were published. In the circumstances, VON Radio, Mr. Herbert and Mr. Brantley (though not a party to this claim) would be liable for any defamatory words published by anyone on VON Radio, and the disclaimer will have no effect, and be of no assistance to the Defendants.

[109] Mr. Hobson Q.C. in his written submissions, contends that the Managing Director of VON Radio Station, Mr. Evered Herbert met the Claimant Ms. Mills and apologized to her a few days after the statement was made by Mr. Perkins. Learned Counsel argued that this was done to show, good faith, contrition and remorse for the words complained of by the Claimant.

[110] Notwithstanding the 2nd Defendants' actions Learned Queen's Counsel, Mr. Hobson argued in his written submissions that "the conduct of any person who holds or seek public office or position of public trust is a matter of public

interest." In **Gatley on Libel and Slander 10th Edition at paragraph 12:29** reference is made to the statement of **Bain J in Manitoba Press Co. vs Martin [1892] 8 Manitoba Rep 70** where he states that "One who undertakes to fill a public office offers himself to public attack and criticism, and it is now admitted and recognized that the public interest requires that a man's public conduct shall be open to the most searching criticism."

Again **in Branson vs. Bower [2002] Q.B 735** Lady J stated that "In a modern democracy all those who venture into public life, in whatever capacity must expect to have their motives subjected to scrutiny and discussed. Nor is it realistic today to demand that such debate should be hobbled by the constraints of conventional good manners still less of deference. The Law of Fair Comment must allow for healthy scepticism.

[111] Mr. Hobson Q.C posited that the content of the statement made by Mr. Perkins is substantially accurate and that the words used was an honest view of which Mr. Perkins was entitled to hold, and therefore the defence of Fair Comment must stand against any action for slander brought against the Defendants.

[112] In relation to the Issue of the tape recording of the words complained of by the Claimant, the evidence from the Claimant is that she bought two tapes from the VON Radio Station, and gave a copy to her lawyer. In her evidence she said

"I bought the tape from VON Radio. I bought two tapes and paid $40.00. People were offering me copies, but I cannot disclose who came to me."

Upon re-examination, Ms. Mills said that she had a copy of the tape which she purchased. "They are in a Jacket Programme (straight talk) Wednesday 14th March 2007; Topic- General Issues, Host- Hon. Mark Brantley; Duration- Two hours produced by VON Radio (Eastern Caribbean Powerhouse).

[113] Mr. Mark Brantley host of the programme "On the Mark" stated in his evidence that the standard operating procedure he had with VON Radio was that if there was anything said on the programme that could not be independently supported with evidence it would be removed from the record before rebroadcasting the next day. Mr. Brantley went on to state that according to standard procedure when a request for a copy of the show was made, the station would contact him and seek his permission to make a copy available to the person requesting it. When this has been done, there was no charge except a small charge for the CD, as he was not in the business of selling copies of the show.

Mr. Brantley added that there was no request made to him to provide copies of the show to anyone, but if the Claimant had obtained a copy of the programme and paid for it, then she had circumvented the procedures at the Radio Station.

[114] Another witness for the 2nd Defendant Yvonne Thompson who is the secretary for VON Radio for the past fifteen years in her evidence denied that

Ms. Mills had bought the CD from her. Her evidence was that she had never seen Ms. Mills at VON Radio, and that on the 15th March 2007 if VON Radio was approached for a copy of the program, it would be a cassette. "We would have to get the Master Disc and ask the Technical person to do the recording."

Under cross-examination Ms. Thompson stated that she did the typing and collection of money for VON Radio which went into the cash pan of VON Radio. She also stated that she remembered the 15th March 2007, it was a Thursday and no one had asked to buy a tape of the show "On the Mark." However she could not remember how many persons had asked to buy tapes of the show for the whole month of March 2007, not how much money was collected from the sale of Tapes in 2007.

[115] Next, the Court heard the evidence of Evered Herbert, Manager of VON Radio for 26 years. He stated that the evidence of Ms. Beulah Mills in relation to the tape recording was untrue; and that the procedure at VON Radio was that if anyone wanted a copy of any programme in particular Mr. Brantley's programme, they would be directed to Mr. Brantley who would then instruct the radio station to produce the copy.

Mr. Herbert stated further that during that period of time in 2007, the station only recorded programmes on mini discs and cassette tapes, and that if they were to reproduce a copy of a programme for someone, it would be reproduced on a cassette tape, in "Real Time" meaning that it would take them two hours to make one copy of the programme.

Mr. Herbert went on to state that it would have been difficult for the Radio Station to reproduce a cassette tape the day following the programme as the Master copy of the programme was used to replay the programme the following day. Interestingly he also said that when someone asks for copies of Mr. Brantley's programme or any programme, if we are going to give them a copy, we would ask them **to bring a cassette or CD which they would like this copied unto.** If they express a difficulty in being able to do so, **we may offer to use one of our CD's or cassettes... and they will pay a fee to cover that cost. (My emphasis)**

[116] I have reviewed the evidence both oral and written on this issue and I am satisfied that the CD which was presented to the Court by Ms. Mills was bought from VON Radio by her from the said Ms. Thompson. I disbelieve the evidence of Ms. Thompson and refer to the evidence outlined from Mr. Herbert himself that if persons wanted a copy, VON Radio would offer to use one of their **CD's** or cassettes and they would pay a fee. Also I find Mr. Herbert's evidence very strange and unbelievable in that in **2007**, a Radio Station would not be able to produce recordings on **CD's** but only on cassettes, because they did not have the equipment to reproduce recordings on **CD**. I also disbelieve the Claimant when she said that the offending words were repeated on the night following their first broadcast and accept Mr. Herbert's evidence on the time and date for the rebroadcast of the programme. This was the extent of my reservations and doubts on the testimony from the witnesses on the "Tape Affair".

[117] Notwithstanding my finding on the tape recording issue, I also find that the Claimant has not adduced any evidence of Malice against the 2nd Defendant. Her sole evidence against Mr. Evered Herbert was under cross examination by Mr. Hobson and was as follows;

"Mr. Herbert complained that I had spelt his name wrongly. I did not do what he asked me, I told him to speak to my lawyer, Mr. Herbert has malice towards me, I told him what was wrong. This is the Malice I am grounding my Claim on."

[118] The 2nd Defendant has also pleaded that Fair Comment was their defence to the words complained of by the Claimant. I have already made a finding that the words spoken by Mr. Perkins was Fair Comment on a matter of Public Interest and that the Court was satisfied that the 1st Defendant was not actuated by Malice in the views that he honestly expressed.

[119] Since the 2nd Defendant can be held to be vicariously liable for the defamatory words spoken by the 1st Defendant. I conclude that although the words are found by the Court to be defamatory, the 2nd Defendant can also avail themselves of the Defence of Fair Comment, and I am satisfied that based on the evidence, both Defendants were not actuated by Malice and believed that the words spoken by Mr. Perkins the 1st Defendant were honestly expressed by him.

[120] I am fortified in my opinion by the witness statement of Mr. Evered Herbert at paragraph eleven when he stated "I received a letter from Mr. Oral Martin from the Law firm of R.L Kawaja and Associates. This was referred to our

solicitors Mr. Theodore L. Hobson with instructions to apologize for the unfortunate remarks made by Mr. Michael Perkins even though I did not consider that it rose to the legal definition of Slander against the Claimant but rather a passing remark about the corrupt practices which many, including the Premier Mr. Joseph Parry have indicated took place at the Registration Office which the Claimant is the person in charge, and the person who is the Registration Officer who has registered virtually all of the persons on the voters list since September 2005."

[121] Further at paragraph 12 of the said Witness Statement, Mr. Herbert stated that a letter of Apology was sent to the Claimant's solicitor dated the 12th April 2007, and at no time did the Claimant or her solicitors inform the 2nd named Defendant that the Claimant was unhappy with the apology or that it was unacceptable.

[122] I am also supported in my view that the 2nd Defendant can avail themselves of the Defence of Fair Comment by the evidence adduced from Mr. Mark Brantley, the host of the programme on VON radio "On the Mark" where the words complained of were made. In his witness statement at paragraph 16, he states that the issue of corruption and irregularities at the Electoral Office in Nevis was not a new one, and did not start with the comments complained of by the Claimant. He continued in his statement to say that:

"Even the Nevis Reformation Party has led a march through Charlestown protesting corruption at the Electoral Office in Charlestown headed by the Claimant. I have personally spoken out publicly about Electoral irregularities

at that office and have personally raised the matter with both the Supervisor of Elections and the Prime Minister... The sad state of the Electoral system and efforts to corrupt it have been widely discussed on radio, in the print media and in both the Nevis Island Assembly and the Federal Parliament, At all times while these allegations were being made, the Claimant was the person in charge of the Electoral Office."

[123] I have cited these sections of the evidence adduced by the 2nd Defendants to illustrate that I am satisfied that the 2nd Defendants, VON Radio the host Mr. Mark Brantley and Mr. E. Herbert have led credible evidence to substantiate their position that the words complained of were Fair Comment on a matter of Public Interest, and that in the circumstances they honestly believed in the views expressed by the 1st Defendant and were not actuated by Malice.

Issue No. 5

Damages

[124] Ms. Beulah Mills, the Claimant has claimed Damages including Compensatory and Exemplary damages and an Injunction to restrain the Defendants, their agents or otherwise speaking or publishing the said or similar defamatory words of the Claimant.

In the case of **John vs MCM Ltd. [1996] All E.R 146,** Sir Thomas Bingham M.R stated that

"The successful Plaintiff in a defamatory action is entitled to recover, as general compensatory damages, such sum as will compensate him for the

wrong he has suffered. That sum must compensate him for the Damage to his reputation, vindicate his good name, and take account of the distress, hurt and humiliation which the defamatory publication has caused.

[125] In determining the Quantum of Damages the Court must either take into account other person's attitude to the Claimant, Ms. Beulah Mills; whether they shunned or avoided her or whether she was lowered in the estimation of right thinking members of society. The compensation that is awarded is to console the Claimant for the distress she suffers from the publication due to injury to her reputation, and as a vindication of her reputation.

[126] However on the evidence that has been presented, I am satisfied that Ms. Mills has not suffered any pecuniary loss and therefore is **not** entitled to be compensated for loss that she suffered. If Defamation is proved, the Law presumes that the Claimant suffered loss.

[127] In relation to the Claim for Exemplary Damages, the learned authors of **Gatley on Libel and Slander 10th Edition paragraph 32:53** state "To support a Claim for Exemplary Damages, there must be evidence that the Claimant knew that what he proposed to publish was defamatory and untrue, or that he was reckless, not caring whether the publication was true or false and that he decided to publish because the prospects of material advantage outweighed the prospects of material loss.

See: Rookes vs. Barnard [1964] A.C 1129; Broome vs Cassell [1972] AC 1027 per Lord Hailsham.

"Exemplary damages are intended to punish the defendant for the wilful commission of a Tort, or to teach him that Tort does not pay." See: **Kuddus vs. Chief Constable of Leicestershire [2001] UKHL 29**.

As the damages are punitive, the means of the Defendant are relevant and evidence of the Defendants financial resources is admissible.

[128] In my view, the Claimant has not adduced an iota of evidence to allow me to conclude that the Defendant knew the words he uttered over the Radio programme was defamatory and that he was malicious, reckless and uncaring as the truth or falsehood of the spoken words. Accordingly I have no basis in Law for awarding Ms. Mills exemplary damages.

[129] Additionally, the award of Damages are to assuage the injury to Ms. Mills' feelings. I am not convinced that Ms. Mills' reputation was injured in any way. She continues to be employed as Executive Officer at The Electoral Office even seven years after the Defamatory words complained of were spoken by Mr. Perkins on the radio programme.

[130] On the totality of the evidence on the issue of Damages, I am of the view that this is **not** a matter for an award of Compensatory of Exemplary damages since I have not found any conduct by the Defendants that necessitated such an award.

[131] In relation to Learned Counsel's submission on the non-compliance of the Defendants to Party 69 (3) of the CPR 2000. I refer to the recent and landmark decision of **Spiller & Another vs. Joseph and others [2010] UKSC 53** where the UKSC considered two main issues. First, can

Defendants rely in support of a plea of Fair Comment on matters to which they made no reference in their particulars and pleadings?

Second, whether in the particular case the matter to which the Defendants did refer in their comment were capable of sustaining a defence of Fair Comment.

Lord Phillips in his judgment explored the history of the defence of Fair Comment and examined a long line of Defamation cases.

[132] At paragraph 104 of his Judgment, Lord Phillips stated;

"I do not consider that Lord Nicholls was correct to require that the comment must identify the matters on which it is based with sufficient particularity to enable the reader to judge for himself whether it was fell founded. **The comment must however identify at least in general terms what it is that has led the commentator to make the comment, so that the reader can understand what the comment is about** and the commentator can, if challenged explain by giving particulars of the subject matter of his comment why he expressed the views that he did. A fair balance must be struck between allowing a critic the freedom to express himself as he will, and requiring him to identify to his reader why it is that he is making the criticism."

[133] This Court can do no better than to adopt the dicta of the learned Law ,Lord Phillips in the said case and the interpretation of Part 69 (3). I am satisfied that the Defendants have outlined in their pleadings in general terms, what it

is, that has led Mr. Perkins to make the comments that he made, and have met the threshold required under Part 69 (3) of the CPR.

Injunction

[134] Ms. Mills has sought injunctive relief which prevents the Defendants from further defamation.

The Court will grant such an injunction if it is satisfied that the words are injurious to the Claimant, and there is reason to apprehend further publication by the Defendant. See: **Procter vs. Bayley [1889] 42 Ch. D 390 C.A** per Lord Fry who stated "An Injunction is granted for prevention, and where there is no ground for apprehending the repetition of a wrongful act, there is no ground for an Injunction."

In the circumstances, I find no basis to grant the Injunctive relief sought by the Claimant; as there is no evidence before the Court where I could properly conclude that the 1st Defendant is likely to repeat the defamatory words about Ms. Mills. I believe he has learned hard lessons.

Conclusion

[135] It is hereby ordered as follows:

a. That the Claim Form, the Statement of Claim and the Amended Statement of Claim of the Claimant be and is hereby dismissed.
b. That there be prescribed costs to the 1st and 2nd Defendants in accordance with Part 65 of the CPR 2000.

[136] The Court gratefully acknowledges the assistance of learned counsel on both sides.

Lorraine Williams
High Court Judge (ag)