



Hilary Term
[2026] UKPC 7
Privy Council Appeal No 0066 of 2024

JUDGMENT

**Phillip Edward Alexander (Respondent) v Andrew
Gabriel (Appellant) (Trinidad and Tobago)**

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

before

**Lord Reed
Lord Sales
Lord Leggatt
Lady Rose
Lord Richards**

**JUDGMENT GIVEN ON
26 February 2026**

Heard on 10 December 2025

Appellant

Douglas Mendes SC

Clay Hackett

(Instructed by Chancery Chambers (Trinidad))

Respondent

Gregory Armorer

(Instructed by Anuradha Sitala Dean)

LORD LEGGATT:

Introduction

1. The question on this appeal is whether the Court of Appeal was justified in interfering with a judgment awarding damages for defamation.

2. The claimant, Mr Andrew Gabriel, is a businessman and a member of the Syrian/Lebanese community in Trinidad and Tobago. He is the managing director of an insurance brokerage company. He was briefly a Senator in the Upper House of Parliament in 1995, having been appointed by the United National Congress government. He later became a supporter of the People's National Movement ("PNM").

3. The defendant, Mr Phillip Alexander, is the political leader of the Progressive Empowerment Party. He is a frequent guest and host of radio programmes and the host or administrator of various blogs and Facebook pages which are open to the public and have a significant number of followers and friends in Trinidad and Tobago and abroad.

4. In these proceedings Mr Gabriel claims that a series of statements published by Mr Alexander defamed him. The first statement was made on the morning of 8 February 2017 during a radio programme known as "the Ground Report" broadcast on More 104.7 FM. The broadcast was also streamed (with video) on Mr Alexander's personal Facebook page where it could be watched live or viewed later. The second statement was posted on Mr Alexander's Facebook page later that day. Mr Gabriel claims that both statements accused him and his family of corrupt and criminal conduct.

5. The next day (9 February 2017) lawyers instructed by Mr Gabriel sent a letter to Mr Alexander under the pre-action protocol, calling on him to desist from further attacks, and to apologise and offer compensation. Mr Alexander responded on his Facebook page making it clear that he intended to continue attacking Mr Gabriel in public. This lawsuit was commenced on that day.

6. Mr Gabriel's statement of case was later amended to add complaints that Mr Alexander had published some ten further defamatory statements on various dates in March and April 2017 ("the subsequent statements").

7. In his defence Mr Alexander admitted publishing the statements complained of but denied that they bore the meanings alleged or were defamatory of Mr Gabriel. Alternatively, he relied on defences that the statements were honest comment or

responsible journalism on a matter of public interest. He did not at any stage assert that the statements, if they bore the defamatory meaning alleged, were true.

8. The trial of the action took place on two days in October and November 2018 before the Hon Madam Justice C Gobin. Mr Alexander was represented by counsel on the first day but appeared in person when the trial resumed. In a written judgment delivered on 1 May 2019, the judge found that both statements made on 8 February 2017 were defamatory of Mr Gabriel and rejected Mr Alexander's defences. She held that the subsequent statements, published after the action was begun, could not themselves form part of the claim but were also defamatory and could be relied on as having aggravated the harm caused to Mr Gabriel by the first two statements. So could Mr Alexander's conduct at the trial and the fact that, as the judge found, the statements were made from malicious motives and Mr Alexander did not honestly believe them to be true. She ordered Mr Alexander to pay general damages in a sum of \$525,000 and further aggravated damages of \$250,000.

9. Mr Alexander appealed. The Court of Appeal (Rajkumar, Wilson and Boodoosingh JJA) allowed his appeal in part. In summary, they held that the trial judge was plainly wrong to find that the first statement was defamatory of Mr Gabriel; that the second statement was defamatory of him but did not also defame Mr Gabriel's family as the judge had found; that none of the subsequent statements was defamatory of Mr Gabriel; and that the judge's order should be set aside and replaced by an order to pay "nominal damages" of \$10,000.

The issues

10. From that decision, Mr Gabriel brings this appeal to the Judicial Committee as of right. The issues are:

(i) On the question of liability, whether the Court of Appeal was justified in reversing the judge's findings (i) that the first statement was defamatory of Mr Gabriel, (ii) that the second statement was defamatory of Mr Gabriel's family, and (iii) that the subsequent statements were defamatory of Mr Gabriel; and

(ii) On the question of damages, whether the Court of Appeal was justified in (i) setting aside the award of damages made by the trial judge and (ii) substituting an award of \$10,000.

The relevant law

11. Before addressing these issues, the Board will outline the core principles of law to be applied. They are well established and not in dispute.

12. Deciding whether words are defamatory of a person (P) has two stages. The first stage is to decide what meaning the words complained of would be understood to bear by an ordinary, reasonable reader (or hearer). For this purpose, it is assumed that the words would be understood to have a single meaning. The words must be considered in their context, having regard to the nature of the publication in which they appeared. The second stage is to decide whether this meaning would lead ordinary, reasonable people to think worse of P (or to treat P less well). In Lord Atkin’s classic formulation in *Sim v Stretch* [1936] 2 All ER 1237, 1240: “would the words tend to lower the plaintiff in the estimation of right-thinking members of society generally?”

13. The characteristics attributed to the ordinary, reasonable reader have been the subject of some judicial elaboration. The following description, or slight variations of it, has often been approved:

“The ordinary, reasonable reader is not naive; he can read between the lines. But he is not unduly suspicious. He is not avid for scandal. He would not select one bad meaning where other, non-defamatory meanings are available. The court must read the article as a whole, and eschew over-elaborate analysis and, also, too literal an approach. The intention of the publisher is not relevant.”

This is a quotation from *Bonnick v Morris* [2002] UKPC 31; [2003] 1 AC 300, para 9. The description was itself based on a statement of Sir Thomas Bingham MR in *Skuse v Granada Television Ltd* [1996] EMLR 278, 285. As restated by Sir Anthony Clarke MR in *Jeynes v News Magazines Ltd* [2008] EWCA Civ 130, at para 14, this guidance has been approved by the UK Supreme Court in *Stocker v Stocker* [2019] UKSC 17; [2020] AC 593, para 35, and by the Judicial Committee as the final court of appeal in this jurisdiction in *Ramadhar v Ramadhar* [2020] UKPC 7; [2020] EMLR 16, para 32.

14. When defamation cases were tried by a judge sitting with a jury, the question whether words bore a defamatory meaning was for the jury to decide. The role of the judge (and of an appeal court) was limited to deciding whether the words were reasonably capable of bearing such a meaning. In a trial by a judge alone, this distinction still applies. What the words complained of would be understood to mean by an ordinary, reasonable person and whether this meaning is defamatory of the claimant are treated as matters of fact. An appeal court is justified in disturbing the judge’s findings only if the judge applied

the wrong legal test or reached an unreasonable conclusion. If the appeal court “would just prefer a different meaning within a reasonably available range, then it should not interfere”: *Stocker v Stocker*, para 59 (Lord Kerr of Tonaghmore).

15. The main reason for requiring such restraint on an appeal is the need for efficiency in adjudication. On matters which are fact-specific and not capable of creating a precedent for later cases, one judicial decision should generally be enough. The costs and other disadvantages of allowing the unsuccessful party to require the question to be decided again on an appeal outweigh any putative benefits. In the words of White J giving the opinion of the United States Supreme Court in *Anderson v City of Bessemer* (1985) 470 US 564, 575 (quoted with approval by the UK Supreme Court in *McGraddie v McGraddie* [2013] UKSC 58; [2013] 1 WLR 2477, para 3):

“... the parties to a case on appeal have already been forced to concentrate their energies and resources on persuading the trial judge that their account of the facts is the correct one; requiring them to persuade three more judges at the appellate level is requiring too much. As the court has stated in a different context, the trial on the merits should be ‘the main event’ ... rather than a ‘tryout on the road’ ...”

What is said here about the parties’ accounts of the facts applies equally to their arguments about whether words published by one were defamatory of the other.

16. A similar test applies, for similar reasons, on an appeal against an award of damages. No sum of money is equivalent to harm to a person’s reputation or feelings. But a court cannot compel a defendant to apologise or correct a defamatory statement and awarding a sum of money is the best that a court can do by way of compensation. It was once left to the discretion of a jury, but is now for the trial judge, to assess what sum of money would represent - or would be seen by fair-minded members of society to represent - appropriate compensation in a particular case. Opinions may naturally differ about what is an appropriate figure. Given the subjective nature of the task, it is a waste of resources to allow an appeal court to substitute a different figure simply because its view differs from that of the trial judge. That merely replaces one judicial opinion by another which has no greater intrinsic validity and is reached on what is likely to be a less direct and detailed understanding of the circumstances. Disturbing the trial judge’s assessment of damages is justified only if it was made on a legally incorrect basis or if the appeal court considers the sum awarded to be outside the generous range within which there is scope for reasonable disagreement.

The first statement

17. The first statement complained of by Mr Gabriel consists of words spoken by Mr Alexander during an unscripted radio broadcast. The broadcast was also recorded and published online in a form capable of being downloaded and reproduced. As the Court of Appeal has recently held in *More FM Ltd v Junior Sammy*, Civil Appeal No S295 of 2018 (2 July 2024), this qualifies as publication in a permanent form which can therefore be the subject of a claim for libel, and not just slander (which is governed by stricter rules).

18. These are the words of the first statement about which Mr Gabriel complains:

“... I want to tell Andrew Gabriel this, Andrew, Rosalind Gabriel, Norman Gabriel, Sophie Gabriel, you recognising them names? I will put your business, I will put Carlos Sabga daughter business in the road brother. Pull back your talking heads because when I come at you Andrew Gabriel, allyuh Gabriel family will pack up and leave this country. Hear what I telling you. Let’s go.

I will put Andrew Gabriel ... I am not talking to your talking heads ... I am ignoring your spranger piper Dane Wilson, I am talking to you and I will put your business in the road. Tell your whole family, Phillip Edward Alexander say so ...

I want Andrew Gabriel, doh send CEPEP Syrians to me. You come brother. Let you and me discuss how Norman Gabriel Insurance Brokers went from a 2x4 with a T&TEC, what it is, what allyuh get, the pension fund? Let we talk nah brother, live on air ... this is a live video, Andrew Gabriel ... (host interjects: you are referring to Andrew Gabriel, the PNM financier?) ... the PNM owner and Rohan Sinanan ... also you, call Andrew now on the phone and tell him, pull off spranger piper Dane Wilson from Phillip tail, tell him pull off CEPEP Syrian George Elias from Phillip tail because I will put information in the public space and you all will have to go home and pack and leave ...”

(Emphasis added by the judge)

19. Mr Gabriel’s case is that these words would be understood to mean that he had engaged in conduct of a corrupt and criminal nature which was so odious and

contemptible that, when it was exposed to the public (“put in the road”) by Mr Alexander, Mr Gabriel and his family would have to leave the country.

20. The judge agreed. She said, at para 20 of her judgment:

“In my assessment, what the defendant issued was a serious threat with extremely damaging imputations against the claimant and named family members. It is a strong thing to suggest that you hold such information on someone and his family, that if you were to expose it, they would only escape the consequences by leaving the country. The imputation is that the unspecified conduct is so gross and despicable that they would not be able to show their faces in this country once it was revealed.”

21. The Court of Appeal rejected this interpretation and decided that the judge was plainly wrong to conclude that the words complained of were defamatory. Rajkumar JA gave two reasons for interfering with the judge’s finding: see para 21. The first was that the judge had failed to apply the correct legal test: she had assessed the meaning of the words without reference to the impact of those words on the ordinary, reasonable listener/reader with the characteristics described in the authorities, hearing those words in the course of a two hour long radio broadcast. The second reason was that “the meaning arrived at by the trial judge could only have emerged as the product of [a] strained or forced or utterly unreasonable interpretation”. In other words, the meaning was not one which in the view of the Court of Appeal the words could reasonably bear.

22. The criticism that the judge failed to apply the correct legal test was pressed on this appeal by Mr Armorer on behalf of Mr Alexander. But the Board does not accept it. In reviewing a judgment given at first instance, an appeal court should adopt what might be called a principle of charity: that is, the appeal court should approach the judgment on the assumption that the judge carried out her task proficiently and understood the facts and the law correctly, unless and until the contrary is shown. It would be unrealistic, would place an unreasonable burden on judges and would hinder the efficient administration of justice to expect judges to record everything relevant to their decisions in the reasons they give for them, including matters which are not salient or not disputed. Thus, it cannot reasonably be inferred that, just because a matter is not mentioned in a judgment, the judge ignored it. An appeal court should assume that a trial judge took into account all the evidence presented at the trial, unless there are clear indications to the contrary: see eg *Volpi v Volpi* [2022] EWCA Civ 464; [2022] 4 WLR 48, para 2 (iii); *Gift v Rowley* [2025] UKPC 37, para 3; *Evans v Barclays Bank Plc* [2025] UKSC 48, para 135. Equally, where there was no dispute about the correct legal test, again unless the contrary is shown, the judge may be assumed to have applied that test.

23. Here counsel for Mr Gabriel in written closing submissions at the trial accurately summarised the legal test for deciding whether words are defamatory - including the description of the characteristics attributed to the ordinary, reasonable reader which the Board has quoted at para 13 above. The test was not in dispute. It was not necessary in these circumstances for the judge to recite it and there is no reason to think that she was applying the wrong test when she made her findings about what the statements complained of meant. There is in fact positive evidence that the judge had the correct legal test in mind. At para 26 of the judgment, she said that “[t]he ordinary reader in an age of social media does not have to be ‘avid for scandal’”. The phrase “avid for scandal” is a direct quotation from the guidance referred to at para 13 above and confirms that the judge was following that guidance.

24. The other reason given by the Court of Appeal for intervention - that the judge had placed a “strained or forced or utterly unreasonable interpretation” on the words complained of - is, in the Board’s opinion, equally misplaced. Although Rajkumar JA considered the words “Let you and me discuss how Norman Gabriel Insurance Brokers went from a 2x4 with a T&TEC, what it is, what allyuh get, the pension fund?” to be “barely comprehensible, and without more detail actually meaningless” (para 26), the basic gist of these words seems to the Board to be clear enough. Mr Alexander was suggesting that he had information about how Mr Gabriel’s family company went from being a small business (“a 2x4”) to winning a contract associated with the pension fund of a major state enterprise (“T&TEC”, the Trinidad and Tobago electricity company). A listener or reader would not have to be “avid for scandal” to understand the obvious imputation that some form of corruption was involved.

25. Rajkumar JA considered that this meaning “makes no sense because an insurance brokerage firm would not normally provide either brokerage services or trusteeship services to a pension fund” (para 26). But even if that were true (and Mr Mendes SC maintained that it is not), it attributes to the ordinary, reasonable reader an overly analytical approach of the kind which he or she is taken to eschew. In any case any uncertainty in the reader’s mind about what the link might be between an insurance brokerage firm and a pension fund would not negate the imputation of corruption. Mr Alexander’s assertions that the information about Mr Gabriel’s family business which he was threatening to publish would, when revealed, make the Gabriel family “pack up and leave this country” clearly signified that Mr Alexander had knowledge of very serious wrongdoing - so serious and potentially damaging that its disclosure would cause Mr Gabriel and his family to leave Trinidad (presumably either to avoid criminal prosecution or to escape from the public shame and humiliation that would ensue).

26. The Court of Appeal thought that the statement could only be understood to convey this meaning by reading into it far more than is justified by the words used. Rajkumar JA, at para 19, reasoned as follows:

“The ordinary reasonable person in this country would be sufficiently rational to fully appreciate that a) no information had been revealed, b) it may never have been revealed, (as in fact turned out to be the case), and c) until such information was revealed it could be considered a bluff or as a threat to reveal information the seriousness of which would only be revealed and assessed by such reasonable man at the time that it was actually revealed. That information, if it had been put in the public space may have turned out to be not as significant as [Mr Alexander] was indicating. In fact there may have been no such information. The ordinary reasonable person not avid for scandal would immediately conclude that that was the point when he would make his own determination as to whether any information revealed was so serious that the respondent and his family could not show their faces, or that [Mr Gabriel] and his family would have to pack up and leave.”

27. In the Board’s opinion, this reasoning confounds the question whether an imputation is defamatory with the question whether it is likely to be believed. They are different questions. Even if the reader doubted whether Mr Alexander really had information which would demonstrate serious wrongdoing, or resolved to keep an open mind until such information was revealed, that would not prevent the imputation from being defamatory. Words are defamatory if they carry an imputation of discreditable conduct regardless of whether a person to whom the words are published is likely to believe or does in fact believe that the imputation is true. The credibility of a defamatory statement is relevant only to the degree of harm caused to the claimant and hence to the amount of damages to be awarded. It does not affect liability. In *Morgan v Odhams Press Ltd* [1971] 1 WLR 1239, 1246, Lord Reid said of a submission that

“no tort is committed by making a defamatory statement about X to a person who utterly disbelieves it. That is plainly wrong. ... There may be no clear authority that publishing a defamatory statement is a tort whether it is believed or disbelieved. But very often there is no authority for an obvious proposition: no one has had the hardihood to dispute it.”

Lord Morris of Borth-y-Gest, at p 1252, similarly described the contention as “completely fallacious”.

28. In any event it seems unrealistic to suppose that members of the public who heard Mr Alexander’s words would apply a strict presumption of innocence and place no credence at all in his claim to possess information that Mr Gabriel’s company had benefited from corruption until such time as Mr Alexander carried out his threat to publish

the information. A more plausible reaction is that Mr Alexander would be unlikely to make such a threat unless he had some damning information which he was ready to reveal. The most that can be said is that the ordinary, reasonable reader or listener may have felt doubt about whether the information would prove to be reliable. But doubt about whether an allegation is true does not prevent it from causing real damage to a person's reputation.

29. The Court of Appeal emphasised the fact that Mr Alexander's threat to reveal the information he claimed to possess was conditional. In the last part of the statement quoted at para 18 above Mr Alexander named two individuals who had apparently attacked him publicly and whom he evidently believed (falsely as it turned out) had been put up to this by Mr Gabriel. Mr Alexander called on Mr Gabriel to "pull off" these individuals "from Phillip tail" (in other words, from attacking Mr Alexander) and threatened that, if he did not, Mr Alexander would make public the information that he claimed would cause Mr Gabriel and his family to leave the country.

30. The Board agrees that the statement complained of would be understood as making such a conditional threat. But the fact that the threat was future and conditional does not affect the gravamen of the libel. What was defamatory was the allegation that Mr Gabriel's company had grown from being a small business to a large one acting for a state enterprise by corrupt means. The fact that Mr Alexander had not yet published the specific information he claimed to possess, and might never do so, does not remove the sting. Nor does the absence of detail. As noted in *Gatley on Libel and Slander*, 13th ed (2022), at para 2-024, it has been held defamatory to publish of a person that he is a rogue and a rascal, a swindler, a crook, a shyster, dishonest, a villain or a blackguard. A generalised allegation of criminality may be less damaging than a more detailed or specific one, but it is still defamatory.

31. For these reasons, the conclusion reached by the Court of Appeal that the first statement was not defamatory of Mr Gabriel and his family cannot, in the Board's opinion, be sustained. Still less can it be said that the defamatory meaning found by the judge was outside the reasonably available range. The Court of Appeal was therefore wrong to disturb the judge's finding.

The second statement

32. The second statement complained of, posted by Mr Alexander on his Facebook page, was as follows:

"I sent a message to the PNM financiers Sinanan and Gabriel live on air this morning that I will be ignoring their personal attackers and respond to THEM directly.

I am not playing this rounds.

I have no time for CEPEP Syrian George Elias and PNM piper Dane Wilson and their pathetic attempts at personal attacks. I don't even have time for puppet Rowley and dapper Don al Rawi, whatever they say about me, I will consider it as said by Gabriel and Sinanan, and I will respond in kind.

A former Attorney General sent to the radio station to silence me?

Friend, you all don't even have a clue what time it is yet. *I will unravel your bandit clan right here in the public arena.* You go write your letters."

(Emphasis added)

33. Mr Gabriel claims that the words "I will unravel your bandit clan right here in the public arena" mean that Mr Gabriel (described earlier in the statement as a "PNM financier") and his family were involved in criminal activity which Mr Alexander intended to expose in the public arena.

34. Again, the judge agreed. She found that, read against the background of the first statement made earlier that morning in which Mr Alexander had named Mr Gabriel's family members, the words meant that his entire "clan" or family was involved in graft and that this was facilitated by Mr Gabriel's connection with the People's National Movement as a "party financier".

35. The Court of Appeal decided that the judge was wrong to regard the term "bandit clan" as referring to Mr Gabriel's family: see paras 32–37, 130–132. That impression could only have been formed by a reader who had listened to the lengthy earlier broadcast, recalled the references in it to members of Mr Gabriel's family, and had then drawn a link between them and the "bandit clan". Though Mr Gabriel might himself have made that connection, the ordinary, reasonable reader would not have drawn that link to the prior broadcast which he or she may not even have heard. Such a reader would have understood the word "clan" in the context of the post itself, which was directed at Mr Gabriel and another alleged "PNM financier", to refer to those two individuals and others associated with that political party. In the view of the Court of Appeal, the statement would have been understood to mean that Mr Gabriel "was obtaining benefits thereby in an unfair manner as a result of favours granted to him as a member of a 'bandit clan' of party financiers" (para 37). This was clearly defamatory but was not the meaning found by the

judge. It was less damaging than the meaning found by the judge because it was a slur against a political group of which the claimant was a member rather than against him personally and his entire family.

36. In this instance the Board considers that the Court of Appeal was justified in interfering with the judge's finding. The judge made an error of law in reading the second statement "against the background" of the first. It could not reasonably have been, and was not, suggested that the statements were sufficiently closely connected to be regarded as a single publication. Nor did Mr Gabriel advance a case of innuendo - that the words would have been understood to have a particular meaning by certain persons with special knowledge of extrinsic facts.

37. Counsel for Mr Gabriel have argued that, although the earlier radio broadcast was not part of the same publication as Mr Alexander's post later that day, it could properly be treated as part of the context of the second statement because it was likely to have been in the mind of the hypothetical ordinary, reasonable reader of the second statement. They rely on the fact that a link to the broadcast appeared above the second statement on the same Facebook page, and on observations of Warby J in *Monroe v Hopkins* [2017] EWHC 433 (QB); [2017] 4 WLR 68 about how much material forms part of the context of a post made on the platform previously known as "Twitter". Warby J said, at para 38, that:

"a matter can be treated as part of the context in which an offending tweet [should be read] if it is on Twitter and sufficiently closely connected in time, content, or otherwise that it is likely to have been in the hypothetical reader's view, or in their mind, at the time they read the words complained of. This test is not the same as but is influenced by the test for whether two publications are to be treated as one for the purposes of defamation ..."

38. Certainly, the Board accepts that what material should be considered as part of the context of a statement must be assessed having regard to the nature of the medium in which the statement is published and how that medium is commonly used. Here, however, while the judge commented that Mr Alexander's post "came on the heels" of his radio interview earlier that morning, that does not warrant the assumption which she appears to have made that someone reading the post would have listened to the full interview and have had in their mind a few words uttered by Mr Alexander in the course of a "rant" (to use the judge's description borrowed from Mr Alexander himself: see para 43 of the judgment) that lasted for some two hours. Nor is it fair to assume that, just because a link to the broadcast was available on the same Facebook page, the reader would be likely to follow it, listen to the interview, and then connect the "bandit clan" with references to Mr Gabriel's family. Rather, as the Court of Appeal pointed out, the content of the post itself

supplied the relevant context. The “bandit clan” was as much a reference to the other PNM financier named in the post as it was to Mr Gabriel and would naturally have been understood as a description of their political associates rather than of the family of one of them.

39. Properly interpreted, the second statement was in the Board’s view not reasonably capable of bearing the meaning which the judge gave it, and the Court of Appeal was entitled to make the finding that it did about what the ordinary, reasonable reader would understand the statement to mean.

The subsequent statements

40. On this appeal it is common ground that the judge was entitled to consider whether the subsequent statements were defamatory of Mr Gabriel and, if any of them were, to take those statements into account in assessing damages. Yet, although the judge found all the subsequent statements to be defamatory, she simply asserted that they all have the meanings ascribed to them in Mr Gabriel’s amended statement of case (see para 48 of her judgment). She gave no reasons for this conclusion. Mr Mendes SC, in his able and realistic submissions on behalf of Mr Gabriel, accepts that in these circumstances the Court of Appeal was entitled to decide for itself whether the subsequent statements were defamatory and that the Board would be justified in interfering with that court’s findings only if the meanings given to the statements fell outside the range of reasonable meanings. Mr Mendes accepted that, for all but one of the subsequent statements, this high threshold cannot be met. But he submitted that the Court of Appeal was plainly wrong to find that one statement (which the Court of Appeal referred to as the “eighth statement”) bore no defamatory meaning.

41. This statement was included in a post made by Mr Alexander on his Facebook page on 22 March 2017. The full text was:

“Members of the Syrian community would like Trinidad & Tobago to know that they are NOT responsible for this Keith Rowley government nor for the handful of their members in the Rowley cabal. Many of them are ashamed and tired of being painted with the same brush because of the antics of a few and I have to agree, stereotyping of a race because of the behaviour of some of its members is unfair.

But the questions I want to ask of this minority government with the lowest vote in our history are, if the black community does not claim you and the middle class wants to see the back of you, who is supporting you?

Besides the group of material beneficiaries, who claims your ideology? Who believes in your programmes? Besides the people being paid to say so and *your financiers raping the treasury*, who supports this government?

I think it is time to fire them. Our country cannot survive this bungling bunch much longer.

We are tired of your excuses Keith Rowley. Tired of you and your band of incompetents.

It is time to admit that you failed.

Fire yourself.

Dissolve the Parliament and call an election now.”

(Emphasis added)

42. Mr Mendes submitted that the reasonable reader could not but draw the conclusion from the words which the Board has emphasised that Mr Gabriel, as a financier of the PNM government, had “raped” the treasury, meaning that he had benefitted from the treasury by unlawful means.

43. The Court of Appeal did not accept that the statement would convey this meaning to the ordinary, reasonable reader. There was a photograph posted on the same page as the text showing a group of people including Keith Rowley (the Prime Minister) and Mr Gabriel (among others), which the Court of Appeal accepted would convey to the reader that Mr Gabriel was a supporter of the government. But, in their view, the reference to the government’s financiers “raping the treasury” was far too general and broad brush an allegation to be defamatory of Mr Gabriel or indeed to be defamatory at all. Rajkumar JA said that “[o]nly the selection of the worst possible meaning would convey to the reader avid for scandal that the photograph of [Mr Gabriel] meant that he was not only materially benefitting from the Treasury but also that he was doing so by unlawful means” (para 72).

44. The Board does not find it possible to say that the meaning given to this statement by the Court of Appeal is outside the range of reasonable meanings. To the contrary, it is an available meaning to regard the words complained of as a piece of political invective accusing the government of incompetence and misusing public funds, but as too general

to be understood by the ordinary, reasonable reader to be making an allegation of corruption against Mr Gabriel. The Board therefore affirms the Court of Appeal's conclusion that none of the subsequent statements was defamatory of Mr Gabriel.

The amount of damages

45. Because the judge's award of aggravated damages was based partly on her finding that all the subsequent statements were defamatory of Mr Gabriel, and that finding has been reversed, Mr Mendes rightly accepts that this element of the damages must be reassessed. But he submits that the Court of Appeal was wrong to interfere with the judge's award of general damages.

46. In the Board's opinion, the general damages must also be reassessed, if only because the judge's assessment was based on an interpretation of the second statement which has not been upheld. The judge considered that, although the family members had not themselves sued Mr Alexander, the imputations cast on them had caused Mr Gabriel hurt and pain which exacerbated the injury to his feelings. She took this factor into account in her award of general damages. Because the judge was wrong to treat the second statement as defaming the family members, she was wrong to do so. As this element forms an unspecified part of a global award of general damages, the award as a whole cannot stand and a fresh assessment is required.

47. The paucity of justification given for such a large award is a further reason to revisit it. The judge noted that there was no evidence of any particular impact on Mr Gabriel's business reputation or of any financial loss but found the injury to his feelings to be significant. The judge recorded her finding that this injury had been exacerbated because of the hurt and pain suffered by members of Mr Gabriel's family - a consideration which, as just mentioned, she was wrong to take into account. She then said that she had considered the range of awards made in similar cases, including four cases which she named. But the judge said nothing further about those cases to indicate what they decided or what guidance she had derived from them. As Rajkumar JA rightly remarked (at para 99), the mere reference to these cases was insufficient to disclose any reasoning upon which the award made could have been justified.

48. In *More FM Ltd v Junior Sammy*, para 95, Kokaram JA surveyed ten cases in which damages were awarded for defamatory statements imputing corrupt or dishonest conduct and concluded that an acceptable range for this type of defamatory remark would be between \$300,000 and \$600,000. These figures included aggravated damages where applicable. The total amount of \$775,000 (inclusive of aggravated damages) awarded here was therefore, as Rajkumar JA observed at para 106, out of line with the range of awards in similar circumstances. To justify such a high award, convincing reasons would need to be given. The failure to give such reasons reinforces the need for a fresh assessment.

49. The Court of Appeal carried out a fresh assessment, but because they found that the only defamatory statement was the second statement made on 8 February 2017, their award left out of account the first statement complained of. In assessing harm, the Court of Appeal took the sting of the libel to be the use of the word “bandit” in the expression “bandit clan”. While accepting that this would be understood to mean that Mr Gabriel was guilty of corrupt activity, they characterised it as a “fleeting reference” (para 116) which would have left a “fleeting impression” on the ordinary, reasonable user of social media (para 105) and which anyway only narrowly overstepped the line between legitimate political speech and defamation (see paras 39, 104–105, 115, 138). As the word “clan” did not refer to Mr Gabriel’s family, distress felt by Mr Gabriel about a slur on his family was based on a mistaken perception and should be left out of account. Overall, the Court of Appeal considered that an award of “nominal damages” would be sufficient to compensate Mr Gabriel for hurt feelings and that the publication of its judgment was sufficient to vindicate his reputation (see paras 117, 141). The sum awarded was \$10,000.

50. The Board has considered whether this award should be allowed to stand as damages for the second defamatory statement, leaving damages for the first defamatory statement to be separately assessed, but has concluded that this would be wrong in principle. Where—as here—there is more than one defamatory publication, it is the cumulative effect on the claimant’s reputation and feelings that must be assessed. It is therefore not appropriate to make separate awards for the two statements: a single, holistic assessment of damages is necessary.

51. That is reason enough to set aside the Court of Appeal’s award. But the Board also considers that, even on its own terms, the award of only “nominal damages” made by the Court of Appeal was manifestly inadequate to compensate Mr Gabriel for the wrong done to him.

52. A primary purpose of an award of damages for defamation is to vindicate (in the sense of repair or restore) the claimant’s reputation. To achieve this, it is generally necessary to award as damages a sum of money which is sufficient to demonstrate to the public that the claimant’s name has been cleared. As Lord Hailsham of St Marylebone LC put it in *Broome v Cassell & Co Ltd* [1972] AC 1027, 1071, the claimant “must be able to point to a sum awarded ... sufficient to convince a bystander of the baselessness of the charge.”

53. In assessing damages, the starting point is to consider the gravity of the defamatory imputation and the extent of publication. As to gravity, it goes without saying that an imputation of involvement in corruption goes to the core of a person’s reputation and is all the more serious when—as here—the person defamed is of unimpeached integrity and good character. As to the extent of publication, Mr Alexander’s Facebook page was said in uncontradicted evidence at the trial to have had over 16,000 followers in July 2017. It is not in dispute that the statements published by Mr Alexander, including the second

statement, were widely disseminated, not only through Facebook but also via social messaging applications such as WhatsApp. It has always been necessary to take account of what Bingham LJ once described as the propensity of defamatory statements “to percolate through underground channels and contaminate hidden springs”: *Slipper v British Broadcasting Corporation* [1991] 1 QB 283, 300. But recent case law has noted that this problem has been immeasurably enhanced by modern technology and, in particular, by the speed, reach and permanence of communication via the internet and social media: see eg *Cairns v Modi* [2012] EWCA Civ 1382; [2013] 1 WLR 1015, para 27; *Barron v Vines* [2016] EWHC 1226 (QB), para 21(3)(d).

54. The harm caused by a defamatory statement can sometimes be effectively mitigated by a prompt public retraction and apology. But that did not happen here. On receipt of the letter sent by Mr Gabriel’s attorney on 9 February 2017 seeking an apology and a proposal for compensation, Mr Alexander, as the judge found, “ramped up the campaign” (para 31) and “chose instead to flaunt his bravado and to intensify his attack” (para 54). He responded to the letter by posting on his Facebook page the following statement:

“IN RESPONSE TO ANDREW GABRIEL

Andrew Gabriel I tag you personally in this so that you know that I have received your legal letter via Michael Quamina’s office, but more importantly I want the entire public to know as well as I plan to fight this in the public space.

You have until three p.m. today to have the same Quamina contact me and cancel this nonsense of a pre-action protocol letter, failing which will be responding to you in depth via a live video today, and to put some very salient information in the public space.

You of course have the ability to put this all behind us.

You can instruct the PNM agents and talking heads to cease the personal attacks against me or and my family and associates and withdraw.

Failing which, we will fight this battle publicly and go round and around, including and especially the court of public opinion.

Phillip Edward Alexander”

55. It is unnecessary to set out in full detail how Mr Alexander carried out his threat to “fight this battle publicly and ... especially [in] the court of public opinion” over the following weeks and months. What is clear from this statement and Mr Alexander’s subsequent conduct is that he adopted a deliberate tactic of continuing to attack Mr Gabriel publicly and seeking to attract the widest possible publicity for his campaign of vilification.

56. By way of illustration:

(i) In statements posted on Facebook on 9 March and 18 March 2017, Mr Alexander called on members of the public to provide him with information to substantiate (after the fact) his allegation that Mr Gabriel (or his wife, their companies or any relative or associate) had corruptly obtained public contracts.

(ii) In a further post on 18 March 2017, Mr Alexander repeated the reference to “bandit clan”, saying that, although this was not intended to refer to Mr Gabriel’s family, Mr Gabriel’s lawyer had “for some reason” assumed that it was, adding the vulgarity:

“Actually no, my post wasn’t about you. But if the shoe fits, feel free to lace that bitch up and wear it.”

(iii) In a Facebook Live video posted on 2 April 2017, Mr Alexander portrayed himself as taking on financiers and investors who were trying to silence his attempts to expose corruption and stand up for the nation, invoking the lawsuit against him as evidence of this and proclaiming his determination “to fight that son of a bitch with every breath I have in my body, in that court”.

(iv) Another Facebook Live video posted on 4 April 2017 was a sustained attack on “Mr PNM Investor man” - in context plainly a reference to Mr Gabriel - raising questions about how Mr Gabriel’s company had rapidly grown in size and how it had got contracts, and making threats to expose the information to the public. A sample extract will give the flavour:

“Mr PNM Investor man, I compiling yuh information, I may not be able to call it in the public space yet ... But pray, I don’t end up in d Senate. Pray I don’t get d same parliamentary privilege dat Rowley use to wine on people for five years,

because I will make yuh cry brudda, I promise yuh you will cry tears.”

(v) The judge found that the aim of Mr Alexander’s “unrelenting campaign” was to cause Mr Gabriel to withdraw the proceedings and that it only came to an end when the subsequent statements were brought to the attention of the court in October 2017 and when Mr Alexander was invited to give an undertaking which he did upon the advice of his counsel not to continue his attacks (para 54).

57. Although the subsequent statements (including those mentioned above) have been held not themselves to be defamatory of Mr Gabriel, they remain relevant in assessing damages because they very obviously magnified the damage caused by the statements published on 8 February 2017. They did so by persisting in baseless claims and speculation about involvement in corruption, demonstrating intense animosity towards Mr Gabriel, engaging in vitriolic abuse, and seeking to broadcast these attacks as widely as possible.

58. Mr Alexander’s aggravating conduct continued during the trial. For example:

(i) Although he did not plead a defence of justification and produced no evidence to justify his allegations, Mr Alexander repeated them at the trial - describing Mr Gabriel under cross-examination, for example, as “corrupt”, insisting in his closing submissions that “truth is an absolute defense to a defamation lawsuit” and again asserting in a further written submission that Mr Gabriel and his family were engaged in corruption.

(ii) Mr Alexander even maintained in the witness box his claim to possess incriminating information about Mr Gabriel (see para 41 of the judgment), although the falsity of the claim was demonstrated by the fact that no such information was ever produced.

(iii) When cross-examining Mr Gabriel, Mr Alexander’s counsel asked Mr Gabriel - “somewhat cheekily” as the judge put it - if he was willing to accept an apology. Given Mr Alexander’s persistence in his allegations and in (as the judge described it) “taunting the claimant and his lawyer”, she justifiably viewed the question as “insincere and disrespectful” (para 58).

59. In *Sutcliffe v Pressdram Ltd* [1991] 1 QB 153, 184, Nourse LJ gave a list (quoted in *Gatley on Libel and Slander*, 13th ed (2022), para 10-016) of examples of conduct of a defendant which may be regarded as aggravating the injury to the claimant’s feelings, so as to support a claim for aggravated damages. The examples include “a failure to make

any or any sufficient apology and withdrawal; a repetition of the libel; conduct calculated to deter the [claimant] from proceeding; persistence ... in a plea of justification which is bound to fail; the general conduct either of the preliminaries or of the trial itself in a manner calculated to attract further wide publicity; and persecution of the [claimant] by other means.” Almost all of these aggravating features are present in this case.

60. As well as conduct of the defendant, a demonstration of malice or other improper motive may aggravate the injury done to the claimant. That is also a feature of this case. The judge found that a video posted on Facebook by Mr Alexander on 10 October 2018 (just a week before the trial) and his answers elicited in cross-examination established malice and deep-seated animosity toward many members of the Syrian Community including the claimant (para 45). She also found that Mr Alexander showed “wanton disregard ... for the truth of his statements” and did not honestly believe his own statements about Mr Gabriel (paras 44 and 45). These findings of malice have not been disturbed on appeal.

61. On these facts the Board feels bound to disagree with the view taken by the Court of Appeal that its own judgment was sufficient to vindicate Mr Gabriel’s reputation and that no award of damages was needed to achieve this, with only a “nominal damages” required to compensate Mr Gabriel for injury to his feelings. It has been recognised that a reasoned judgment from a court may sometimes help to mitigate damage caused by a defamatory statement. But the impact of such a judgment depends on all the circumstances and is generally viewed as marginal: see *Purnell v Business F1 Magazine Ltd* [2008] 1 WLR 1, paras 27–30; *Cairns v Modi*, paras 30–32. In this case the notion that Mr Gabriel’s reputation was fully restored simply by publication of the Court of Appeal’s judgment is not sustainable. It is unrealistic to imagine that many people who follow Mr Alexander on Facebook or who had his defamatory words disseminated to them will read or have read any of the judgments in this litigation. What is more likely to come to their notice is the headline result. Learning that Mr Gabriel was awarded nominal damages does not send a signal that his defamatory allegations of corruption were baseless. If anything, it gives a false impression that the claimant’s reputation is of little worth.

62. An award of nominal damages is also wholly insufficient to compensate Mr Gabriel for the injury to his feelings, seriously aggravated as it was by Mr Alexander’s subsequent conduct and malice. In their assessment of damages, the Court of Appeal disregarded all but one the aggravating features found by the judge. The only one mentioned was the absence of any apology, which Rajkumar JA downplayed. He said, at para 109:

“The suggestion of an apology was rejected by the trial judge as cheeky without exploring what the content of such apology could be. While a full apology might not have been possible

[Mr Alexander] always maintained that he did not mean to refer to [Mr Gabriel's] parents and at least part of [Mr Gabriel's] hurt feelings stemmed from his mother's perception that she had been attacked. There was no reason why that aspect could not have been put to rest by an apology or at least the option allowed to be explored. All the more so when [Mr Alexander] indicated throughout that he respected them and did not mean to refer to them or hurt them."

63. The spirit of generosity shown in this passage towards Mr Alexander's failure to make any apology for his defamatory statements is not, in the Board's opinion, warranted by the facts. The suggestion appears to be that this failure is somehow mitigated by a possibility that Mr Alexander could have apologised for the hurt caused to Mr Gabriel's parents. But an apology not given is no mitigation whatever. Injured feelings are not assuaged by a possibility that there might have been scope for an apology that was never offered or made.

64. If the suggestion is that the option of a partial apology is one which Mr Gabriel ought to have explored or did not allow Mr Alexander to explore, that too is unsustainable. Had Mr Alexander wished to apologise for hurt caused to Mr Gabriel's parents, there was nothing to prevent him from doing so. It was not for Mr Gabriel, on receipt of Mr Alexander's belligerent response to the request for an apology in the pre-action letter, to propose some lesser alternative. Mr Alexander's subsequent communications bear out the judge's finding, at para 56, that he remained "unrepentant about publishing what remains unproven even to the end" and her description (referred to above) of the enquiry made by Mr Alexander's counsel during cross-examination of Mr Gabriel as "insincere and disrespectful". There is nothing to extenuate the failure to make any apology and it was a mistake to discount this aggravating feature of Mr Alexander's conduct.

65. The failure to have regard to the many elements of aggravation in this case vitiates the Court of Appeal's award of damages.

The relevance of freedom of expression

66. It is apparent from the judgments that the Court of Appeal's approach to the assessment of damages was influenced by a concern that defamation proceedings should not be allowed to undermine freedom of political speech. Because of the importance of this issue, the Board thinks it necessary to address it.

67. In discussing the allegation that Mr Gabriel was part of a "bandit clan", Boodoosingh JA placed particular emphasis, as part of the relevant context, on the robust and often raw nature of political discourse in Trinidad and Tobago and the fact that

generalised labelling of political opponents as “robbers”, “thieves” and other insulting epithets is common (see paras 123–138). He also emphasised, at para 139, that:

“in our society we have to be careful that the courtroom must not become the usual place where political disputes are settled through defamation lawsuits. Lawsuits that are based on political causes have the potential to stifle public debate and to have a chilling effect on freedom of political expression.”

Boodoosingh JA linked this point to the issue of damages. He said, at para 143, that:

“while the courts must ensure that the value of a person’s reputation is protected, exorbitant awards in political cases can and will eventually have a chilling effect on freedom of political speech and ultimately lead to less questioning of public officials by ordinary citizens out of fear of lawsuits.”

This informed his conclusion that, in cases such as this, “an award of nominal damages and publication of the judgment would be sufficient to vindicate the right while balancing the need for freedom of political speech and expression”.

68. The nature and norms of public discourse in Trinidad and Tobago are matters which judges with local knowledge are much better placed than the Board to assess. The same applies to setting the scale of awards in defamation cases relative to incomes and the purchasing power of money - a matter to which Rajkumar JA referred, at paras 107–108, pointing out that a straightforward conversion of amounts into pounds or US dollars is likely to mislead. Nor would the Board wish to detract in any way from the importance accorded by the Court of Appeal to the need to avoid chilling legitimate political expression. That is a relevant concern, not only in determining the extent of liability for defamatory statements, but also at the stage of assessing damages. The Board also accepts that special caution is required when the statements complained of are directed at politicians or others who have chosen to enter the political arena or engage in political activity. As the Board observed in *Ramadhar v Ramadhar*, para 37:

“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 ... might have a chilling effect on democratic debate.”

Although Mr Gabriel is not a politician, he is a strong public supporter of the People's National Movement and has been involved in organising PNM Conventions and campaign events. Comments made by Mr Alexander about the nature of Mr Gabriel's connections with that party thus fall within the general domain of political speech.

69. There is, however, a critical limit on the rights to freedom of expression and to express political views which Rajkumar JA mentioned in passing (at para 83) but of which the Court of Appeal appears to have lost sight when assessing damages in this case. Those rights do not protect speech that is malicious.

70. In a footnote to that proposition, Rajkumar JA quoted a long extract from the judgment of the Board in *Panday v Gordon* [2005] UKPC 36; [2006] 1 AC 427, paras 12–25. In that case the Board rejected an argument that the right to express political views protected by section 4(e) of the Constitution is an absolute right which “trumps” the law of defamation. Among other matters, Lord Nicholls of Birkenhead (who delivered the judgment) pointed out that this interpretation would lead to the “repellent conclusion” that “the gravest of factual allegations known by the maker to be false could be made with impunity” (paras 21–22). The Board also rejected an alternative argument that the right is qualified only to the extent that the views expressed must be held in good faith. The Board noted that other common law countries have not adopted such an approach. Instead, it has been recognised that the interests of those whose reputations are impugned call for more protection than that afforded by a requirement that the maker of a defamatory statement had a positive belief in its accuracy and was not acting dishonestly or recklessly or for an improper purpose (paras 14–15). One of the examples given was the decision in the United Kingdom of the House of Lords in *Reynolds v Times Newspapers Ltd* [2001] 2 AC 127, in widening the protection for statements on matters of public interest, to impose a requirement of responsible journalism.

71. What is significant for present purposes is not precisely where the balance is struck between the rights to freedom of expression and to express political views on the one hand and the right to respect for private life guaranteed by section 4(c) of the Constitution, which extends to the individual's reputation, on the other. The essential point is that, wherever the balance is struck, the rights to freedom of expression and to express political views do not protect malicious falsehoods. Even in the United States, where the Supreme Court has held since the famous case of *New York Times Co v Sullivan*, (1964) 376 US 254 that the right to freedom of speech guaranteed by the First Amendment generally precludes an award of damages for defamation of a public figure, a defendant is liable if shown to have acted with “actual malice” - meaning that the statement was made with knowledge that it was false or with “reckless disregard” for the truth.

72. Proving malice is a demanding test which was not satisfied, for example, in *Ramadhar*. But where malice is made out, the defendant is shown to have been abusing rather than exercising their free speech rights. Nor is it tenable to suggest that denying or

downgrading redress for malicious speech is necessary to avoid chilling legitimate expression. Allowing malicious falsehoods to be published and spread with impunity does nothing to encourage honest public debate. To the contrary, it poisons public discourse and undermines the conditions in which freedom of expression can flourish.

73. As already mentioned, not only was justification not even raised as a defence by Mr Alexander in this case, but the trial judge made findings that Mr Alexander did not honestly believe his own statements defaming Mr Gabriel to be true and acted from malicious motives. Those findings were one reason why the defence of honest comment failed (the other being that the defamatory statements were assertions of fact rather than comment): see paras 42–44 of the judgment. Those findings also justified awarding aggravated damages. Certainly, such damages ought not to be exorbitant; but nor should they be set at a level which signals that harming others by abusing the right to express political views is of little moment. It is wrong in principle to permit a defendant to embark on a wholesale attack on the character of a claimant in a libel action with the aim of deterring the claimant from proceeding, and to persist in making scandalous allegations which the defendant does not honestly believe to be true, without having to face the full consequences of the damage done to the victim by such conduct.

74. For these reasons the Board considers the concerns expressed by the Court of Appeal about the importance of avoiding a chilling effect on freedom of political expression to be misplaced. Fundamental as they are, the rights to freedom of speech and to express political views are not engaged here. The legitimate exercise of those rights is not impaired by awarding full compensation for injury to reputation and feelings in a libel case like this where malice has been proved.

Conclusion

75. For the reasons given, the Board will allow the appeal and set aside the award of damages made by the Court of Appeal. The case will be remitted to the High Court for a fresh assessment of damages for the injury to Mr Gabriel's reputation and feelings caused by the first and second statements and aggravated by Mr Alexander's malicious motives and subsequent conduct. The assessment should be made by a judge other than the trial judge but on the basis of the evidence given at the trial and the findings made by the trial judge where these have not been overruled on appeal.