



Hilary Term
[2020] UKPC 7
Privy Council Appeal No 0043 of 2018

JUDGMENT

**Ramadhar (Appellant) v Ramadhar and others
(Respondents) (Trinidad and Tobago)**

**From the Court of Appeal of the Republic of Trinidad
and Tobago**

before

**Lord Wilson
Lady Black
Lord Lloyd-Jones
Lord Briggs
Lady Arden**

JUDGMENT GIVEN ON

2 March 2020

Heard on 4 July 2019

Appellant
Ramesh L Maharaj SC
Tom Poole

Respondents
Mervyn Campbell
Frederick A Gilkes
Yuri Saunders

(Instructed by BDB Pitmans LLP)

(Instructed by Sinclair Gibson)

Respondents:-

- (1) Kishore Ramadhar
- (2) Rudolph A Hanamji
- (3) Satu-Ann Ramcharan

LADY ARDEN: (with whom Lord Wilson, Lord Lloyd-Jones and Lord Briggs agree)

Main issue on this appeal is the meaning of media statements by a politician

1. This is an appeal by Mr Prakash Ramadhar, the first defendant in this above action. He is one of three defendants whom Kokaram J, sitting in the High Court of Justice of Trinidad and Tobago, found liable in damages for defamation, but he is the only defendant to have appealed. The judge's decision was affirmed on appeal by the Court of Appeal of Trinidad and Tobago (Archie CJ and Smith JA, Moosai JA dissenting). The main issue is the meaning of the appellant's statements, because on that turns the question whether he can rely on the defence of truth. There were three claimants in the action, and they are the respondents to this appeal.

How the media statements came to be made

2. All the parties to this action were members of the Congress of the People ("the COP"). In 2010, the COP was one of the partners in the coalition government, the People's Partnership Government of Trinidad and Tobago ("the PP"). The coalition replaced the government of the People's National Movement ("the PNM"). Some of the respondents held high office within the party. Mr Prakash Ramadhar was the political leader of the COP. The first respondent, Mr Kishore Ramadhar, is his brother.

3. There were disagreements within the COP. Mr Prakash Ramadhar had caused the COP to enter the PP. The respondents disagreed with this decision, and proposed resolutions requiring the National Executive of the party to withdraw from the coalition (the "motion to quit resolution") and calling on Mr Prakash Ramadhar to account for his leadership of the party (the "resurrection motion"). It was agreed that their resolutions should be considered at a general meeting of the party, called a National Council meeting, which was convened for this purpose for 10 November 2013. In the event the two resolutions were not pursued. Prior to the meeting being held, the respondents criticised Mr Prakash Ramadhar in public.

4. Local government elections ("the LGE") were fixed for October 2013. The PNM were reported on 3 October 2013 in the press to have complained to the Elections and Boundaries Commission (the "EBC") that three of the COP's candidates were not in fact members of it. The PNM also claimed that it had details of the members of the COP. In fact, although this only became known to the members of the COP at the National Council meeting on 10 November 2013, there was a letter dated 1 October

2013 (“the October letter”), purportedly signed by three of the COP’s members, namely the first three claimants in the action and respondents to this appeal, and addressed to the secretary of the PNM. This letter informed the PNM that three named candidates put forward by the COP, were not as stated members of the COP and this could be seen from a CD of the membership list of the COP, which was enclosed with the letter. The October letter was read out to the meeting by the fifth defendant to the action, Mr Iqbal Hydal.

5. In the course of the debate that ensued, a new resolution was proposed by the third defendant to the action, Mr Bahadur. It was to suspend the respondents as members of the National Council and National Executive of the COP.

6. The resolution to suspend the respondents pending an investigation into their conduct was carried. A committee was set up to investigate the authorship of the October letter, but in the end, when it reported the following year, the committee did not make any finding that the respondents had sent the October letter.

7. There was considerable press interest in the affairs of the COP. Following the COP’s usual practice, Mr Prakash Ramadhar and certain executive members of the COP held a televised press conference immediately after the National Council meeting. At that conference, the chair of the meeting and second defendant to the action, Mrs Seepersad-Bachan, explained that the October letter had been received, what it said and that it had preceded by one day the complaint by the PNM to the EBC, and that this had led to the resolution to suspend the claimants “pending an investigation by an investigating committee,” to be set up within the next seven days. Then Mr Prakash Ramadhar spoke. As more fully appears from his statements (set out in the next two paragraphs), he said that he made no pronouncement on the authenticity of the October letter which was pending investigation but said that it was an act of betrayal to provide another party with the membership lists since it might lead to discrimination against members shown on that list.

8. The judge quoted the following from Mr Prakash Ramadhar’s address to the press conference:

“[1] Contrary to the many efforts by a few to destroy the party, the party stood in its resolve [that the party is greater than any individual or group of individuals. This party is the only hope in the politics of Trinidad and Tobago and I say that unreservedly.]

[2] Those who moved motions of no confidence against the leader of this party knew full well, that they grounded their ambitions in an effort to destroy this party by attacking the leader. They made it

clear in other statements that their intent was to destroy this party and that their efforts had nothing to do with the lack of confidence in the leader, but everything to do with their wanting to destroy the leader and therefore the party. The party today resoundingly rejected them and they know full well they could not have succeeded [and] did not pursue their trouble making efforts in the face of the National Council.

[3] They would do so in the media, in solitary effort where they had open space to spread their poison but here where it mattered, where their voices would have been heard so the party would say whether we agree or reject you, they ran away like cowards.

[4] And then to have found that the very personalities who have been making all the mischief on the outside, that this letter has come to us and I make no pronouncements as to its authenticity, it maybe all the media they have garnered for the last several weeks or months, maybe they should go to the media and explain whether they did in fact put their signature to such a letter, betraying the party by disclosing its membership list, something we hold very dear.

[5] And let me explain why [a membership list] is important, when people join a political organisation they are much afraid by that they may be discriminated against by the mere fact that they hold membership in a party. Many may not feel that way, but many do feel that way, [and that is] why we held it in terms of a high level of confidentiality. If it is true that they did do these things, then that is the highest level of treachery that we condemn in politics generally and in the COP unreservedly.

[6] And that is why the suspension, without a finding of guilt, and that is why we ask that a proper and full investigation into the matter and if it proved true, the next step is expulsion from the party [...]” (paragraph numbers added)

9. The transcript of the press conference contains the following as the next paragraph (the last paragraph before Mr Prakash Ramadhar turned to national issues):

“[7] The party has been condemned for not being decisive, but that is to confuse process with doing what is right and what is proper, and in these circumstances where the allegations were so strong and so high, we say step aside and let the investigation be concluded, and

then whatever necessary steps be taken after that, the party will engage.” (paragraph number added)

Respondents’ defamation proceedings are tried by Kokaram J

10. The respondents brought proceedings for defamation, contending, in the case of Mr Prakash Ramadhar, that his statements at the press conference were defamatory.

11. Mr Prakash Ramadhar contended that his statements were true and denied any malice. He contended that the respondents had been engaged in abusive and disruptive activities at earlier meetings and that they had made disrespectful and critical statements about him in the press.

12. Section 2 of the Libel and Defamation Act 1846 of Trinidad and Tobago provides that no action for defamation is maintainable in respect of words spoken except in those cases in which an action would be maintainable in respect of the same words in England.

13. At the trial, the judge heard evidence from several witnesses. The judge held that the imputation made by publishing the contents of the October letter was that the respondents had stolen confidential information and betrayed the COP and that they had acted in bad faith and engaged in behaviour that was inimical to the best interests of the party (Judgment of the judge, para 45). The judge held that the resolution “in effect meant that the respondents had engaged in behaviour that was inimical to the best interests of the party” (Judgment of the judge, para 41).

14. The judge dealt with the case against each defendant separately. In relation to Mr Prakash Ramadhar, the judge considered his statements at the press conference. He held that they had the same meaning as the resolution. The judge held that Mr Prakash Ramadhar was “overly critical of the conduct of the claimants condemning them of the very allegations which he sought to characterise as mere allegations” (Judgment of the judge, para 55). Mr Prakash Ramadhar had not been guilty of malice, but, in the judgment of the judge, he was not able to rely on the defence of justification.

15. The judge also rejected Mr Prakash Ramadhar’s defence that he was fairly and accurately reporting on a matter of public interest (in reliance on the decision of the House of Lords in *Reynolds v Times Newspapers Ltd* [2001] 2 AC 127, which was replaced in England and Wales by section 4 of the Defamation Act 2013, but only with effect from 1 January 2014) mainly because he had taken no step to verify the information in his statements before making them. That ruling is not in issue on this appeal.

16. The judge's full reasoning for his conclusion that Mr Prakash Ramadhar was liable for defamation was as follows:

“56. The words [ie the statements made at the press conference] carried the same meaning as outlined in para 41 above [which the Court of Appeal considered was an erroneous cross-reference to para 45 of the judgment of the judge, as to which see para 13 of this judgment]. The speech went well beyond the boundaries of responsible speech and was commentary based on facts which were simply not true. Far from a legitimate reply to an attack on his leadership it was a collateral and unrelated attack on the claimants with the intention of bolstering his position as leader of the party and the direction of the party at the expense of the claimants' reputation. The latitude granted by the law to defend one's character to an attack is limited to a proper and proportional response to the charge and not to '[segue way]' into separate charges or counterattacks which are unnecessary and unrelated to the substance of the initial attack on his character.

57. His further embellishment of the report of the Chairman gave the allegations even more credibility and currency. His attempt to couch his speech in the terms of not accepting the truth of the letters was diluted by the force that he gave to the actual substance of the charges. Obviously upset about the claimants challenge it was an opportunity to silence the detractors and even if there was an ultimate finding of innocence the damage would have already been done.

58. There is little doubt that a reasonable viewer would have placed more weight upon the political leader's invective and criticism of the conduct of the claimant. Taking the speech in its entirety and in its proper context, the claimants were simply hung out to dry and tried in public even before they knew of the charges levelled against them.

59. This cannot qualify as responsible speech or a measured and responsible response to an attack by the claimants. I have given deference to a person under such an attack as not being guided by any fine principles of propriety, but even so this attack can be characterised as designed to destroy his opponent with a disproportionate response. Using a nuclear weapon of the press conference, so to speak, to nuke a fly.

60. The defence of both qualified privilege and fair comment fails. There will be judgment for the claimants against Mr P Ramadhar with costs.”

The Court of Appeal by a majority dismisses Mr Prakash Ramadhar’s appeal

17. The Court of Appeal, on Mr Prakash Ramadhar’s appeal from the judge, by a majority dismissed the appeal.

18. In a judgment of Smith JA, with which Archie CJ agreed, the majority considered and approved the judge’s analysis of the *Reynolds* defence. The majority took the view that the judge was entitled to hold that Mr Prakash Ramadhar’s statements had been disproportionate and retaliatory (Judgment of the majority, para 48).

19. Further, based on the judge’s findings, in the judgment of the majority, any privilege would have been lost because of express malice on the part of the appellant (Judgment of the majority, para 48). The majority held that the judge’s findings justified the inference that Mr Prakash Ramadhar had had an intent to injure the respondents:

“50. In libel, express malice can be proved, inter alia, by proof of improper motive in making a statement. One form of improper motive is a decision to injure a claimant. Such proof of malice negatives the defence of qualified privilege. In this case the trial judge’s findings clearly show that the dominant motive of the press conference was to injure the [respondents] and hence there was proof of malice such as would negative a defence of qualified privilege based on reply to attack. These findings were as stated at para 49 above, especially so the findings that:

The appellant used the press conference

- (i) as an opportunity to silence his detractors and even if there was an ultimate finding of innocence the damage would have been done;
- (ii) to hang the respondents out to dry and be tried in public even before they knew of the charges levelled against them; and

(iii) as an opportunity to destroy his opponent with a disproportionate response ie to nuke a fly.”

20. Further Mr Prakash Ramadhar’s statements that he was not making any pronouncement on the authenticity of the October letter were outweighed by the force he gave to the substance of the charges against the respondents, which was based on a substratum of fact which was not true and so he could not rely on the defence of fair comment:

“56. Even though the appellant purported to put caveats on his commentary by the choice of words like ‘*if it is true that they* (the respondents) *did these things*’, as I have already indicated, the trial judge, after hearing and seeing the appellant and the other witnesses and considering the rest of the evidence and the totality of the speech, formed the impression that those caveats ‘*were diluted by the force that he* (the appellant) *gave to the actual substance of the charges*’. The commentary was squarely an assertion against or attack on the respondents based on a substratum of fact that was simply not true.”

Moosai JA dissents

21. Moosai JA, dissenting, analysed the events in some detail. On the law, Moosai JA rightly recognised that an appellate tribunal did not generally interfere with the meaning given by the trial judge to statements alleged to be defamatory (Judgment of Moosai JA, para 20). A key point in his reasoning was his holding that Mr Prakash Ramadhar’s statements at the press conference had a lesser meaning than the judge had found. Words had to be given their ordinary meaning (Judgment of Moosai JA, para 25). The ordinary person would understand that the events were political in nature and that the respondents had made trenchant criticisms of the appellant (Judgment of Moosai JA, para 28). Ms Seepersad-Bachan and Mr Prakash Ramadhar were careful not to impute guilt to the respondents (Judgment of Moosai JA, para 30).

22. Moosai JA held that it followed that the judge was wrong on meaning, and that his holding among other matters that the respondents “were simply hung out to dry” was difficult to follow. In his judgment:

“It was pellucidly clear that the appellant never pronounced on the merits of the allegations such as to give actual substance to the charges. Nonetheless, a finding that the sting of the publication is only that the circumstances warrant an investigation, without a statement or implication that there was actual guilt or reasonable grounds to suspect, is on the authorities, defamatory. However, such a

publication may be justified by proof of grounds to investigate.”
(Judgment of Moosai JA, para 31)

On justification, Moosai JA accepted that qualifications could be abused and that the source of the October letter was not shown to be the respondents, but he held that there were grounds to investigate because the October letter was before the meeting on 10 November 2013 and the signatures appeared to be those of the respondents; it referred to three named candidates for election; it enclosed a CD with the COP membership list; at least one of the respondents had access to the leaked membership list; the October letter might have been the reason for the complaint to the EBC; and an investigation was set up. Mr Prakash Ramadhar’s press conference statements had made it clear that he did not attribute the October letter to the respondents and there was no suggestion that what had prompted the investigation was their dispute with his leadership. Moosai JA added:

“Although some reference was made in the press conference to the conduct of the respondents, this was specific to issues directly related to an ongoing internal party situation that had by itself attracted significant public attention, and continued to be aired in the public domain.” (Judgment of Moosai JA, para 34)

23. Moosai JA concluded that the meaning of Mr Prakash Ramadhar’s statements at the press conference was that there were circumstances warranting an investigation as to whether the respondents were responsible for the October letter and disclosure of the membership list and that this meaning was substantially true and Mr Prakash Ramadhar was entitled to rely on the defence of justification (Judgment of Moosai JA, para 35).

Submissions to the Board

24. Mr Maharaj SC, for Mr Prakash Ramadhar, submits that the judge failed to give proper weight to all the elements of the context in which the statements were made. In particular, as the matters involved politicians and political matters, it was to be expected that there would be an intense debate and no reasonable outsider would consider it to have been defamatory as opposed to being a fair debate on a matter of public interest. Moreover, he submits, the courts afford greater latitude to criticism of politicians and public officials. The rationale for this approach was explained in *Derbyshire County Council v Times Newspapers Ltd* [1993] AC 534, 548 where Lord Keith of Kinkel quoted from Lord Bridge of Harwich’s speech in *Hector v Attorney General of Antigua and Barbuda* [1990] 2 AC 312, 318:

“In a free democratic society it is almost too obvious to need stating that those who hold office in government and who are responsible for

public administration must always be open to criticism. Any attempt to stifle or fetter such criticism amounts to political censorship of the most insidious and objectionable kind.”

25. The Constitution of the Republic of Trinidad and Tobago protects political activities. Section 4 of the Constitution guarantees a fundamental human right and freedom to join political parties and express political views. Moreover, under the jurisprudence of the European Court of Human Rights, it is well established that the right to free expression includes the right to express views on matters of political concern, and, Mr Maharaj submits, a generous margin is given for statements in this context. Indeed, Warby J held in *Barron v Vines* [2016] EWHC 1226 (QB) at [86] that:

“The primary focus of this jurisprudence is on the need to avoid chilling legitimate political expression by ensuring that those who speak out in good faith on political topics are not unreasonably exposed to findings of liability for defamation.”

26. Thus, the protection given to expressions of opinion on political matters is not unlimited but the courts are expected to take into account that political debate is important in a democracy and that the law must not discourage it. The communications in this case were by leaders of the COP to the public who might be concerned or interested in the internal debates in the COP party.

27. For the first and third respondents, Mr Gilkes submits that the boundaries of free expression should not be extended. He seeks to uphold the judgments of the judge and the majority in the Court of Appeal. He submits that Mr Prakash Ramadhar went too far in what he said at the press conference. He did not need to talk publicly about the events within the COP party and any reference to the October letter could have been left until after completion of the investigation. He vilified the respondents and engaged in character assassination. He manifested an intention to suggest that the respondents wrote the October letter. He encouraged them to go to the media themselves and defend themselves (as they did). So effectively he sought to conduct a trial in the media. Mr Gilkes contends that the discovery of the October letter just in time for the meeting of 10 November 2013 was (as he put it) “happenstance” because there was no explanation as to why that letter had not previously come to attention of the senior officers of the COP. It was explosive because of its content. It appeared to reveal that the respondents had sent the membership list to the opposition. Mr Gilkes submits that the impression given by Mr Prakash Ramadhar’s press conference statements was that he believed that he had found the culprits for the October letter. He made it clear that he regarded the action of sending the letter as treacherous. He considered that the respondents were mischief-making. The trial judge and majority in the Court of Appeal had been correct to hold that this was not political speech which should be protected.

28. Mr Gilkes also submits that the Court of Appeal were right to find malice. Mr Campbell, for the second respondent, in his helpful submissions pointed out that the catalyst for these proceedings was that the appellant had gone to the press.

Analysis of the Board

29. Mr Prakash Ramadhar's defence was that his statements at the press conference were true. The burden of proving truth rests on the defendant, as in defamation falsity is presumed in favour of the claimant. The defendant must 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). Here the judge had found that the press conference statements carried an imputation of bad faith and disloyalty. On the other hand, the defendant need only prove the truth of the substance of the statements: "as much must be justified as meets the sting of the charge" *Edwards v Bell* (1824) 1 Bing 403, 409 per Burrough J.

30. The meaning of words alleged to be defamatory is a question of fact. The judge must decide on the basis of the totality of the facts the meaning that the words would have to an ordinary reasonable person. An appellate court therefore exercises caution in determining whether the trial judge was in error in his assessment of meaning. Thus, as Lord Kerr of Tonaghmore JSC, with whom Lord Reed DPSC, Lady Black, Lord Briggs and Lord Kitchin JJSC agreed, held in *Stocker v Stocker* [2019] UKSC 17; [2019] 2 WLR 1033:

"[59] ... [i]f an appellate court considers that the meaning that he has given to the statement was outside the range of reasonably available alternatives, it should not be deterred from so saying by the use of epithets such as 'plainly' or 'quite' satisfied. If it was vitiated by an error of law then the appellate court will have to choose between remitting the matter or, more usually in this context, determining the meaning afresh. But if the appellate court would just prefer a different meaning within a reasonably available range, then it should not interfere."

31. So the first step in resolving this appeal is to consider how meaning should have been ascertained in this case and then whether the judge made an error of law or found a meaning outside the range of reasonably available responses.

32. As to guidance on the method of finding meaning, Lord Kerr JSC approved in *Stocker*, at para 35, the following list of the "essential criteria" of meaning set out by Sir Anthony Clarke MR in *Jeynes v News Magazines Ltd* [2008] EWCA Civ 130 at [14]:

“(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 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. (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) In 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’: see Eady J in *Gillick v Brook Advisory Centres* approved by this court [2001] EWCA Civ 1263 at [7] and *Gatley on Libel & Slander* 10th ed, para 30.6. (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’: *Nevill v Fine Art and General Insurance Co Ltd* [1897] AC 68, 73, per Lord Halsbury LC.”

33. The most pertinent criterion in that list for present purposes is “(5) [Mr Prakash Ramadhar’s press conference statements] must be read as a whole, and any ‘bane and antidote’ taken together”. The judge’s meaning was that given in para 56 of his judgment (set out in para 16 above) which incorporated the meaning given in para 45 of his judgment. The judge thus gave the same meaning to the statements at the press conference as he gave to the resolution for suspension. He also considered that Mr Prakash Ramadhar had incorporated and adopted the chair’s statement as his own (Judgment of the judge, para 30). The chair referred to the respondents’ conduct in discouraging and undermining COP candidates in the LGE, but the chair did not go further than say that the October letter was purportedly written by the respondents and that their suspension was pending an investigation.

34. The judge did not set out the terms of the qualifications actually made by Mr Prakash Ramadhar. Almost as soon as he started to speak about the letter, Mr Prakash Ramadhar had said “I make no pronouncements as to its authenticity”, and later he said that the suspension was “without a finding of guilt” and “if it is true that they did do these things” and then he made a further reference to the investigation. Instead, the judge noted Mr Prakash Ramadhar’s reference to the events as constituting allegations but inferred that he had in fact treated the allegations as true or was trying to make political capital at the respondents’ expense out of the events (paras 56 and 57). He also drew inferences as to motive from Mr Prakash Ramadhar’s trenchant criticisms of taking the membership list and passing it to another political party (para 57). The judge did not give a full and fair account of the reservations that had been made. Paras 56 and

57 of the judge's judgment are conclusory. Those paragraphs do not explain why the judge gave no real weight to the reservations, or provide a reasoned basis for the inferences as to Mr Prakash Ramadhar's motive that he drew.

35. In addition, the judge appears not to have considered the full context in which the statements were made at the press conference. (The context would not include what had been said at the National Council meeting since this would not be known to the ordinary person listening to the press conference). The importance of context is illustrated by the decision in *Stocker v Stocker*, which concerned the meaning of statements made on a Facebook wall. The judge in that case had had regard to dictionary definitions of the words used. The Supreme Court held that the trial judge had to be "particularly conscious of the context in which the statement was made" (per Lord Kerr JSC at para 38). In that case, the meaning of the Facebook post had to take account of the fact that Facebook was a casual medium, using language in a conversational sense. In the same way, tweets on Twitter were to be understood as using an impressionistic approach: see per Eady J in *Smith v ADVFN plc* [2008] EWHC 1797 (QB) at [13] to [16], per Warby J in *Monroe v Hopkins* [2017] EWHC 433 (QB); [2017] 4 WLR 68, para 35 and per Nicklin J in *Monir v Wood* [2018] EWHC 3525 (QB) at [90]. Tweets were closer to a social conversation than to a carefully chosen expression. Often people gave immediate or only half-considered responses or engaged in repartee in that situation.

36. The Board does not suggest that a press conference given by senior politicians is to be regarded as an occasion for casual statements. On the contrary, 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.

37. On the other hand, the respondents were themselves engaged in public life and courted the media, and therefore they could not expect to be free from scrutiny or criticism in public. Politicians cannot expect to be free from banter and ridicule, good-humoured or otherwise, or from scrutiny of their motives. If politicians were entitled to be protected by the law of defamation against mere criticism, that, as was made clear in *Barron v Vines*, might have a chilling effect on democratic debate. There has, moreover, been no suggestion that the National Council could not impose on the respondents an interim suspension pending an investigation if there were grounds for thinking that the respondents were involved in some underhand matter.

38. The other particularly important element of the context in this case, however, is that the press conference took place in real time and was broadcast live. Some margin has to be allowed for the fact that the statements were made orally and so were more likely to be made in a conversational style and without the precision of a legal

document. What a person says in those circumstances should be interpreted with a certain degree of understanding and generosity.

39. Mr Gilkes submits orally that, if there was a risk of imprecision, the chair and Mr Prakash Ramadhar should simply have declined to say anything about the suspension resolution. They were the authors of their own misfortune for having made the wrong decision to go public on this, and so the court should not view what they said with any generosity.

40. The Board does not accept that submission. The public expected to have the true position explained to them and not to have information withheld from them. There was a clear expectation that a press conference would be given about events at the meeting. That was the usual practice of the COP, and there was in fact considerable human interest in the story because of the relationship of brothers between the two principal protagonists. Representatives of the media had been waiting outside the meeting. Moreover, according to Brandeis J of the US Supreme Court, “sunlight is said to be the best of disinfectants”: there was a public interest in disclosure of important events in the internal affairs of a significant political party. Further, in an age of social media, a version of the story would have reached the public anyway and it was surely preferable for the leader to state his version. The circumstances are very different from those in *Purcell v Sowler* (1877) 2 CPD 215, cited by the respondents.

41. The judge failed to give weight to the importance of communication with the public and this is apparent from his characterisation of the press conference as a nuclear weapon “to nuke a fly”. Once the importance of that communication is appreciated it is unsustainable to say that what was said by Mr Prakash Ramadhar was “mere retaliation”.

42. Looking at Mr Prakash Ramadhar’s press conference statements (paras 8 and 9 above), it is evident that he saw the actions which, unlike authorship of the letter, he knew to be those of the respondents as undermining of the only responsible political party in Trinidad and Tobago. His view appears to have been that, having been unsuccessful within the party, the respondents had sought to make their concerns public. In paras 1 to 3 of his statements (para 8 above), he gave listeners the context to the internal dissension in the party and informed them about his perspective on it.

43. The judge considered that Mr Prakash Ramadhar was motivated by an intention of bolstering his own position and of silencing the respondents who were his critics. As against that, it would have been odd if a politician such as Mr Prakash Ramadhar, the political leader of the COP, neither made any reference to the attacks on his position nor sought to rebut their criticisms robustly. Politicians are not expected to be shrinking violets when answering their critics or giving their opinion as to what is in the public

interest. Subject to the issue of malice, no one suggests that Mr Prakash Ramadhar did not honestly hold the opinions and beliefs that he expressed.

44. Paras 4, 5 and 6 of Mr Prakash Ramadhar's press conference statements are, moreover, couched as conditional statements, conditional, that is, on the respondents being shown to have committed the wrongful acts of writing the letter to the PNM and disclosing the membership list. Thus, in para 4 he expressly declares that he was not making any pronouncements on the authenticity of the letter, and in para 5, he says that it was treachery to the party to hand over the membership list to PNM, but this was only "*if it is true that they did do these things*". In para 6, he states that, *if the allegations were proved*, then it would be appropriate to seek the respondents' expulsion. So, in the judgment of the Board, he was not jumping to conclusions on the question whether they wrote the October letter or passed the COP membership list to the PNM.

45. In the Board's judgment, in these circumstances there was no basis for the judge's conclusion that the press conference was intended to hang the respondents out to dry even before they knew of the allegations against them.

46. Likewise there is, in the judgment of the Board, no substance in the point that what he said was disproportionate. It is difficult to see what else Mr Prakash Ramadhar could have done other than to make the qualifications he did. The majority in the Court of Appeal, in agreement with the judge, thought that those qualifications were diluted (by which is implicitly meant eliminated) by the emphasis that he gave to the substance of the criticisms which he made of the respondents. The Board is unable to accept that conclusion as a reasonably available meaning of Mr Prakash Ramadhar's statements read as a whole, especially in the light of the reference to the investigation in para 7 of his statement (above, para 9).

47. Mr Gilkes' various criticisms of Mr Prakash Ramadhar's statements at the press conference summarised in para 27 above must receive the same response. He submits that there was no explanation as to how the October letter (which he describes as "an apparent deus ex machina") came to light just in time for the meeting on 10 November 2013. The Board sees no basis in the judgments below for any suggestion that the defendants had arranged for it to be produced at that time and intended to take the meeting by surprise.

48. Examining the various statements made at the press conference, the Board considers that it is clear that the appellant qualified what he said about the respondents by stating that the authenticity of the letter was in question and that there had to be an investigation to determine what had happened. He made no secret of the fact that he considered that handing over the memberships lists to the PNM would be an act of treachery and that serious consequences would have to follow but this was only by

reference to the situation which would arise if in an investigation it were established that the respondents had written the October letter. The bane and the antidote have to be taken together. Since the attacks on him were effectively undermining his leadership, he was entitled to meet them in a robust fashion.

49. However, the case is not concluded by finding the meaning of the press conference statements to have been qualified by statements that the matter was subject to investigation. Mr Prakash Ramadhar still has to justify the meaning. This was not pleaded but was clearly considered to be in issue before the judge (see, for example his judgment at para 24) and the Court of Appeal.

50. As Moosai JA pointed out, where the defendant seeks to justify his having said that the claimant's conduct is in some way unlawful or wrongful, the court must determine the meaning of his statement. 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.

51. *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.

52. The Board has considered the press conference statements by Mr Prakash Ramadhar with care, but agrees with Moosai JA that Mr Prakash Ramadhar did not suggest that there were reasonable grounds for concluding that the respondents had sent the October letter. He did not attempt to weigh up the evidence which he would have to have done to assert that there were reasonable grounds. It is correct that he was critical of the respondents' talking to the press, and suggested that they should tell the press whether they wrote the October letter, but he did not give any view on the vital issue of authenticity.

53. Therefore, all he had to prove in this action was that there was a basis for investigation. That was self-evidently so because the October letter purported to be signed by the respondents and the National Council had resolved that there should be an investigation. It was not necessary to give the respondents the chance to respond

before saying that there were grounds for an investigation. The respondents would have an opportunity to put their case to the investigation in due course and before any decision was taken about their membership of the COP. Mr Prakash Ramadhar did not have to go further and prove that the investigation would show that the respondents were indeed responsible for the letter, a matter which they firmly denied.

54. It was suggested in argument that the tone of political debate was different in Trinidad and Tobago and that judges in the court below were best placed to make an assessment of whether the appellant had gone beyond what was reasonable in the circumstances. The need for politicians to follow high standards in political debate and the expectation that politicians should be open to reasonable criticism are universal features of a democratic society. The Board takes account of the limits on its role as a second appellate body in these circumstances: see *Stocker v Stocker* above. However, in this instance the Board considers that there was an error which must lead to the setting aside of the judgments below.

55. It follows that the Board does not consider that this is a case in which it was open to the Court of Appeal, especially in the absence of a holding to that effect by the judge, to conclude that there was malice on Mr Prakash Ramadhar's part. His statements at the press conference, when read as a whole, did not give rise to a necessary inference that he intended to harm the respondents.

56. The Board therefore concludes that, given in particular the practical reality that Mr Prakash Ramadhar had to tell the public at the press conference what had happened at the National Council meeting on that day, the reasonable parameters of political debate were not exceeded.

Conclusion of the Board

57. For the reasons given above, the Board allows Mr Prakash Ramadhar's appeal.

LADY BLACK:

58. I agree that the Board should allow Mr Prakash Ramadhar's appeal. Lady Arden's judgment sets out the facts, and the reasoning of the majority, in some detail, so I will only set out the essence of my own reasoning, and do so briefly.

59. Kokaram J's finding that Mr Prakash Ramadhar had defamed the claimants was focused upon what was said about the October letter at the press conference. Kokaram

J found that, rather than simply reporting an allegation, Mr Prakash Ramadhar was stating that:

“the claimants had stolen confidential information and betrayed their party, that they were unethical, corrupt, acted in bad faith and adverse to the interests of the party; violating the trust reposed in them by abusing their access to the COP database; and had engaged in the highest act of treachery against the party by stealing information from the party and handing it over to the Opposition party.”

(para 45 of Kokaram J’s judgment, applied in relation to the claim against Mr Prakash Ramadhar by para 56 *ibid*)

60. In making this finding, Kokaram J did refer to Mr Prakash Ramadhar’s having “sought to characterise” what he said as “mere allegations” (para 55 *ibid*, and see also para 57). However, he discounted this qualification and concluded that Mr Prakash Ramadhar’s meaning was that the claimants had, in fact, behaved in the way described. Approaching the matter with the caution that, as Lady Arden has explained in setting out the law on meaning (paras 30 to 32 above), an appellate court must always exercise in reviewing the trial judge’s finding as to meaning, I have concluded that it was not open to the judge to interpret what was said at the press conference in this way. Putting what was said into its proper context, which is set out in Lady Arden’s judgment, it is clear, as Lady Arden says at para 48 above, that Mr Prakash Ramadhar qualified what he said by saying that the authenticity of the letter was in question and that there had to be an investigation to determine what had happened. It was not open to the judge to find that he was imputing guilt to the claimants; his meaning was that there were grounds for an investigation into the claimants’ conduct (*Chase* level 3: see para 51 above). That was the meaning that had to be justified, as Lady Arden says at para 53 above. As she explains in that paragraph, it *was* justified. And from that, as I see it, follows the consequence that the appeal must be allowed and the judgment against Mr Prakash Ramadhar for damages for defamation set aside.