

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV 2018-03949

BETWEEN

ADRIAN LEONCE

First Claimant

KAREN-LEE BETHELMY LEONCE

Second Claimant

AND

RENUKA SINGH

First Defendant

GUARDIAN MEDIA LIMITED

Second Defendant

Before the Honourable Mr. Justice Frank Seepersad

Date of Delivery: December 17, 2021.

Appearances:

1. Mr C. Blaize, Mr F. Hove Masaisai instructed by Mrs. J. Farah-Tull Attorneys-at-law for the Claimant.
2. Mr M. Campbell and Mr. A. Rudder, Attorneys-at-law for the First and Second Defendant.

DECISION

1. Before the Court for its determination is the Claimants' Re-Amended Claim Form and Statement of Case filed on 12 April 2019 wherein the Claimants have sought the following relief:
 - a. Damages to the First Claimant from the Defendants, including aggravated and exemplary damages, for libel published via article in the daily Guardian Newspaper on 8 October 2018;
 - b. Damages for the republication of the article by third parties;
 - c. Damages including aggravated damages to the Second Claimant for breach of confidence: misuse of private information.
 - d. An order that the Defendants whether by themselves, their servants, agents or otherwise be prohibited and restrained or causing to be published and/or from republishing or causing to be republished any words, statements and/or innuendos defamatory of the First Claimant as complained of in the affidavit of Adrian Leonce dates the 30 October 2018;
 - e. An apology and public retraction in writing by the First Defendant to the First Claimant of the allegations made in the article written by the First Defendant and published by the Second Defendant on the 8 October 2018 in terms and form to be approved by the Claimant's attorneys or the Honourable Court. This public statement should take the form of the original defamatory publication, being an equally highlighted article published in both the Daily Guardian and online version;
 - f. Interest;
 - g. Costs;
 - h. All necessary and consequential orders, directions and inquiries that this Honourable Court may order;
 - i. Any other relief that the Honourable Court may deem just and expedient.

First and Second Claimants' Facts:

2. The First Claimant ("Mr Leonce") is a government minister and the current Member of Parliament for Laventille East/Movant since 2015. He is an experienced mechanical

engineer by profession. The Second Claimant (“Ms Leonce”) is married to the First Claimant and she is a secondary school teacher.

3. The First Defendant (“Ms Singh”) is a senior journalist with the Second Defendant.
4. On the 6 October 2018 Ms Singh contacted Mr Leonce via telephone and Whatsapp Messenger indicating to him that she had information that he had beaten his wife and he threatened the staff at Mt Hope Medical Hospital to keep the assault a secret.
5. Mr Leonce responded via Whatsapp and he denied the claims advanced but on 8 October 2018 an article was written by Ms Singh and published by the Second Defendant in its daily newspaper. The article was also posted on its online website entitled “MP: Wife recovering after near death fall”. Paragraphs 1 to 5 of the article reads as follows:

“Member of Parliament for Laventille East/Movant Adrian Leonce says his wife who suffered serious injuries to her face after falling at home is recovering after three “extensive surgeries”.

Two weeks ago, Leonce posted a statement on social media asking for prayers for his wife who was in a “terrible accident”.

There have been very little updates on her condition since then except for calls from staff at Mt Hope Medical Complex that Leonce’s wife did not show any injuries associated with a car accident as it was only her face that was damaged.

In fact, the injuries were so severe that staff at Mt Hope said she received three facial reconstruction surgeries.

In an interview on Saturday and Whatsapp exchanges over the weekend, Leonce said it was not the first time that he heard rumours that he was violent towards his wife. He described the persistent rumours as “mischief”.

6. Mr Leonce throughout his communication with Ms Singh maintained that his wife's injuries were due to a fall at their home at which time he was not present.
7. The Claimants contend that the First Defendant is guilty of irresponsible journalism as the publication made it seem, *inter alia*, as though Mr Leonce was on the defensive and that he had something to hide. Ms Singh, they say, deliberately and maliciously published the article and conveyed the impression that the First Claimant raised the issue of domestic violence on his own volition. Despite the fact that Ms Singh received clarification of the operative facts from Mr Leonce surrounding his wife's accident, the article was written so as to imply that he may have been responsible for his wife's injuries. The Claimants pointed to several disparaging comments by readers on the online version which suggested that Mr. Leonce may have been engaged in domestic violence.
8. The article was also published by Ricardo Welsh on Facebook and a Facebook group called "Kick out the PNM". Mr Welsh captioned the posted article with the following title, "IS PNM MP A WIFE BEATER OR NOT AS WIFE SUFFERS SERIOUS INJURIES TO HER FACE???- HE SAYS WIFE FELL AT HOME....". Kick out the PNM posted a photo of the First and Second Claimant together and labelled it with the words, "Serious injuries to wife face" and captioned the post with the following statement- "Paging CoP Gary Griffith, please investigate".
9. The Claimants further outlined that Ms. Singh has a history of defaming Members of Parliament that belong to the Peoples National Movement and that a claim was brought against her and another daily newspaper by Member of Parliament Mrs Ayana Webster-Roy.
10. The Claimants advanced that in its natural and/or literal and/or ordinary meaning or by way of innuendo, the article published on the 8 October 2018 meant and was understood to mean that the First Claimant is:
 - a. A criminal
 - b. Guilty of an offence under the Offences Against the Persons Act

- c. Guilty of an offence under the Summary Offences Act
 - d. Guilty of an offence under the Domestic Violence Act
 - e. Violent
 - f. Abusive to women
 - g. Not capable of performing his duties as a Member of Parliament
 - h. Has brought the Office of Member of Parliament into disrepute.
11. A complaint was also made on the basis that Ms Singh purportedly relied upon information which she received from staff at Mt Hope Hospital. Such medical information, they say was private, confidential and privileged as between a patient and their doctor and/or agents of the doctor and that a duty of confidence was imposed on the Defendants.
12. The Claimants advanced that they suffered shame and embarrassment as the First Claimant was put into public odium and disrepute and he was exposed to public ridicule and contempt.

First and Second Defendants' Facts:

13. The First Defendant admitted that her initial contact with Mr Leonce was via Whatsapp on 6 October 2018 and outlined that in response, Mr Leonce contacted her via a Whatsapp call and she related to him that she received calls from staff members of Mt. Hope Hospital about his wife's injuries. She enquired of him as to the extent of her injuries and if she underwent any surgeries. The First Defendant also told Mr Leonce that the staff members informed her that there was speculation amongst some of the hospital's staff that the Second Claimant's injuries were not consistent with a car accident and more likely the result of domestic violence. Further, she told him that staff members informed her that he threatened the hospital's staff not to report the Second Claimant's injuries.
14. In response Mr Leonce indicated, *inter alia*, that his wife's injuries were sustained from a fall and not a motor vehicle accident. Subsequent to the call, the First Claimant also sent Whatsapp messages to Ms Singh which explained how his wife sustained her injuries.

15. The Defendants denied that the published article was a product of irresponsible journalism and articulated that it was a matter of public interest for, *inter alia*, the following reasons:
- a. The said article alluded to allegations of spousal abuse, assault and/or other criminal acts perpetrated by the First Claimant, a Member of Parliament who has sworn an oath to, *inter alia*, uphold the Constitution and laws of Trinidad and Tobago;
 - b. Insofar as the alleged conduct of the First Claimant would be tantamount to a criminal offence and be a contravention of the laws of Trinidad and Tobago, the First Claimant's alleged conduct calls into question his fitness for office;
 - c. The cause of the Second Claimant's injuries are addressed in the said article in circumstances where the First Claimant had already publicly acknowledged the Second Claimant's injuries in a Facebook post published on 2 September 2018;
 - d. The said article engages with the question as to whether the Second Claimant was the victim of a serious crime;
 - e. Allegations of domestic violence between the First and Second Claimant had, prior to the publication of the said article, been in circulation in the public domain.
16. The Defendants further stated that the article was the product of responsible journalism and they pointed out that:
- a. The First Defendant received ostensibly credible information from trusted sources within the employ of Mt. Hope Hospital who were acquainted with the Second Claimant's medical condition;
 - b. The First Defendant initiated contact with the First Claimant and put the allegations of domestic abuse to him and recorded his responses;
 - c. The First Claimant's denials of the allegations of domestic abuse were prominently featured in the said article;
 - d. The Defendants, having been provided with an outright denial by the First Claimant, exercised editorial and journalistic discretion in not making any mention in the said article of the alleged threats made to the hospital staff.

17. The First Defendant denied that she targets Members of Parliament who belong to the Peoples National Movement and stated that she produced numerous articles on members of successive governments.
18. The Defendants further averred that the said article was published on an occasion of Reynolds privilege.
19. The Defendants also denied that the information communicated in the article relating to the Second Claimant was confidential in character and suggested that it was information which was public knowledge or in the public domain owing to a previous post by the First Claimant.

The Evidence:

20. At the trial the Court heard evidence from Mr Foster Cummings MP, Mrs Ayanna Webster Roy MP, Ms Vanessa Beharry, Ms Abia Leonce, Mr Adrian Leonce MP, Ms Karen-Lee Bethelmy Leonce and Ms Renuka Singh. The material evidence in the case, however, came from Mr Leonce, Ms Leonce and the First Defendant.
21. The Court heard from Mr Cummings and Mrs Webster-Roy but felt that their evidence did not provide significant information in relation to the issues which it had to decide. However, the Claimants' daughter, Abia, confirmed that her mother fell at the family's home and was adamant that her mother was not the victim of domestic violence.
22. Mr Leonce testified that he has been the Member of Parliament of Laventille East/Movant since 2015. He accepted he received his first ministerial portfolio in 2019 and that in January 2020 he was reassigned to another ministry. He further testified that he was not responsible for his wife's accident. He said he was not at home at the time when the incident occurred and outlined that he received a telephone call from his daughter who informed him of his wife's accident. At the time of the telephone call he was on his way home and so he called Mr Cummings who lived close by, to render assistance.

23. Mr Leonce further testified that when he reached home his wife was on a bed and he took her first to Southern Medical Hospital and then to Mt. Hope Hospital. The witness denied that he told the staff at Mt. Hope Hospital that the Second Claimant sustained injury in a car accident or that he threatened anyone at the hospital.
24. Mr Leonce outlined that on 2 September 2018 he posted on the social media platform, Instagram, a message about his wife. He also accepted that his Instagram account was not private and that it can be accessed by anyone using Instagram. This witness said that the comments received from this Instagram post were positive and it generated numerous likes before the said article.
25. With regard to the Whatsapp communication with Ms Singh, Mr Leonce testified that he corrected her erroneous information that his wife was involved in a car accident or that she was a victim of domestic violence. The witness outlined that he responded to the First Defendant on Whatsapp and stated, *“It will be sad if this fabrication is perpetuated and start to affect my children who are already traumatized after experiencing seeing their mother in a near death state...”* .
26. With respect to the similar claim which was brought against the First Defendant by Mrs Webster Roy, the witness said that he did not know about this action at the time he communicated with the First Defendant via WhatsApp.
27. The witness testified that although the article contained some of the information which he conveyed to the First Defendant, it did not accurately portray his side of the story.
28. With regard to the republication of the article, the First Claimant agreed that he did not establish a connection between the Defendants and Mr Ricardo Welsh.
29. The next significant witness was Ms Leonce and she testified that she was never a victim of domestic violence. She said that she was heading to the bathroom in her house and

everything went blank. This witness further testified that she never told any one that she was in a car accident.

30. She indicated that she was aware that the First Claimant posted on social media about the incident. She also testified that she understood that the First Defendant contacted her husband and alleged domestic violence and she became anxious that an inaccurate article would be published. The witness said that there are aspects in the said article that were untrue as the article impliedly portrayed her as a battered woman who was living in an abusive relationship.
31. With regard to the assertion of breach of confidence, Ms Leonce testified that aspects of her medical treatment such as her facial injuries and the fact that she had to undergo three surgeries were referenced in the article. She contends that this personal information should not have been included. She reinforced that there was no medical document which indicated that her injuries were due to a car accident and the witness said she felt that her privacy was violated as even the name of the hospital was mentioned.
32. She accepted that the “Kick out the PNM” article was different from the article written by the First Defendant. The Second Claimant also accepted that there was no adduced evidence to establish that the Defendants were associated with Mr Welsh or “Kick Out the PNM” or that the Defendants authorised them to republish same. With regard to the republications on Trinituner, the Braveboy Report and Stabroek News, the witness acknowledged that these were not included in the Re-Amended Statement of Case and that the Defendants were not associated with these websites.
33. The only witness for the Defendants was the First Defendant. Her evidence was amplified to include that she did not recall Mr Leonce’s request that the Defendants should not publish the article. She accepted that she has a certain level of experience and that the Guardian Newspaper is not a “gossip type” paper and she explained what journalism and investigative journalism meant to her.

34. She testified that she received information which suggested that : 1) surgeries were performed on the Second Claimant's face; 2) she was involved in a car accident; 3) the surgeries were extensive; 4) hospital staff were threatened with respect to release of information. She also accepted that she also communicated with a third source and this source corroborated only two of the above listed factors namely, 1) that three surgeries were performed and 2) the Second Claimant suffered injuries to her face. This source did not indicate that Mr Leonce was engaged in domestic violence nor was there any suggestion that there was information which suggested that the Second Claimant's injuries were attributed to a car accident.

35. The Court asked the witness whether Mr Leonce confirmed that his wife was not in a car accident and the witness said yes. She then accepted that his response directly contradicted a material aspect of her source's information. She was also asked whether she did anything other than speak to Mr Leonce to rationalise that inconsistency and she said she did not. She further accepted that she made no attempt to contact Ms Leonce or any other person who may have had direct knowledge of the incident which occurred.

The issues:

36. The Court has to determine the following primarily issues :

- a) Whether the article published on the 8th of October 2018 or parts thereof , is defamatory of the First Claimant and in its determination of this issue the Court has to consider the defence of Reynolds Privilege.
- b) Whether the publication amounted to a breach of confidence and misuse of the Second Claimant's private medical information.
- c) Whether the Claimants are entitled to damages.

The Law:

37. Halsbury's Laws of England Volume 32 (2012) defines an actionable libel as follows:

“511. A libel for which a claim will lie is a defamatory statement made or conveyed by written or printed words or in some other permanent form, published of and concerning the claimant, to a person other than the claimant.”

38. A claim presented in libel is a private legal action and the ultimate object is to vindicate the Claimant's damaged reputation and to provide for meaningful reparation for the private injury inflicted by the wrongful publication. The Defendant in any libel case can mount numerous defences including the defence of Reynolds privilege derived from the case Reynolds v Times Newspapers Ltd [2002] 2 AC 127. This defence is premised upon the traditional defence of qualified privilege. The defence requires a mutual duty and interest as between the publisher and recipient of the information. It is accepted that in a modern democracy, journalists are entrusted, *inter alia*, with the professional obligation to impart information on matters of public interest as they can unearth and/or publicise information which can lead public officials to be held to account for their actions and decisions.

39. The Court of Appeal in Civ. App. No. 118 of 2008 Kayam Mohammed and others v Trinidad Publishing Company Limited and others stated at paragraphs 60 and 62 as follows:

“60. The defence of *Reynolds* privilege is a complete defence and if established denies any remedy to the claimant. It only arises as a live issue where the statement in question is defamatory and untrue. Reynolds privilege therefore protects the publication of untrue and defamatory matter. It does so for two reasons that impact on freedom of expression and freedom of the press; first so as not to deter the publication in question, which might have been true and secondly, so as not to deter future publication of truthful information (see *Loutchansky v Times Newspapers*

Ltd. (No. 2) [2002] 1ALL E.R. 652,68 (at para 41)). It protects such matter where the publication is to the public at large or a section of it and where (1) it was in the public interest that the information should be published and (2) where the publisher has acted responsibly - a test usually referred to as “responsible journalism”.

...

62. In *Reynolds* Lord Nicholls provided a non exhaustive list of certain considerations which may be of relevance in deciding whether the test of responsible journalism is satisfied. These are as follows:

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

40. With respect to verification, the UK Supreme Court in **Flood v Times Newspaper Limited** [2012] UKSC 11 stated at paragraph 79 as follows:

“Thus verification involves both a subjective and an objective element. The responsible journalist must satisfy himself that the allegation that he publishes is

true. And his belief in its truth must be the result of a reasonable investigation and must be a reasonable belief to hold.”

41. In **Jameel and others v Wall Street Journal Europe Sprl [2006] UKHL 44** the House of Lords expressed the responsibility at paragraph 149 in the following terms :

“...The publisher must have taken the care that a responsible publisher would take to verify the information published. The actual steps taken will vary with the nature and sources of the information. But one would normally expect that the source or sources were ones which the publisher had good reason to think reliable, that the publisher himself believed the information to be true, and that he had done what he could to check it”.

Analysis of the evidence and application of the Law:

42. The article was published subsequent to a conversation which the First Defendant initiated with the First Claimant. The First Defendant called the First Claimant and he maintained that his wife's injuries were sustained as a result of a fall at home and at a time when he was not at home.

43. The First Defendant's evidence is that her initial information came from a hospital source who indicated that the Second Claimant's injuries were not consistent with injuries sustained in a car accident.

44. After her exchanges with the First Claimant and her additional source, the First Defendant must have realised that there was no car accident and she should have then viewed her source's information with some degree of suspicion and caution. As a responsible journalist, the First Defendant should have thereafter pursued further verification of the operative circumstances surrounding the incident. Attempts should have been made to speak with the Second Claimant especially since she had no documentary evidence either

by way of hospital records or police report to suggest that the Second Claimant may have been the victim of domestic violence.

45. The insertion in the article of the following paragraph, *“In an interview on Saturday exchanges over the weekend. Leonce said it was not the first time that he heard rumors that he was violent towards his wife and he described the persistent rumors as "mischief"”* (the highlighted portion) was inappropriate and ill advised.
46. The inclusion of the highlighted portion was wholly unnecessary having regard to the complete absence of corroborative evidence to suggest that the Second Claimant may have been physically abused by her husband.
47. The social media comments which were posted after the publication referenced discussions as to whether or not the Second Claimant was a victim of domestic violence.
48. The natural and ordinary meaning of the words used in the article, conveyed to the ordinary reasonable and non-naive reader, the possibility that there may have been a purposeful fabrication and cover up of the possibility that Second Claimant was the victim of violence at the hands of her husband. The combination of words clearly conveyed a meaning to the minds of the readers that there was, "more in the mortar than in the pestle" and that domestic abuse seemed to be behind her injuries.
49. The Court considered the defence of Reynolds privilege and it had regard to the range of possible meanings which the used words were capable of bearing but found that no contradictory meaning other than the one as aforesaid was likely.
50. The social media comments cemented this view in the Court's mind as they demonstrated that the meaning which was conveyed to the reasonable reader was that the situation may have involved domestic violence.

51. The defence of Reynolds privilege is an integral part of the media landscape as it protects the publication of material in circumstances where a publication was in the public interest.
- 52. Not everything in which the members of the public may have an interest necessarily satisfies the “public interest” aspect of the defence. The public may be interested in issues, situations or occurrences which may be entertaining or salacious but which are devoid of any element of national significance. In this regard, the media has for too long genuflected to the generation of finances by publishing articles which contain puerile, sensational, sensual or personal information which has no real public interest aspect or element. It is the duty of media practitioners, acting responsibly and without biases, to judge where the line should be drawn. Generally matters should fall under the rubric of public interest where they relate to the public functions and /or the conduct or contributions of those who form an integral part of the social framework and whose activities or actions benefit or impact upon members of the society.**
53. The Second Claimant is and was not a public figure and like any citizen, she deserved some privacy in relation to her medical condition. On the other hand, her husband, the First Claimant, as a minister of government has a heightened obligation to uphold the Constitution and the law. If therefore he engaged in domestic violence, any such established scenario is certainly a matter of public importance.
54. The First Defendant, however, had no credible information or basis to insert into the public domain any suggestion that the First Claimant acted inappropriately or that he may have engaged in domestic violence. The inclusion of the First Claimant’s response was purposeful and the First Defendant sought to make public the “possibility” that the First Claimant was a “wife beater”. This suggestion was devoid of justification as it was speculative and premised upon mere gossip.
- 55. If, the First Claimant had committed an act of domestic violence, it is logical to expect that right thinking members of a society which values its women, would not say that**

“the Second Claimant didn’t choose her man wisely” but they would condemn the acts of violence and demand that the perpetrator be held to account. It is therefore obvious that a story which suggested that a Government Minister was possibly guilty of domestic violence was a “news item” which would sell like “hot hops” and generate increased readership and revenue.

56. As a teacher in an all-girls secondary school, the Second Claimant’s students likely viewed her as a role model for female empowerment given that she was and still is a working professional, fitness instructor, mother and the supportive wife of a husband who has offered himself to the rigours of public service. An assertion that she may have been a silent victim of abuse had the potential to materially impact upon the manner in which she was viewed by her students and possibly signalled to young women, that you really cannot have it all and that in the face of violence, women who live lives of relative comfort, need to “save face” and suffer in silence.

57. The WhatsApp conversations as between the First Claimant and the First Defendant emphatically signalled that her source’s information required further verification but she failed to engage further inquires so as to ascertain whether there was plausible or reliable evidence of domestic violence.

58. Based on its review of the evidence, this Court, having applied a practical and flexible approach in its evaluation of the First Defendant’s standard of conduct, holds that she failed dismally and abdicated her obligation to adhere to the standards of responsible journalism.

59. The inclusion of the highlighted portions of the article, introduced into the public domain the insinuation that the First Claimant was a possible wife beater and that the Second Claimant was his helpless victim. These insinuations were inserted without justifiable foundation and possibly altered the public’s perception of an upstanding professional couple who seemed to be admirably balancing service to country and devotion to family.

60. Gossip ought not to be the foundation upon which news is premised. Sadly and notwithstanding the billions spent on education, this society's appetite for salacious stories is significant and it is fuelled, unabated, by the media. In an era where occurrences and developments reach a wide audience almost instantly via social media platforms, traditional media houses should understand that their continued relevance will depend on their ability to publish verified, reliable and accurate information.

61. The decision to introduce the First Claimant's response to the unsubstantiated allegation of violence was seemingly a calculated one and it was obvious that the inference of domestic violence by a Government Minister was likely to gain traction in the public domain.

62. The First Defendant should have also realised that the insertion of the First Claimant's response to her baseless enquiry, legitimized and clothed gossip with a cloak of news worthiness.

63. In this modern media environment social media platforms cannot be easily controlled and when the Court viewed the republications complained about, it holds view the that it was not possible for the Defendants to prevent the referenced republications as they were outside their remit and control. Accordingly, the Defendants cannot be held to be vicariously liable for the said republications especially since no evidence was adduced which demonstrated that they either encouraged, sanctioned or authorized same.

64. In addition, this Court holds the view that the evidence in this case does not support a claim for breach of confidence nor does it establish that there was a misuse of private medical information by the First Defendant. The information as to the Second Claimant's hospitalization, was, prior to the publication of the article, already in the public domain as the First Claimant posted same on his social media platforms. In any event the reporting

that a Minister's spouse was hospitalized, suffered facial injuries and underwent multiple surgeries, without more could hardly occasion damage.

65. The Court further formed the view that the Claimants' allegation that the First Defendant targeted members of the PNM, was unnecessary and wholly unsupported by the evidence. In response, the First Defendant adduced evidence which established on a balance of probabilities, that she had written about the alleged misconduct of office holders across various administrations.

66. Many politicians seemingly believe that they are untouchable. Constructive or justified criticism as well as suggestions of impropriety are often addressed by the politicising of the commentary and the authors. This position is seemingly adopted with the objective of distracting and deflecting. This manner of response is becoming the modus operandi of political operatives who pose as social commentators and their reach has even extended to decisions of the Court. This practice is unacceptable, it undermines the administration of justice, jeopardises the rule of law and has no place in a democratic society.

67. Based on the adduced evidence, this Court resolutely concludes that the inclusion of the First Claimant's responses to the suggestion that he may have been an abusive spouse, was made without justification and it was not premised upon reliable information. Consequently, the insertion was not the product of responsible journalism.

68. The Court holds the view that the publication on the 8th of October 2018 was meant to be understood and was understood to mean that the First Claimant was possibly a wife beater and that he may have committed offences under the Domestic Violence Act Chap. 45:56 and The Offences Against The Person Act Chap. 11:08. It was further meant to be understood and was understood that the First Claimant may not have been suitable to hold elected office and/or a ministerial portfolio.

Assessment of damages:

69. Having found that the article was defamatory of the First Claimant, the Court must now consider the issue as to the quantum of damages which should be awarded.

70. **Halsbury's Laws of England 4th edition Vol 28 at paragraph 18** states:

“If a person has been libelled without any lawful justification or excuse, the law presumes that some damage will flow in the ordinary course of events from the mere invasion of his right to his reputation, and such damage is known as “general damage” ... [he] is not required to prove his reputation, nor to prove that he has suffered any actual loss or damage ... having proved a statement defamatory of him and not excused by any available defence he is always entitled to at least nominal damages.”

71. To attract a substantial award of damages the requisite degree of evidence as to the impact of the libel must be adduced. In **Hayward v Hayward [1897] 1Ch D 905** where as a result of vague and imprecise evidence of injury to the reputation of a business on the publication of a disparaging article, nominal damages were awarded. Conversely, in **CV2010-04909 Keith Christopher Rowley v Michael Annisette** where sufficient evidence was brought to prove injury both to the private and public aspects of the life of a prominent political figure, including how the libel impacted his children whose concerns he was forced to address, an award of \$475,000.00 inclusive of aggravated damages was made.

72. The Court of Appeal in **Civil Appeal No 166 of 2006 TnT News Centre Ltd v John Rahael** at paragraph 10 stated:

“10. The purpose of an award of damages in a defamation action is threefold in nature: first, to compensate the claimant for the distress and hurt feelings, second, to compensate the claimant for any actual injury to reputation which has been proved or which may reasonably be inferred and third, to serve as an outward and visible sign of vindication. Thus in the assessment of damages several important factors fall to be considered. In **John v MGN** it was noted that in assessing damages

regard must be had to the extent of the publication and the gravity of the allegation. The following passage from the judgment of Sir Thomas Bingham is worthy of note:

“The successful plaintiff in a defamation 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. In assessing the appropriate damages for injury to reputation, the most important factor is the gravity of the libel; the more closely it touches the plaintiff’s personal integrity, professional reputation, honour, courage, loyalty and the core attributes of his personality, the more serious it is likely to be. The extent of the publication is also very relevant: a libel published to millions has a greater potential to cause damage than a libel published to a handful of people.”

73. This Court also considered the factors enunciated by Lord Bingham in **John v MGN [1997] QB 586** and noted that the First Claimant is still gainfully employed. In fact, the First Claimant accepted in cross-examination that post 2018 he was promoted as he was given a ministerial portfolio. Notwithstanding the publication and the unjustified insinuations that he was a ‘wife beater’, the First Claimant’s political party and his constituents were obviously unaffected by that erroneous portrayal and he was in, 2020, re-elected as the Member of Parliament for Laventille East/Movant. In the circumstances, this Court finds that the First Claimant’s reputation suffered no significant long term detriment as a result of the said article.

74. However, the First Claimant and his family must have experienced distress, hurt and humiliation because of the said article. In fact, they all testified that they received family therapy. This speaks to the gravity of the libel and its impact upon them.

75. The Court further considered the fact that the First Claimant is a public figure and noted that the said article created an insinuation that he was unsuitable for high public office. In addition the article brought unjustified ridicule and odium to a model family which was worthy of emulation as opposed to vilification.
76. The evidence established that the reach of the publication was extensive as it was replicated on social media platforms and potentially reached significant audiences around the globe.
77. The Court also reviewed the following cases as a guide to assist it in its determination of an appropriate award of damages.
78. In **HC 3039 of 2008 Robin Montano v Harry Harrinarine** the claimant was called a racist and a hypocrite and these claims attracted an award of \$250,000.00.
79. Regionally, in **HC185/2009 Lester Bird v Winston Spencer**, the Defendant, the then Prime Minister of Antigua accused the Claimant, another former Prime Minister of theft of public funds, corruption and vote padding in the local government elections at a public rally carried live on national radio. The court in that case found the words complained of to be of a serious nature and that they impugned the character of the Claimant and awarded the Claimant \$75,000.00 EC or \$190,000.00 TT.
80. In **CV2017-00507 Andrew Gabriel v Phillip Edward Alexander** the Court found that a publication made on Facebook was defamatory and awarded the Claimant \$525,000.00 general damages and \$250,000.00 exemplary damages.
81. In **CV 2018-02405 Alfred I. Pierre v Francis Morean** the Claimant was awarded the sum of \$900,000.00 inclusive of aggravated damages. This case concerned defamatory statements made of the Claimant via a Facebook post.
82. In **CV 2014- 00134 Anand Ramlogan v. Jack Austin Warner** the Claimant was the then Attorney General of Trinidad and Tobago and the Court awarded the sum of \$600,000.00

inclusive of aggravated damages and an award of exemplary damages in the sum of \$200,000.00.

83. It appears that within the recent past, the High Court has increased the quantum of awarded damages in defamation cases which involve politicians. This is a development with which this Court is unable to align itself.

84. This is a society which traditionally displays a short memory and negative reputations rarely impede the resolve and electability of politicians. These high awards in defamation suits offer greater compensation to politicians than that which is awarded to citizens who suffer significant personal injuries and they are simply not justified.

85. The purpose of awarding damages in defamation cases is primarily compensatory not punitive and the holder of public office has no automatic entitlement to inordinately high awards which exceeds that which could be properly considered as being “compensatory”. This applies more particularly in instances where there is little to no evidence to establish the extent to which the defamatory statements have had a negative impact.

86. In this regard the observations of Sir Thomas Bingham M.R. in *John v MGN* (supra) at page 611, are worthy of repetition:

““Any legal process should yield to a successful plaintiff appropriate compensation, that is, compensation which is neither too much nor too little. That is so whether the award is made by judge or jury. No other result can be accepted as just. But there is continuing evidence of libel awards in sums which appear so large as to bear no relation to the ordinary values of life. This is most obviously unjust to defendants. But it serves no public purpose to encourage plaintiffs to regard a successful libel action, risky though the process undoubtedly is, as a road to untaxed riches. Nor is it healthy if any legal process fails to command the respect

of lawyer and layman alike, as is regrettably true of the assessment of damages by libel juries.”

87. In this case, the First Claimant undoubtedly suffered emotionally, as he witnessed the impact of the publication on his wife and children. The Second Claimant seems to be a private woman who supports her husband but stays in the background and the article brought unsolicited, unjustified and unwelcomed attention to her. She, by implication, was painted as a weak victim of a powerful man and such a portrait was inaccurate, highly offensive and must have occasioned substantial distress to this family.

88. With regard to aggravated damages, in **Sutcliffe v. Pressdrum Ltd [1991] 1 Q.B. 153 CA at 184**, Nourse LJ stated that:

“The conduct of a defendant which may often be regarded as aggravating the injury to the plaintiff’s feelings, so as to support a claim for ‘aggravated’ damages includes a failure to make any or any sufficient apology and withdrawal; a repetition of the libel; ...persistence by way of a prolonged or hostile cross-examination of the Claimant...”.

89. This Court noted that the said article negatively impacted the First Claimant and his family to the extent that they required therapy and holds the view that an uplift for aggravated damages is therefore appropriate.

90. Based on all the operative circumstances, the Court finds that the First Claimant should be awarded damages in the sum of \$250,000.00, inclusive of an uplift for aggravated damages.

91. The Court next considered the issue as to exemplary damages and noted that in **Gatley on Libel and Slander, 12th Edition pages 361-365 paragraph 9.25**, the learned author stated as follows :

“Exemplary damages are intended to punish the defendant for the wilful commission of a tort or to teach him that tort does not pay.”

92. In **Rookes v Barnard [1964] A.C. 1129** the court determined that exemplary damages may be awarded where the tortious act has been done “with guilty knowledge, for the motive that the chances of economic advantage outweigh the chances of economic, or perhaps physical penalty.” Lord Devlin was of the view that: “This category is not confined to moneymaking in the strict sense. It extends to cases in which the Defendant is seeking to gain at the expense of the Plaintiff some object ... which either he could not obtain at all or not obtain except at a price greater than he wants to put down” per page 1226 and 1227.

93. In **Civ App No 252 of 2014 Faaig Mohammed v Jack Warner** the Court of Appeal at paragraph 110 stated:

“110. Indeed, this latter statement by Lord Devlin of the overriding policy underpinning this second category, was seized upon by Hamel Smith J in the case of Ford v Shah, in which he filtered the expression ‘tort does not pay’ through a local lens, to mean ‘tort will not be rewarded’ (stripping its dependency on any purely economic gain analysis). Hamel Smith J opined, that in awarding exemplary damages, he was “not confined to considering simply whether the Defendants calculated that, by publishing the libel, they ran a better chance of making a profit in excess of what they may have to pay in compensation”, because he was “permitted to look at the issue from the broad perspective that ‘tort cannot pay’”. This decision is an example of the evolution of our local common law in this area, and I agree entirely with the broader approach articulated by Hamel Smith J (as he then was).”

94. As outlined, the Court has found that it is plausible to conclude that the Defendants took the calculated risk to gain increased readership at the First Claimant’s expense.

95. Regrettably this is a divisive society and the ill-advised, unjustified and reckless inclusion of the highlighted portion of the article, plainly played into a narrative of

“another dysfunctional black family”. This portrayal was irresponsible and the Court feels compelled to register its dismay and disapproval that such an exemplary family was brought into ridicule.

96. This Court shall with unwavering resolve, uphold and protect press freedom, but, it will not sanction irresponsible journalism or outrageous press conduct.

97. In the circumstances this Court deems that an award of \$75,000.00 by way of exemplary damages is appropriate so as to highlight its dissatisfaction with the Defendants’ conduct and to dissuade any such future conduct.

98. Accordingly the Court hereby orders as follows:

- a. That the Defendants are to pay to the First Claimant damages including an uplift for aggravated damages in the sum of \$250,000.00.
- b. That the Defendants shall pay to the First Claimant exemplary damages in the sum of \$75,000.00.
- c. The Second Claimant’s claim as against the Defendants for damages for breach of confidence and misuse of private medical information is hereby dismissed.
- d. Each party is to bear its own respective legal costs.

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FRANK SEEPERSAD
JUDGE

Assisted by Liam Labban, Judicial Research Counsel