

IN THE SUPREME COURT OF BELIZE A.D. 2020

CLAIM NO. 771 OF 2020

BETWEEN

KAREN BEVANS

CLAIMANT

AND

HON JOHN BRICENO

1ST DEFENDANT

RENE VILLANUEVA

2ND DEFENDANT

RSV LTD.

3RD DEFENDANT

BELIZE TV LTD

4TH DEFENDANT

Before: The Hon Westmin R.A. James

Date: 30th August 2021

Appearances: Mr Dean Barrow SC and Ms Darinka Munoz for the Claimant

Mr Andrew Marshalleck SC and Ms Stacy Castillo for the 1st Defendant

Mrs Deshawn Arzu-Torres for the 2nd 3rd and 4th Defendant

JUDGMENT

1. The former Prime Minister of Trinidad and Tobago, Basdeo Panday, in 2002 on a political platform famously said '*Politics has its own morality.*' This phrase has been often repeated as: '*politics has a morality of its own.*' This case is an example of what can occur when political morality and the law intersect.
2. The Claimant's claim is for damages, including aggravated damages, an injunction, costs and interest for libel for words stated by the Honourable John Briceño, the 1st Defendant, which was broadcasted by the 2nd through 4th Defendants.

Background

3. This case arises in the context of the aftermath of the 11th November 2020 general elections in Belize in which the People's United Party won, and the 1st Defendant was sworn in as Prime Minister of Belize. The Claimant at the time was the Director of Tourism and the Executive Chairman of the Belize Tourism Board having first been appointed from 8th April, 2014.
4. On 24th November 2020, the 1st Defendant, the Honorable John Briceño gave an interview that was recorded and aired by the 2nd to 4th Defendants in a news story on Love FM Radio Station and Love TV Station. A portion of the 1st Defendant's interview was broadcast and published by the 2nd, 3rd and 4th Defendants.
5. The 1st Defendant said the following:

"As part of the em of the reforms that we want to do This is one of the things that we have to address that future governments starting with our government would not be able to say give a contract to a crony like what happened with the am at the BTB, the executive director who fired everybody, you know released everybody but yet she just gave eself wah massive massive two hundred and fifty thousand dollars a month am a year am raise ah am contract, coughing when eh done fire everybody. Em to make sure that those kinds of abuses will not happen. It should not happen under any government. So am we will static a certain am legislative changes it will be part of our hundred day am plan which will roll out in the weeks to come."

6. The Claimant claims damages, including aggravated damages, an injunction, costs and interest for libel in consequence of the utterance and publication of these words.
7. The main issues for this Court to determine in terms of liability are
 - a. *Whether the words or any of them are defamatory of the Claimant in their natural and ordinary meaning, including inferred meanings.*

If so:

- b. *whether the publication of the defamatory matter was defensible on the ground of justification;*
 - c. *whether the publication of the defamatory matter was defensible on the ground that their publication was on an occasion of qualified privilege;*
 - d. *whether the publication of the defamatory matter was defensible on the ground of fair comment; and*
 - e. *whether the publication of the defamatory matter was defensible on the ground of innocent dissemination.*
8. The tort of defamation exists when there is an attack on the good reputation of a person without any lawful justification or excuse. It is considered a reasonable limitation on the constitutional right of freedom of expression, and therefore, a person cannot say whatever they like without consequence. Senior veteran politicians giving interviews understand especially that it is not (or should not be) an occasion for unscripted or casual statements.
9. As stated by the Privy Council in *Ramadhar v Ramadhar and others* [2020] UKPC 7 *“there is a clear public interest that politicians talking in public should observe high standards of accuracy and fairness since the public need to know the true position and are inevitably influenced by what they say. Moreover, in the eyes of the law, the respondents were entitled to have their reputations protected from untrue allegations.”*
10. While politics may well have a morality of its own, the words and deeds of politicians have real life consequences for members of the public.
 - (a) *Whether the words or any of them are defamatory of the Claimant in their natural and ordinary meaning, including inferred meanings.*
11. It is trite law that where words or materials published to a third-party tend to lower a man (or woman) in the estimation of others, or expose him to hatred, contempt or ridicule, or to injure his reputation in his office, trade or profession or to injure his financial credit, that is defamation

12. The Defendants all accept that the words refer to the Claimant but deny that they have, or can be understood to have, the meanings contended for by her and don't agree that the words uttered lower her in the estimation of a reasonable person.

13. In her Statement of Case, the Claimant pleads that the words meant

- a. *In the way of her profession as an Executive Manager and Director of the Belize Tourism Board and in relation to her conduct in that office and imputed misconduct in that office;*
- b. *Imputed by the natural and ordinary meaning of the words, or by innuendo, that the Claimant had engaged in self-dealing and awarded herself a grossly inflated own contract in circumstances that constituted abuse, impropriety and corruption;*
- c. *Knew that the words were untrue and knew, or ought to have known, that the Claimant had been given on April 21st, 2019 an arm's length contract renewal by the Board of Directors of the Belize Tourism Board.*

14. The Claimant filed a Reply to the 1st Defendant's Defence. In that Reply she pleaded as follows:

"11.1. The First Defendant falsely described the Claimant as, inter alia, guilty of cronyism, abuse and nepotism in giving herself an "own contract".

15. In the Claimant's submissions, the Claimant contends that the words meant and were understood to mean by their natural and ordinary meaning, and/or by innuendo as follows:

- a. *that the Claimant is an immoral and corrupt person who had given herself a bloated contract at the same time as she was firing staff from the BTB;*
- b. *that the Claimant was guilty of misconduct in her office of Director of Tourism;*
- c. *that the Claimant had engaged in self-dealing and awarded herself a grossly inflated contract in circumstances that constituted abuse, impropriety and corruption; that her outrageous self-dealing was made that much worse when juxtaposed against her heartless simultaneous firing of BTB staff.*

- d. *That the Claimant was able to give herself the position of Director of Tourism at the BTB due to her status of cronyism with those in charge of the BTB, and without any regard to her qualifications or lack thereof.*
16. The 1st Defendant contends that the Claimant is confined to the meanings that have been pleaded in the Claim. All Defendants argued that the words complained of do not have the meaning imputed by the Claimant, and instead meant that the 1st Defendant was talking about reform. The 1st Defendant also argued that the Claimant has offered no evidence of any contempt or hatred exhibited toward her by right thinking members of society as a result of the words spoken.
17. The approach that a Judge should adopt in determining whether words are defamatory was laid down in *Skuse v Granada Television Limited* [1993] EWCA Civ 34 at para 14 per Lord Bingham MR who stated:
- i. *“The court should give to the material complained of the natural and ordinary meaning which it would have conveyed to the ordinary reasonable viewer ...*
 - ii. *The hypothetical reasonable reader [or viewer] is not naïve but he is not unduly suspicious. He can read between the lines. He can read in an implication more readily than a lawyer, and may indulge in a certain amount of loose thinking. But he must be treated as being a man who is not avid for scandal and someone who does not, and should not, select one bad meaning where other non-defamatory meanings are available...*
 - iii. *While limiting its attention to what the defendant has actually said or written, the court should be cautious of an over-elaborate analysis of the material in issue... Its audience would not have given it the analytical attention of a lawyer to the meaning of a document, an auditor to the interpretation of accounts, or an academic to the content of a learned article. In deciding what impression the material complained of would have been likely to have on the hypothetical reasonable viewer we are entitled (if not bound) to have regard to the impression it made on us.*
 - iv. *The court should not be too literal in its approach. We were reminded of Lord Devlin’s speech in Lewis v Daily Telegraph Ltd. [1964] A. C. 234 at 277*

'My Lords, the natural and ordinary meaning of words ought in theory to be the same for the lawyer as for the layman, because the lawyer's first rule of construction is that words are to be given their natural and ordinary meaning as popularly understood. The proposition that ordinary words are the same for the lawyer as for the layman is as a matter of pure construction undoubtedly true. But it is very difficult to draw the line between pure construction and implication, and the layman's capacity for implication is much greater than the lawyer's. The lawyer's rule is that the implication must be necessary as well as reasonable. The layman reads in an implication much more freely; and unfortunately, as the law of defamation has to take into account, is especially prone to do so when it is derogatory.'

iv. A statement should be taken to be defamatory if it would tend to lower the plaintiff in the estimation of right-thinking members of society generally or would be likely to affect a person adversely in the estimation of reasonable people generally.

v. In determining the meaning of the material complained of the court is 'not limited by the meanings which either the claimant or the defendant seeks to place upon the words'.

vi. The defamatory meaning pleaded by a plaintiff is to be treated as the most injurious meaning the words are capable of bearing and the question a judge sitting alone has to ask himself are, first, is the natural and ordinary meaning of the words that which is alleged in the statement of claim and, secondly, if not, what (if any) less injurious defamatory meaning do they bear?" [emphasis added]

18. The test was also set out by Sir Anthony Clarke MR in the case of *Jeynes v News Magazines Ltd* [2011] EWHC 3269 (QB) who stated:

"The legal principles relevant to meaning...may be summarised in this way:

(1) The governing principle is reasonableness.

(2) The hypothetical reasonable reader is not naïve but he is not unduly suspicious. He can read between the lines. He can read in any implication more readily than a lawyer and may indulge in a certain amount of loose thinking but he must be treated as being a man who is not avid for scandal and someone who does not, and should not, select one bad meaning where other non- defamatory meanings are available.

(3) Over-elaborate analysis is best avoided

(4) The intention of the publisher is irrelevant.

(5) The article must be read as a whole, and any 'bane and antidote' taken together.

(6) The hypothetical reader is taken to be representative of those who would read the publication in question.

(7) The delimiting the range of permissible defamatory meanings, the court should rule out any meaning which, 'can only emerge as the produce of some strained, or forced, or utterly unreasonable interpretation...'

(8) It follows that 'it is not enough to say that by some person or another the words might be understood in a defamatory sense.'

[34] It is not the function of the court simply to either reject or accept the meaning put forward by the Claimant. The court must reach its own conclusion...'
(emphasis added)

19. In determining the meaning of the words, the Honourable Hamel-Smith JA, in CV 175 of 2000 *Basdeo Panday -v- Kenneth Gordon*, is instructive:

"...the trial judge adopted the correct approach. In respect of the former he warned himself about approaching the interpretation of the words complained of in a pedantic or legalistic way. As he said, one should avoid interpreting the words "like a lawyer straining the language of the words". He considered the article as a whole in order to determine the ordinary and natural meaning of the words complained of, but avoided a full analysis of the article.

*18. The trial judge considered what the words would convey to the ordinary man. It was not one of construction in the legal sense. He noted what Lord Reid has stated in *Lewis - v- Daily Telegraph Ltd* (1964) AC 235 (at 258): "The ordinary man does not live in an ivory tower and he is not inhibited by any knowledge of the rules of construction". He also took guidance from what Lord Reid had said in *Morgan -v- Odhams Press Ltd* (1971) 1WLR 1239 at 1245 – "...we must accept a certain amount of loose thinking. The ordinary reader does not formulate reasons in his own mind; he gets a general impression and one can expect him to look again before coming to a conclusion and acting on it. But formulated reasons are usually an afterthought." [emphasis added]*

20. Therefore, it is a question of fact whether, taken as a whole, the words in their natural and ordinary meaning would convey to a reasonable listener who is not naïve but not unduly suspicious and not avid for scandal, a meaning which is defamatory of the claimant and/or whether the words used would convey to a reasonable reader an implied meaning or an inferred or indirect meaning that is defamatory of the claimant.

21. In determining this question of fact, I am not bound by the meaning that either side has submitted whether in pleadings or submissions and I am not to take an overly legalistic or over-elaborate interpretation.

22. The words uttered are:

“As part of the em of the reforms that we want to do This is one of the things that we have to address that future governments starting with our government would not be able to say give a contract to a crony like what happened with the am at the BTB, the executive director who fired everybody, you know released everybody but yet she just gave eself wah massive massive two hundred and fifty thousand dollars a month am a year am raise ah am contract, coughing when eh done fire everybody. Em to make sure that those kinds of abuses will not happen. It should not happen under any government. So am we will static a certain am legislative changes it will be part of our hundred day am plan which will roll out in the weeks to come.” (Emphasis added)

23. I accept and find that the said words underlined, when taken in their natural and ordinary meaning and/or inferential meaning did mean and would have been understood to mean:

- a. **That the Claimant was ‘a crony’ and she was given her contract by the government because she was a crony.**

24. The 1st Defendant submitted that the Oxford Dictionary defines the word “crony” as ‘a close friend or companion’. I do not accept this. The more commonly used sense of, ‘crony’ is used in a negative sense as opposed to just a friend or companion.

25. The Claimant in cross examination said that in Belizean society a 'crony' was a person that is: *"awarded something because of political affiliation; it refers to political merit as opposed to qualifications and expertise. A crony is a politically favoured person-not only favoured-but is treated and awarded contracts or offers, whatever it is, because of their political connection."*

26. This submission was even more surprising because the 1st Defendant's own witness, Henry Charles Usher, who gave evidence on behalf of the 1st Defendant, said the meaning of crony was exactly the negative sense described. In answer to the Court Mr Usher said a crony was someone who benefits from a political party not because of qualification but from who he/she knows. It is therefore in this negative sense that the reasonable or ordinary man in Belize would take the word 'crony' or a contract being given to a crony:

b. The Claimant gave herself a \$250,000.00 contract and at the same time fired everyone and the Claimant gave herself a contract with a contract just before the 2020 general election.

27. This meaning given to the words were in fact confirmed by the 1st Defendant in his Defence where he pleads in the particulars of truth that the Claimant entered an employment contract with the BTB several months before the 2020 General Elections for a sizeable sum and several members of the BTB staff were terminated in around March 2020.

28. The Defence goes on further to state the 1st Defendant's administration intends to pursue reforms to stop abuses of the power to execute new employment contracts for the benefit of favoured friends of the incumbent government just prior to elections.

29. This in fact confirms what the Claimant has submitted and that the impression an ordinary man (or woman) would have taken from the 1st Defendant's words is that the Claimant had engaged in some corrupt activity by getting this \$250,000.00 contract just before election.

30. The words also gave the impression and I hold that the words did mean that the Claimant was immoral, heartless and only enriched herself just before an election while leaving staff “on the bread line” so to speak. It also meant that the Claimant herself fired the staff at the BTB.

c. That the Claimant engaged in corrupt activities or misconduct and abuse of power.

31. The 1st Defendant’s own submission confirms this. The 1st Defendant in fact submitted that the ordinary, intelligent, and unbiased person would understand and interpret the words to mean that the 1st Defendant intended to pursue reforms to stop abuses of the power to execute new employment contracts for the benefit of favoured friends of the government prior to elections such as the contract between the Claimant as a favoured friend of the United Democratic Party and the Belize Tourism Board.

32. By referring to the Claimant in this context the ordinary man would understand that the Claimant was an example of that exact abuse of power and got a contract executed for her benefit as a favoured friend of the government prior to election.

33. Also, given the juxtaposition of the words used, in the same phrase abuse when the 1st Defendant after referring to the Claimant and her contract said that they have to “make sure that those kinds of abuses will not happen.” This also gave the impression, and it can be inferred, that the Claimant in her capacity as Director of Tourism of the BTB abused her power and engaged in the corrupt activity which needed legislative intervention to prevent.

34. There is also authority that such imputations or allegations against someone as set out above are defamatory. Alleging someone was the beneficiary of “cronyism” was held to be defamatory in *Miller v Associated Newspapers Limited* [2010] EWHC 700 per Eady J.

35. It has been held to be defamatory to refer to a person as being dishonest: see *Austin v Culpepper*: (1684) 2 Show KB, 313; *MacLaren v Robertson* (1859) 22 D 278; *Brookes v Tichborne*: (1850) 5 Exch. 929.
36. An accusation that a person is guilty of breach of duty has also been held to be defamatory: See *Foulger v Newcome* (1867) 2 Exch 327, *Helsham v Blackwood* (1851) 11 CB 111 and *Holdsworth Ltd v Associated Newspapers Ltd* [1937] 3 All ER 872.
37. It is clear that the words used by the 1st Defendant in respect of the Claimant and highlighted above, were clearly and obviously defamatory. There is not much ambiguity or subtlety in the language used.
38. The very fact of these allegations with the meaning ascribed and accepted by the Court in the context of after election and allegations of corruption of the last administration it is sufficient, in this court's mind, would clearly tend to lower her in the estimation of right-thinking members of society generally and/ or lead to her being shunned or avoided. This was highlighted with all the social media chatter about the Claimant at that time.
39. The Defendants argue that the social media evidence attached to the Claimant's evidence was not directly related to the 1st Defendant's words. In my view, the posts need not specifically say what the 1st Defendant said, to provide evidence that as a result of the 1st Defendant's words, the Claimant was held in ridicule and contempt.
40. I do find that the social media posts provided to the Court demonstrated that the Claimant was directly the subject of contempt and ridicule as a result of the Defendants' words. The 1st Defendant cannot light matches to start a fire and act surprised when others pour gasoline on the fire.
41. The evidence provided by the Claimant, and indeed in some respects by the Defendants themselves, has satisfied this Court on a balance of probabilities that the 1st Defendant's words complained of in their ordinary and natural meanings,

when taken as a whole, as published by broadcast by the 2nd through 4th Defendants are defamatory of the Claimant.

DEFENCES

42. The 1st Defendant contend in the Amended Defence that the words are substantially true. All Defendants say that the words are fair comment on a matter of public interest. All Defendants further contend that the words are covered by qualified privilege as words said by the 1st Defendant to the other Defendants in discharge of his duty to communicate his position on a matter of public interest; and as words that the other Defendants had a reciprocal right to receive in the same vein.
43. The 2nd, 3rd and 4th Defendants also say that their transmission of the words to the public in Belize and abroad was innocent dissemination done responsibly by way of fair journalism regarding a matter of public interest.

(b) Whether the publication of the defamatory matter was defensible on the ground of justification

44. The defence of justification is a defence in which the Defendant alleges that the words complained of were true in substance and in fact. Since the law presumes that every person is of good repute until the contrary is proved, falsity is presumed in favour of the Claimant.
45. It is for the defendant to not only plead but prove affirmatively that the defamatory words the Claimant complains of are true or substantially true. The burden is on the defendant to prove not only the truth of the words in the literal sense but also their innuendo meanings: *Digby v Financial News* [1907] 1 KB 502, 507.
46. While justification may be pleaded as a defence to the whole of the defamatory statements or in the alternative as a defence to a severable part of them, it is to be noted that a failure to establish the defence at trial may properly be taken into

account in aggravation of damages: *Halsbury's Laws of England*, Volume 32 (2012), para 582.

47. The requirements for making out a defence of justification are set out in **Gatley on Libel and Slander** at paragraph 11.9 as follows:

"[...] for the purposes of justification, if the defendant proves that "the main charge, or gist, of the libel" is true, he not justify statement or comments which do not add to the sting of the charge or introduce any matter by itself actionable. It is sufficient if the substance of the libelous statement be justified, it is unnecessary to repeat every word which might have been the subject of the original comment. As much must be justified as meets the sting of the charge, and if anything be contained in a charge which does not add to the sting of it, that need not be justified When considering the substantial truth it is important to "isolate the essential core of the libel and not be distracted by inaccuracies around the edge-however substantial [...]"

48. As stated in *Ramadhar v Ramadhar and others* [2020] UKPC 7, there are three recognised levels of meaning, known as the Chase levels following the decision of the Court of Appeal in England and Wales in *Chase v News Group Newspapers* [2002] EWCA Civ 1772; [2003] EMLR 11.

"Chase level 1 is the most serious level of meaning and it applies where the defendant's statement meant that the claimant has actually committed the wrong. So, if he said that the claimant has committed fraud, he will have to show that the claimant has indeed committed a fraud. Chase level 2 meaning applies where the defendant alleged only that he has reasonable grounds for suspecting that the claimant has committed a fraud. Then, to establish the truth of his statement, he will have to show that reasonable grounds did in fact exist. If, however, the meaning of what he said is merely that there are grounds for investigation, the meaning is Chase level 3 and he will simply have to show that there are such grounds, as where an official investigation has been instituted."

49. The First Defendant pleaded the following particulars of truth:

- a. *The Claimant entered an employment contract with the Belize Tourism Board several months before the 2020 General Elections were held for a sizeable sum.*
- b. *Several members of the Belize Tourism Board staff were terminated in or around March of 2020.*
- c. *The First Defendant's administration intends to pursue reforms to stop abuses of the power to execute new employment contracts for the benefit of favoured friends of the incumbent government just prior to elections.*

50. None of the particulars address the essence of the defamatory words that the Claimant is a crony, got a crony contract, give herself a contract or fired everyone or abused her power -which amount to Chase Level I meaning. The particulars of truth, as pleaded by the 1st Defendant itself, was not borne out by the evidence which was presented before the Court.

51. The evidence as adduced by the 1st Claimant is that the renewal of her contract was issued some 18 months before the election and therefore was not just before the 2020 General Elections.

52. While several members of the BTB staff were terminated in March 2020 that was not the gist of the allegation. The 1st Defendant said that the Claimant gave herself a contract for \$250,000.00 a year and at the same time fired those staff. Neither of those things are borne out by the evidence adduced by the 1st Defendant.

53. The evidence shows that Claimant did not give herself a contract but rather it was negotiated and entered into by the relevant parties. Whether it was approved or not in writing is subject in another case and not relevant for this determination.

54. The 1st Defendant's witness, Mr Usher, when asked whether the Claimant gave herself a contract, admitted that he did not know the process of how the contract came about. It is also to be noted that the 1st Defendant's own witness, Mr Evan

Tillet, the Chairman of the BTB admitted that he too was appointed by the Minister to hold over as Director of Tourism not in writing.

55. Furthermore, the evidence from the 1st Defendant's witness was that the BTB terminated persons, some persons voluntarily resigned, some retired and some were made redundant due to Covid 19. The Claimant who did sign the letters, did so on behalf of the BTB Board which actually made the decision, and therefore it was not the Claimant who fired those persons.
56. As to the third pleaded aspect of truth, namely that the 1st Defendant's administration intends to pursue reforms to stop abuses of the power to execute new employment contracts for the benefit of favoured friends of the incumbent government just prior to elections; this statement did not acknowledge that the allegation was that the 1st Defendant intends to pursue reforms to stop abuses of power like the ones of the Claimant's. There isn't any evidence produced in these proceedings where the 1st Defendant has been shown to abuse her duty or authority. Therefore, there is no justification on this basis.
57. As to the allegation that the Claimant was a crony and received a crony contract, the 1st Defendant has unfortunately fallen short in his evidence on this matter. The 1st Defendant's counsel in cross examining the Claimant indicated that she was asked by the former Minister of Tourism whether she would be interested in the Director of Tourism position. She indicated her interest and thereafter she was asked to send her resume and later attended an interview with several persons including the Minister. She was later offered the position. She admitted that she did not have experience in Tourism at the time but she did have extensive senior managerial experience.
58. This evidence does not show that the Claimant was a crony, i.e. someone with no qualification or experience and was given a position as a political favour. There was no evidence to even remotely suggest that the Claimant was a political friend much less placed in that position out of cronyism. A person appointed during one administration does not make a person either a political appointee, or a crony. This allegation was simply not borne out by the evidence.

59. I therefore hold on the totality of the evidence that the defence of justification has not been proven.

(c) Whether the defence of fair comment is available or applicable in the circumstances.

60. All the parties seem to agree on the elements of this defence. The 2nd – 3rd Defendants set out the approach in their submissions. The writers in **Gatley on Libel** at paragraph 705, have defined fair comment as:

“A comment is a statement of opinion on facts. A libelous statement of fact is not a comment or criticism on anything. It is a comment to say that a certain act which a man has done is disgraceful or dishonourable; it is an allegation of fact to say that he did the act so criticised.” (Emphasis added)

61. The 2nd- 4th Defendants referred to the Eastern Caribbean decision of *Sean Stanley v Julian Sutherland et al*, SVGHCV2006/0420, where Justice Byer outlined the principles of fair comment as follows:

“[37] Fair comment has been defined to include circumstances where “...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. [38] The essence of this defence is therefore that the “defamatory matter must appear on its face to be a comment or opinion and not a statement of fact.”

62. I agree with the Defendants that in order to establish fair comment, the words complained of must be shown to be: (a) a comment; (b) it is a fair comment (as distinct from an imputation of fact); (c) it is fair comment on some matter of public interest or otherwise a matter with which the public has a legitimate concern; (d) the comment must indicate, at least in general terms, what are the facts on which the comment is being made; and (e) the comment must be one that could have been made by an honest person and be germane to the subject at hand.

63. The difficulty with this defence is that the words of the 1st Defendant which were published by the 2nd to the 4th Defendant were not comments. The comments were not fair because they were an imputation of fact that the Claimant was a crony and got a crony contract and was abusing her power. The Claimant was the example which was used by the 1st Defendant, and it is not that the 1st Defendant was commenting on the Claimant's actions per se.

64. The Defendants have also not shown that the statements were based on actual facts as stated above. The evidence shows that the 1st Defendant made allegations against the Claimant that simply were untrue. And the evidence shows that the 1st Defendant made them either knowing them to be false, or being reckless as to their falsity. The 1st Defendant knew of the Claimant's contract and knew the details surrounding it. I take that view since the 1st Defendant has not given evidence to state otherwise.

(d) Whether the publication of the defamatory matter was defensible on the ground that their publication was on an occasion of qualified privilege

65. The Defence of qualified privilege, also known as the Reynolds Privilege, protects the publication of defamatory material to the world at large where it was in the public interest that the material should have been published and where the publisher has acted responsibly in publishing the information. The standard of responsibility that must be achieved is referred to as responsible journalism.

66. The defence was first promulgated by Lord Bingham of Cornhill in *Reynolds TD v. Times Newspapers Limited* [1998] EWCA Civ 1172 and further explained by Lord Hoffman in *Jameel v. Wall Street Journal Europe* (2006) UKHL 44.

67. The Defendants are all seeking to rely on the public interest defence of Reynolds Privilege. The House of Lords in *Reynolds* established a new variant of qualified privilege in which less emphasis was placed on the traditional, reciprocal duty and interest test, and more on the question of whether the publication was on a matter of public interest and whether it was the product of responsible journalism (with the issue of malice subsumed within this latter element).

68. For a Defendant to successfully rely on the Reynolds Privilege defence the Court must find that:

- (i) The publication as a whole concerned matter of public interest;
 - (ii) That the inclusion of the allegedly defamatory material in the publication was justifiable; and
 - (iii) That the publication met the standard of responsible journalism.
- Once all three conditions are met, then the Reynolds Privilege defence succeeds.

69. The aforesaid test was approved by the Privy Council in *Bonnick Morris (supra)* and the Supreme Court in *Flood v Times Newspapers [2012] UKSC 11*.

70. Of most relevance to this case are the last two requirements. In *Jameel (supra)* Lord Hoffman spoke to the approach to be taken by the Court when examining this question of whether the inclusion of defamatory material was justifiable. He said:

“If the article as a whole concerned a matter of public interest, the next question is whether the inclusion of the defamatory statement was justifiable. The fact that the material was of public interest does not allow the newspaper to drag in damaging allegations which serve no public purpose. They must be part of the story. And the more serious the allegation, the more important it is that it should make a real contribution to the public interest element in the article... But whereas the question of whether the story as a whole was a matter of public interest must be decided by the judge without regard to what the editor’s view may have been, the question of whether the defamatory statement should have been included is often a matter of how the story should have been presented. And on that question, allowance must be made for editorial judgment. If the article as a whole is in the public interest, opinions may reasonably differ over which details are needed to convey the general message. The fact that the judge, with the advantage of leisure and hindsight, might have made a different editorial decision should not destroy the defence. That would

make the publication of articles which are, ex hypothesis, in the public interest, too risky and would discourage investigative reporting.”
(Emphasis added)

71. There was no reason for the 1st Defendant to use the Claimant as an example for his point. He could have reasonably spoken to matters of the former administration but there was no reason to single out the Claimant and make these statements about her. The Court is satisfied on a balance of probabilities, that the second condition has not been satisfied, the inclusion of the defamatory material about the Claimant in the statement were justifiable. It is not in dispute that the allegations made against the Claimant were very serious and there was no real public interest in communicating and receiving the information contained in the answer. As it relates to the 1st Defendant, the defence falls on this basis.

72. In relation to the 2nd through the 4th Defendant it is established that the publication was in the public interest, the next question that must be considered is whether the publication was the product of responsible journalism. As Lord Nicholls said in *Bonnick v Morris and others* [2003] 1 AC 300 at para 23:

“[23] Stated shortly, the Reynolds privilege is concerned to provide a proper degree of protection for responsible journalism when reporting matters of public concern. Responsible journalism is the point at which a fair balance is held between freedom of expression on matters of public concern and the reputations of individuals. Maintenance of this standard is in the public interest and in the interests of those whose reputations are involved. It can be regarded as the price journalists pay in return for the privilege. If they are to have the benefit of the privilege journalists must exercise due professional skill and care.”

73. The onus is on the publisher to establish both that the publication was in the public interest and that the publication was the product of responsible journalism.

74. In determining whether the Defendants met the standards of responsible journalism, the Court must consider the non-exhaustive list of considerations in

Reynolds (supra) which were listed in *Kayam Mohammed v Trinidad Publishing Co. Civil Appeal No. 118 Of 2008* at paragraph 62 namely:

“a. 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.

b. The nature of the information, and the extent to which the subject-matter is a matter of public concern.

c. The source of the information. Some informants have no direct knowledge of the events. Some have their own axes to grind, or are being paid for the stories.

d. The steps taken to verify the information.

e. The status of the information. The allegations may have already been the subject of an investigation which commands respect.

f. The urgency of the matter. News is often a perishable commodity.

g. 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.

h. Whether the article contained the gist of the plaintiffs' side of the story.

i. The tone of the article. A newspaper can raise queries or call for an investigation. It need not adopt allegations as statements of fact.

j. The circumstances of the publication, including the timing. “

75. In Lord Nicholls' non-exhaustive list of considerations of whether the standard of responsible journalism has been met, there is included "the steps taken to verify the information". That is of particular relevance here.

76. The Claimant contends that the 2nd, 3rd and 4th Defendants decided to conduct the interview, edit and publish it on the very same day without making any effort to fact-check the 1st Defendant's assertions; and without delaying in order to obtain Mrs Bevans's version of events.

77. In her witness statement Ms Trujillo said that she attempted to get in touch with the Claimant after the Claimant had filed her claim. This was after the publication

of the words of the 1st Defendant and, in fact, after the Claimant had already filed her claim for libel.

78. Ms Tujillo did not have in her witness statement that she had attempted to contact the Claimant before airing the interview. In cross examination she confirmed that hearing from the Claimant before publication would have been one ingredient of fair and responsible journalism. But when asked why she didn't try to reach the Claimant before publication, she said that she had in fact tried. She admitted that she did not say that in her witness statement and that she had nothing to back that up. She said that her call log was cleared. She also, unlike the later time, did not WhatsApp the Claimant.

79. I do not believe the witness in this regard. If the witness had tried to reach the Claimant, she would have put it in her witness statement like the other occasion whether or not she had the proof to back it up. Further, call logs are not only on the phone but can also be accessed from the telecommunication provider, so there could have been proof of the attempt. What solidifies in my mind that this did not occur was that the 2nd, 3rd and 4th Defendants in their publication of the words never provided evidence that it was said that attempts were made to reach the Claimant for comment but received no response. I therefore hold that there was no real attempt to get the Claimant's side of the story and so the defence fails on this basis for the 2nd 3rd and 4th Defendants.

(e) Whether the publication of the defamatory matter was defensible on the ground of innocent dissemination

80. The common law defence of innocent dissemination as was pointed out at page para 6.30 of **Gatley on Libel and Slander** 12th ed, gives some degree of protection to the person who publishes but who is not the author, printer, or the "first or main publisher of a work which contains a libel", and who has only taken a "subordinate part in disseminating it" e.g. by selling, distributing or handing to another a copy of the newspaper or book in which it appears.

81. The defence is not available to the 2nd to the 4th Defendant as the main publishers or broadcasters, as the defence, is usually only available to persons who had a subordinate part in the dissemination of material such as newsagents, book and magazine sellers.
82. Even if the defence was available to the 2nd to 4th Defendants, in order to succeed, the 2nd to 4th Defendants would have had to establish the following elements: -
- (a) that it did not know that the material complained of contained a libel;
 - (b) that there was nothing in the material itself or in the surrounding circumstances of the case which ought to have led it to suppose that it contained a libel; and
 - (c) that the absence of knowledge of the existence of the libel was not due to the negligence on its part.
83. The 2nd to 4th Defendants did not on the evidence, establish the aforesaid. Consequently, the defence of innocent dissemination cannot be relied upon by them.
84. The 2nd to 4th Defendants had knowledge that the broadcasts contained these defamatory matters or knowing the nature of the statement ought to have known that it contained libellous claims.
85. The 2nd to 4th Defendant's Ms Trujillo edited it, and in cross examination admitted she had full control over what was eventually aired by station and she could have taken out anything. She admitted that she only broadcasted the answer by the Prime Minister on the various media outlets and not the question and answer. I find that this was deliberate to get as many views as possible, so there was no absence of knowledge.
86. The 2nd to the 4th Defendant did not give any evidence as to any system imposed to vet the statements of 1st Defendant. The Defendants never sought the Claimant in order to get the full picture. The right to broadcast cannot be taken lightly and where for commercial advantage, decisions are made to edit a story for maximum

views, the station has to take steps so as to ensure that the privilege to broadcast, is not violated.

Conclusion on liability

87. Having regard to the foregoing, the Court is of the respectful view that the words are defamatory and none of the defences succeed.

DAMAGES

88. In *John v MGN Limited* [1996] 2 All ER 35, 41, Sir Thomas Bingham M.R. said that the sum must compensate the claimant for the damage to their reputation, vindicate their good name, and take account of the distress, hurt and humiliation which the defamatory publication has caused.

89. Counsel for the Defendants submitted that due to the paucity of evidence the Claimant can only recover nominal damages. It is to be noted that once a person is libelled, without any lawful justification or excuse, it will be presumed that he suffered injury to their reputation and their feelings, for which he may recover damages. There is therefore no explicit requirement for the person libelled to produce any evidence to prove such injury as he starts off with a presumption of damage. However, to attract a substantial award of damages, I would agree that evidence should be provided or reasonably inferred: see *Claim No. CV 2016-02996 Heidi Joseph v Ama Charles para 75*.

90. The purpose of damages in defamation is to (1) to compensate for the distress and hurt feelings; (2) to compensate for any actual injury to reputation, which must be proved or may reasonably be inferred; and (3). to serve as an outward and visible sign of vindication.: See Kangaloo JA in *Civ Appeal No 166 of 2006 TnT News Centre Ltd v John Raphael*.

91. The factors to be taken into consideration in assessing damages in cases of libel and slander include:

- (1) the conduct of the claimant, her position and standing;
- (2) the nature of the libel;

- (3) the mode and extent of publication;
- (4) the absence or refusal of any retraction or apology;
- (5) the conduct of the defendant from the time when the libel was published down to the verdict; and
- (6) The impact upon the claimant's feelings, reputation and career.

The Claimant's Position and Standing

92. The Claimant is an executive and businesswoman by profession with 32 years of leadership and management experience at Executive and Senior Management level in the Tourism and Telecommunication industries. The Claimant's evidence is that she has an unblemished professional record and known for her professionalism, integrity, honesty, dedication and hard work ethic. She holds several degrees including an MBA and BSc in Management and Psychology.
93. The Claimant worked for Belize Telemedia Ltd (BTL) for 25 years and at BTB for seven. The Claimant has held other senior positions locally and regionally. Importantly, the Claimant was not a politician. The Defendants did not provide any evidence to refute the Claimant's evidence of her professional record, good character and standing.

The Conduct of the Claimant

94. There is no evidence of any conduct by the Claimant that provoked the defamatory statements by the 1st Defendant.

Nature of the Libel

95. **Gately on Libel and Slander** where it is stated "*the most serious defamation are those that touch the "core attributes of the plaintiff's personality", matters such as integrity, honour, courage loyalty and achievement...*" The words of the 1st Defendant were clearly meant to be of a serious nature, so much so, he said, that the government had to do reform to prevent such circumstances.

The Mode and Extent of Publication

96. As stated in *John v MGN [1996] 2 All ER 35 at page 48* libel or slander published to millions has a greater potential to cause damage than a libel published to a handful of people. The defamatory words were made on national media, on television, radio and internet both in and out of Belize. The 2nd, 3rd and 4th Defendants have a wide audience of over 200,000 people online. The 1st Defendant being the Prime Minister of Belize, and his interview and his words would be widely seen and heard by persons both within Belize and abroad.

The absence or refusal of any retraction or apology

97. In *John v MGN (supra)* it stated

“A successful plaintiff may properly look to an award of damages to vindicate his reputation: but the significance of this is much greater in a case where the defendant asserts the truth of the libel and refuses any retraction or apology than in a case where the defendant acknowledges the falsity of what was published and publicly expresses regret that the libelous publication took place. It is well established that compensatory damages may and should compensate for additional injury caused to the plaintiff’s feelings by the defendant’s conduct of the action, as when he persists in an unfounded assertion that the publication was true, or refuses to apologize, or cross-examines the plaintiff in a wounding or insulting way.”

98. The 1st Defendant refuses to apologize to the Claimant. In fact, the 1st Defendant doubled down on his statements and warned the Claimant about taking legal action.

The conduct of the Defendants from the time when the libel was published down to the verdict.

99. Since the publication of the defamatory statements, the 1st Defendant doubled down on his statement saying he stood by what he said and even warned the Claimant about continuing with her action before the Court saying “I don’t think she wants us to go down that road.” Further, the 1st Defendant has not come to Court to give evidence as to why this was the truth or why there was no malice.

The impact upon the Claimant’s feelings, reputation and career

100. The Claimant’s evidence with respect to the impact of the defamatory statements is that:

“...I was completely flabbergasted, hurt, humiliated, and highly embarrassed that such falsehoods and unjustified allegation were said to smear and discredit me.

...The defamatory words have caused grave injury to my character credit and reputation. I have been brought into public scandal, odium and contempt and suffered, and continue to suffer great anguish as a result”

101. Since the words were uttered by the 1st Defendant, the Claimant was also terminated from her position as Director of Tourism without cause.

102. I have no doubt that the allegations, would have caused significant hurt and injury to the Claimant’s feelings. Especially in a small society prone to gossip, the taint of even unproven assertions such as these made in the aftermath of an election victory by the Prime Minister and the assertions of impropriety that are always cast on the previous administration would be potentially long lasting.

103. There is also clear evidence of damage to the Claimant’s reputation as a result of the Defendants’ publication of the defamatory statements. The evidence provided by the Claimant of the social media posts was clear indication of that. Consequently, the need for an award of damages to repair or vindicate the

claimant's reputation does arise. The Claimant has also clearly suffered distress and hurt feelings as a result of the Defendant's publication of the statements.

104. The Claimant's written submissions submit that appropriate damages should start at \$60,000.00 in general damages and \$40,000.00 in aggravated damages. The 1st Defendant argued that it should be nominal damages.

Cases considered

105. I have considered the case of *Claim No. 254 of 2018 Anwar Barrow v Michael Rudon et al* where the Claimant was accused of corruption and his political relationship with his father to get a Minister fired and conspired to cover up. He was awarded \$40,000.00 and \$10,000.00 in aggravated damages.

106. I consider the cases referred to in the *Anwar Barrow* case which included *Lois Young Barrow v Andrew Steinhart, Belize Times Press Limited Claim No.561 of 2006* (\$30,000.00); *Robert Garcia v Andrew Steinhart and Belize Times. John Flowers v Andrew Stienhauer and Belize Times Limited Claims No. 4 and 5 of 2006* (\$30,000.00); *Said Musa v Ann Marie Williams, Harry Lawrence & Reporter Press Ltd. Claim No. 376 of 2005* (\$25,000.00); *Belize Times & Amalia Mai v Manuel Esquivel, Civil Appeal No. 7 of 1993* (\$25,000.00); *Sittee River Wildlife Reserve et al v Thomas Hershowitz & Independent Owners of Sanctuary Belize Claim No. 131 of 2016* (\$30,000.00 to the first and \$60,000.00 to the second), plus \$30,000.00 aggravated damages (to the second). The cases range from \$25,000.00 to \$60,000.00 in general damages. I also had regard to the fact that these cases are of some vintage and account must be taken of inflation as stated in *Robert Garcia and John Flowers (supra)* and what was done in the *Anwar Barrow* case.

107. Having considered all the circumstances and the above cases like in the case of *Sittee River Wildlife Reserve* I would award the sum of \$60,000.00 in general damages.

Aggravated Damages

108. The Claimant also seeks aggravated damages. The general rule is that in claims for defamation, damages are assessed on a compensatory basis which includes special damages and aggravated damages. Compensatory damages are intended to compensate the Claimant for injury to his reputation and injury to his feelings and to vindicate him to the public. In certain circumstances exemplary or aggravated damages may be awarded.

109. The following grounds justify the award of aggravated damages.

(a) The nature of the allegation itself justifies an award for aggravated damages; the major allegations are of cronyism, corruption, and misuse of public funds.

(b) The fact that it was a senior politician, the Prime Minister who made the allegations and whose words would be listened to and believed by many;

(c) I find that the 1st Defendant was motivated by political means and his conduct aggravated the injury to the Claimant;

(d) the Defendants never and refuses to apologize;

(e) The failure of the 2nd 3rd and 4th Defendant to conduct any investigation or inquiries to ascertain the truth before repeating the defamatory statements to the public.

(f) The defamatory statements were published widely without any attempt at verification of the material alleged or contact the Claimant.

(g) The manner in which the defence was pleaded amplifies and seeks to justify the defamatory meanings and implications. The attempt to justify was persisted in beyond trial and in its submissions.

(h) The Claimant was threatened not to take legal action or more would be revealed about her.

32. In all the circumstances the Court finds that this is a suitable case for an award of aggravated damages. The Court having considered the cases and the

circumstances of this particular case finds an award of \$30,000.00 to be appropriate for aggravated damages.

33. In relation to the injunction as held before the Court also considered the fact that the Defendants have refused to apologize and the 1st Defendant has threatened the Claimant to not go down this road or more would be revealed, so an injunction against the continued or repeated publication will also be ordered.

Conclusion

34. This case was also a good example of the use by this Court of the CPR to expeditiously deal with cases pursuant to Part 1.1 of the CPR being assigned to this Court in May, 2021 with judgment being delivered in August 2021. I thank Counsel for their assistance in this case.

ORDERS

35. It is ordered that –

- a. There be judgment for the Claimant against the Defendants;
- b. The Defendant do pay to the Claimant damages for defamation in the sum of \$60,000.00 and aggravated damages of \$30,000.00 with interest at the rate of 6% per annum from 24th November 2020;
- c. The Defendants whether by themselves, their agents or servants or otherwise, from further speaking or publishing the same or any or any similar libels upon the Claimant
- d. Costs on the prescribed basis based on the award of damages; and
- e. A stay of execution of 48 days is placed on this order.

/s/Westmin James

Westmin R.A. James

Justice of the Supreme Court (Ag)