

**BARBADOS**

**IN THE SUPREME COURT OF JUDICATURE**

**HIGH COURT**

**(CIVIL DIVISION)**

**Civil Suit No: 1454 of 2013**

**BETWEEN:**

**RASHDA LANI DAISLEY**

**CLAIMANT**

**AND**

**NATION PUBLISHING CO. LTD  
VIVIAN-ANNE GITTENS**

**DEFENDANTS**

**Before: The Hon. Madam Justice Shona O. Griffith, Judge of the High Court**

**Dates of Hearing 2020: July 28 & 29**

**Written Submissions:**

**(Claimant) 2017 December 11**

**2020 September 7, 16**

**(Defendant) 2019 October 14**

**2020 September 18; October 23**

**Date of Decision: 2021: 30<sup>th</sup> March (Oral); 6<sup>th</sup> April (Written)**

**Appearances:**

**Ms. Marilyn Moore, Moore Daisley in association with Ms. Kristin Turton and Jessica Theobalds, KCT Chambers, for the Claimant.**

**Mrs. Sherica Mohammed-Cumberbatch, Carrington & Sealy, for the Defendants.**

*Defamation – Pleadings – Defamatory meaning - Natural and ordinary meaning of words published – Innuendo — Defence of qualified privilege – Whether fair and accurate report of court proceedings.*

## DECISION

### **Introduction**

[1] In August, 2013, the Claimant Rashda Lani Daisley, an Attorney-at-Law, filed an action for defamation against the Defendants, the Nation Publishing Co. Ltd and Vivian-Anne Gittens, its publisher. The 1<sup>st</sup> Defendant as it did then, publishes and prints a daily newspaper in Barbados, known as 'the Nation'. In their Saturday edition of January 19<sup>th</sup>, 2013, the Nation published an article arising out of proceedings at the District 'A' Magistrate's Court, which concerned a number of criminal charges levied against the Claimant. The Claimant has alleged that the newspaper article was defamatory of her, by disparaging her in her profession as an attorney-at-law. The Defendants firstly refute that the words complained of were capable of bearing the defamatory meanings attributed to them by the Claimant. Further or in the alternative, the Defendants raised the defences of truth, fair comment and qualified privilege.

### **The Parties' Cases**

#### *The Claimant's Case*

[2] On the 12<sup>th</sup> September, 2012 the Claimant was charged by Police with the following offences:-

- (i) Contrary to Section 62 clause (a) of the Police Act, Chapter 167 of the Laws of Barbados, that the said accused at the Parish of Saint Michael within the jurisdiction of the Magistrate at District “A” on the 12<sup>th</sup> day of September, 2012 did unlawfully assault Kim-Marie Rock Police Constable number 1755 a member of the Royal Barbados Police Force in the execution of her duty;
- (ii) Contrary to Section 62 clause (a) of the Police Act, Chapter 167 of the Laws of Barbados, that the said accused at the Parish of Saint Michael within the jurisdiction of the Magistrate at District “A” on the 12<sup>th</sup> day of September, 2012 did unlawfully resist Kim-Marie Rock Police Constable number 1755 a member of the Royal Barbados Police Force in the execution of her duty;
- (iii) Contrary to Section 62 clause (a) of the Police Act, Chapter 167 of the Laws of Barbados, that the said accused at the Parish of Saint Michael within the jurisdiction of the Magistrate at District “A” on the 12<sup>th</sup> day of September, 2012 did unlawfully resist Hughshone Gamble Police Constable number 1367 a member of the Royal Barbados Police Force in the execution of his duty;
- (iv) Contrary to Section 51 clause (c) of the Trespass to Property (Reform) Act, Chapter 155B of the Laws of Barbados, that the said accused at the Parish of Saint Michael within the jurisdiction of the Magistrate at District “A” on the 12<sup>th</sup> day of September, 2012 having

lawfully entered the premises known as Customs Office of Shed #2 at the Bridgetown Port, misconducted herself by behaving in an annoying manner;

- (v) Contrary to Section 51 clause (d) of the Trespass to Property (Reform) Act, Chapter 155B of the Laws of Barbados, that the said accused at the Parish of Saint Michael within the jurisdiction of the Magistrate at District “A” on the 12<sup>th</sup> day of September, 2012 did not leave the premises known as Customs Office of Shed #2 at the Bridgetown Port, after she was directed to do so by the Assistant Controller (sic) of Customs, Mr. Charles Parris.

- [3] The Claimant appeared in court in answer to these charges on the 13<sup>th</sup> September, 2012, was granted bail according to her in the sum of \$1500 with one surety, and the matter was adjourned to the 5<sup>th</sup> March, 2013. On the 18<sup>th</sup> January, 2013 the Claimant appeared before the Magistrate to seek permission to leave the jurisdiction. On the 19<sup>th</sup> January, 2013, the Defendants’ Saturday Sun newspaper reported on the Claimant’s appearance in court and the following extract forms the basis of the Claimant’s complaint:-

*“Lawyer to reappear in conduct case*

*The Attorney accused of disorderly conduct at the Bridgetown Port made another appearance in District “A” Magistrate’s Court yesterday.*

*Rashda Lani Daisley will reappear in court on March 21. She remains on \$3000 bail with a surety.*

*The 32 year-old of Casa Costanera, Paradise Drive, St. Michael is accused of unlawful resistance, misconduct by behaving in a disorderly manner, unlawfully assaulting Constable Kim Rock, resisting Constable Hughshone Gamble and trespassing by not leaving the premises of the Customs Office of Shed 2 at the Bridgetown Port when ordered to do so by Assistant Comptroller of Customs Charles Parris all on September 12.”*

[4] The defamatory meanings attributed by the Claimant to the article as extracted above, are formulated in the following manner:-

- (i) In their natural and ordinary meaning<sup>1</sup>, the words meant that the Claimant was accused of the offence of ‘disorderly conduct’ contrary to section 2 of the Minor Offences Act, Cap. 137;
- (ii) By innuendo<sup>2</sup> the words bore the following meanings ascribed to ‘disorderly conduct’ as set out under the said section 2 of the Minor Offences Act, Cap. 137. Namely, that the Claimant:-
  - (a) *was or is accused of applying for relief to the Chief Welfare Officer or to any person or body acting on his behalf and at the time of the application is the owner of any money or property of which, on enquiry by the Chief Welfare Officer or the person or body acting on his behalf, does not make correct and complete disclosure;*
  - (b) *was or is accused of being able, either by labour or by other lawful means, to maintain herself or spouse or child wilfully refuses or neglects to do so and thereby becomes burdensome or renders her spouse, or child burdensome upon national*

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<sup>1</sup> Paragraph 5 of Statement of Claim

<sup>2</sup> Paragraph 6 of Statement of Claim

*assistance or other public funds set apart for the relief of the poor;*

- (c) was or is accused of wandering in the public streets or highways or in any place of public resort and behaving in a riotous or indecent manner;*
- (d) was or is accused of accosting a passenger and offers to take him to the house of residence of a prostitute;*
- (e) was or is accused of loitering in any street or highway and importunes passengers for the purpose of prostitutions;*
- (f) was or is accused of accosting, molesting, threatening or harassing any person or following him about in any street, highway or public place including a beach;*
- (g) was or is accused of loitering in any highway, yard or other place, and is unable to give a satisfactory account of herself or whom there is cause to suspect of being about to commit an offence; or*
- (h) was or is accused of, for the purpose of obtaining relief from national assistance, for herself or for any other person, wilfully giving a false name or making or using a false statement to the Chief Welfare Officer or any person or body acting on his behalf.*

(iii) By innuendo<sup>3</sup> the words also bore the following meanings:-

That the Claimant

- (a) re-appeared in court in respect of a charge of disorderly conduct

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<sup>3</sup> Paragraph 7 of Statement of Claim

- (b) was on a different and new charge and was appearing in court on that charge having previously answered the charges [the charges of 12<sup>th</sup> September, 2012];
- (c) will re-appear in court on March 21;
- (d) was on bail for the sum of \$3000 with one surety; and
- (e) misconducted herself by behaving in a disorderly manner as opposed to an annoying manner<sup>4</sup>.

[5] In support of the innuendos alleged, the Claimant (as required by CPR Rule 68.3(c)), pleaded a number of extraneous facts, including the full statements and particulars of the offences with which she was charged.<sup>5</sup> In addition to the full details of the offences charged, the Claimant pleaded the dates and purposes of her appearances in the Magistrate's Court in connection with the offences charged and the following matters (paraphrased):-

- (i) Pursuant to the Legal Profession Act Cap. 370A, Code of Ethics, 1998, an Attorney-at-Law is expected to maintain integrity and the honour and dignity of the legal profession and shall refrain from conduct which is detrimental to the profession or which may tend to discredit it;

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<sup>4</sup> This last paragraph was pleaded in paragraph 2 of the Claimant's Reply.

<sup>5</sup> Claimant's SOC para 8(a); *Supra*, para 2

- (ii) On summary conviction, the offences with which the Claimant was charged under the Police Act, Cap. 167 carry a penalty of a fine of \$1000 or imprisonment for 12 months;
- (iii) On summary conviction, the offences with which the Claimant was charged under the Trespass to Property (Reform) Act, Cap 155B carry a penalty (on a first offence) of a fine of \$250 or imprisonment for 3 months;
- (iv) The offence of disorderly conduct under the Minor Offences Act, Cap. 137 carries a penalty on summary conviction of \$2500, 2 years imprisonment or both;
- (v) The allegation that the Claimant was acting in a disorderly manner implied behaviour or dishonourable conduct on the part of the Claimant and was not becoming of an Attorney-at-Law;
- (vi) The Claimant has never been charged with any criminal offence prior to the offences charged on 12<sup>th</sup> September, 2012.

By reason of the defamatory words published, the Claimant alleges that she suffered distress, embarrassment and humiliation, for which she seeks damages, aggravated by the Defendants' refusal to cease publication of the article when requested by the Claimant to do so.

*The Defendants' Case*

[6] The Defendants in no way disavowed the article, the words complained of or their reference to the Claimant. The Defendants instead denied that the words complained of were defamatory of the Claimant in their ordinary and natural meaning, or by way of the innuendos alleged. The Defendants also pleaded the statutory defences of truth<sup>6</sup>, fair comment<sup>7</sup> and qualified privilege<sup>8</sup>. Specifically, in relation to the ordinary and natural meaning of the words complained, the Defendants assert there was no relation between the words 'disorderly conduct', and any offence existing under, or other reference thereto in the Minor Offences Act, Cap. 137. Further, that the Minor Offences Act was neither mentioned by name nor reference in the article complained of. To the contrary, the Defendants plead that the article as extracted, makes reference to the offences with which the Claimant was in fact charged.

[7] In relation to paragraph 6 of the SOC which alleges imputation by innuendo to the specific offences prescribed under section 2 of the Minor Offences Act, the Defendants contend that the words of the article are incapable by reason of any innuendo, to have attributed to them any meaning connected to the specific offences of section 2 of the said Act.

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<sup>6</sup> Defamation Act, Cap 199 section 7

<sup>7</sup> Ibid, section 8

<sup>8</sup> Ibid, section 11, para 4 of Part 1 of Schedule.

In relation to meanings ascribed to the words complained as asserted in paragraph 7 of the SOC, the Defendants deny that the words so complained could have the meanings alleged by innuendo. Particularly for reason that:-

- (i) the words complained of were clear and unambiguous in respect of the offences with which the Claimant was charged and bore no connection to the Minor Offences Act or section 2 thereof;
- (ii) the Claimant could not be appearing in court afresh on a new and different charge as the article referred to the Claimant having previously answered the offences for which she was in fact charged;
- (iii) the imputation that the Claimant would re-appear in Court on March, 21<sup>st</sup> was at that material time true;
- (iv) the Claimant was on bail for \$3000 with one surety, was true, according to the records of the Magistrate's Court.

[8] In relation to the specific defences alleged, albeit maintaining their primary position that the words complained were not defamatory of the Claimant, the Defendants pleaded that the words complained of were substantially true having regard to the five offences with which the Claimant was actually charged. Further, that the details regarding the Claimant's reappearance in court being set for 21<sup>st</sup> March and bail set in the sum of \$3000 with one surety were entirely true. Taken as a whole therefore, the Defendants allege the article to have been substantially true. In relation to the pleaded defence of comment on a matter of public interest, the

Defendants allege that the subject matter of reports concerning the actions of police and other public authorities were matters of concern and interest to the public, which gave rise to the entitlement of the Press to report the Claimant's charges and court appearance.

- [9] Finally, the Defendants pleaded qualified privilege in pursuance of paragraph 4 of Part I of the Schedule to the Defamation Act, Cap. 199, which makes the plea available in respect of reports of court proceedings. In general terms as pertains to certain aspects of the Claim, the Defendants denied that the words complained were calculated to disparage the Claimant in her trade or profession as an attorney-at-law, or that the words were published with malice or recklessness as to their truth. Further, that any distress, embarrassment or humiliation suffered by the Claimant occurred as a result of the fact of the offences for which she was actually charged. By her Reply, the Claimant joined issue with the allegations pleaded by the Defendants. The Claimant also made the additional assertion of a further defamatory meaning arising from the words complained, namely, that the Claimant reappeared in court on a new charge of *disorderly conduct* as opposed to the actual charge of *misconducting herself in an annoying manner*; and in relation to such new charge the Claimant would reappear in court March 21<sup>st</sup> 2013.

## The Case to be Considered

[10] Given that the Law of Defamation comprises many technical principles and procedures, the Court considers it necessary establish the parameters within which the Claim falls to be considered. The Claim ultimately tried, was not the full extent as that pleaded, however the Court does have to account for matters pleaded which ought properly to be disposed and as such identifies the parameters of the Claim in the following manner:-

- (a) The words complained of (pleaded in paragraph 4 of the SOC), emanated from the Defendants' Saturday Sun article of 19<sup>th</sup> January, 2013. To the extent that there was reference whether in evidence or submissions to an earlier article of September 14<sup>th</sup> 2012, that earlier article was not pleaded as being defamatory (or as an extraneous fact) and as such does not fall within the contemplation of the Court;
- (b) The Claimant alleges the Defendants to have defamed her in three ways arising from the article complained of,<sup>9</sup> namely:-
  - (i) The ordinary and natural meaning of words complained, meant that the Claimant was accused of disorderly conduct contrary to section 2 of the Minor Offences Act, Cap. 137;
  - (ii) By way of innuendo, the words of the article were to be understood that the Claimant had been charged with any one or

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<sup>9</sup> Set out *supra* @ para 3 herein

more of the offences prescribed in section 2 of the Minor Offences Act, Cap. 137<sup>10</sup>;

(iii) By way of innuendo, the words complained of were to be understood to bear the meanings ascribed by the Claimant as pleaded in paragraph 7(a)-(d) of her SOC, and in paragraph 2 of her Reply.

(c) The Defendants' defences of the matter are as follows:-

(i) It is denied that the ordinary natural and ordinary meaning of the words complained in any way imply that the Claimant was charged with disorderly conduct pursuant to section 2 of the Minor Offences Act, Cap. 137;

(ii) The Defendants deny that the words complained of, by innuendo, can be attributed the meaning of disorderly conduct as defined by the offences set out at sections 2(a) through (h) of the Minor Offences Act, Cap. 137;

(iii) The Defendants deny that the words complained of, by innuendo, can be attributed the meaning asserted by the Claimant in paragraph 7 of her SOC and 2 of her Reply;

(iv) The Defendants pleaded the statutory defences of truth, comment and qualified privilege.

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<sup>10</sup> Extracted supra @ para 4(ii) herein

- (d) Albeit addressed by the Claimant in her submissions, the Defendant did not plead a defence of triviality therefore no consideration of this defence arises;
- (e) The Defendants in their legal submissions filed in October, 2019, contended that the Claimant's SOC failed (as required by CPR Rule 69.3), to specifically identify the words complained of along with the defamatory meaning alleged, whether by way of the natural and ordinary meaning or by innuendo. As a consequence it was submitted that the SOC should be struck out. This argument was made via submissions filed after the close of pleadings and in compliance with directions for trial. The Defendants answered the Claim and proceeded to defend it, presumably therefore knowing exactly what case the Claimant had asserted. It was open for the Defendants to have sought an order during prior stages of the proceedings, to address any asserted defect of pleadings. The Court understands the Claimants case as pleaded to be that defamatory words complained of comprise the entire extract of the article pleaded by the Claimant at paragraph 4 of her SOC. This does however mean that the words complained of fall to be construed when read as a whole.

- (f) With reference to CPR Rule 69.3, the following observations are made in relation to the extraneous facts pleaded at paragraph 8 of the SOC<sup>11</sup>, in furtherance of Rules 69.3(b) & (c):-
- (i) The offences stated at paragraph 8(a) are accepted as the actual offences for which the Claimant was charged on the 13<sup>th</sup> September, 2012;
  - (ii) Paragraphs (c) and (d) are irrelevant;
  - (iii) Paragraphs (e) is a fact in issue;
  - (iv) Paragraph (f) is not an extraneous fact, it is a statement of principle which would be known to a narrow class of readers, namely those in, with knowledge of, or otherwise connected to, the legal profession;
  - (v) Paragraph (j) is not an extraneous fact, it is itself a conclusion capable of forming a defamatory inference from the words complained. The Claimant was at liberty to plead as such but did not;
  - (vi) Paragraph (k), if at all an extraneous fact relevant to the innuendos pleaded by the Claimant at paragraphs 6 and 7 of her SOC, it would be a fact within the knowledge of a very limited class of reader;

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<sup>11</sup> Supra, paragraph 4

(vii) Paragraphs (g) through (i) are facts which would be within the knowledge of a particular class of readers, (namely) persons connected to or having exposure to law or the criminal justice system;

The categorisation of statements pleaded as extraneous facts is relevant to the proof or not, of the defamatory meanings alleged by way of innuendo.

[11] Further by way of defining the scope of the Claim, some aspects of the Claim lend themselves to summary determination without the need for any in depth consideration by the Court. The first such aspect is the alleged defamatory meaning of the words, in their natural and ordinary sense:-

- (i) Counsel for the Defendants' position is that the words complained of (as extracted at paragraph 3 hereinabove), in their natural and ordinary meaning, do not give rise to any association with section 2 of the Minor Offences Act, Cap. 137. In particular, the terminology 'disorderly conduct' does not appear in the offences defined in section 2 of the said Minor's Act, or even in the marginal note thereto.
- (ii) The Court's position is that having regard to the manner in which the natural and ordinary meaning of words is to be construed, a reference to section 2 of the Minor Offences Act cannot be inferred from the use of the words complained.

In the first place, the determination of whether the words are capable of having the defamatory meaning alleged is always that of the Court.<sup>12</sup>

- (iii) Further, the ‘natural and ordinary meaning’ of words refers to the meaning

*‘in which ordinary intelligence, with the ordinary man’s general knowledge and experience of worldly affairs would be likely to understand them*<sup>13</sup>

The natural and ordinary meaning may also

*“include any implication or inference which a reasonable reader guided not by any special legal rules of construction would draw from the words.”<sup>14</sup>*

And

*“The ordinary and natural meaning of words may be either the literal meaning or it may be an implied or inferred or an indirect meaning: any meaning that does not require the support of extrinsic facts passing beyond general knowledge but is a meaning which is capable of being detected in the language used can be a part of the ordinary and natural meaning of words.”<sup>15</sup>*

- (iv) Having regard to the above stated rules which define the manner of construction of the natural and ordinary meaning of words, the Court

<sup>12</sup> Capital and Counties Bank v Henty [1881-1885] All ER 86 @ 89;

<sup>13</sup> Gately on Libel and Slander 8<sup>th</sup> Ed. Para 93, (citing *R v Horne (1777) 2 Cowp @ 680*)

<sup>14</sup> Jones v Skelton [1963] 3 All ER 952 @ 958

<sup>15</sup> Ibid

is unable to find any meaning referable to the Minor Offences Act, Cap. 137, much less the specifically pleaded, section 2 of the said Act. The words complained of make no reference to the Minor Offences Act and there is nothing which gives rise to any inference in relation to the applicability of that Act.

- (v) Even further, the natural and ordinary meaning of the words complained is attributed to a specific provision in a specific piece of legislation. This fact alone encroaches on the construction of ordinary and natural meaning being within the understanding of ordinary reasonable persons. Moreover, the particular Act – the Minor Offences Act, cannot be said with any conviction, to be a piece of legislation that an ordinary reasonable person, would be familiar with. Thirdly, the words complained, when read, as a whole (as they must be)<sup>16</sup>, points the reader in a direction of the offences charged, none of which have anything to do with section 2 of the Minor Offences Act.
- (vi) The Court therefore agrees with Counsel for the Defendant that the natural and ordinary meaning of the words complained as pleaded, bear no relation to section 2 of the Minors Act, Cap. 137.

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<sup>16</sup> See paragraph 10(e) supra regarding the Claimant's pleadings and satisfaction of CPR Rule 69.3.

It is however noted, that the Claimant appeared to have abandoned any pursuit of this aspect of her pleaded case at the trial.

[12] In addition to the natural and ordinary meaning, the Claimant's second cause of action was pleaded by way of innuendo – namely, that the words complained of gave rise to an implication that the Claimant had been charged with the actual offences prescribed under section 2 of the Minor Offences Act.

- (i) The offences prescribed in section 2 of the Minor Offences Act, have been set out at paragraph 4 above and in paragraph 6 of the Statement of Claim. In the Act, the offences are grouped under the moniker 'disorderly behaviour'. Having pleaded innuendo in relation to these specific offences, the extraneous facts pleaded (set out at paragraph 5 above (and in paragraph 8 of the Statement of Claim), must be read along with the words complained, in order for the defamatory meaning to be attributed to the said words.
- (ii) There is no fact or circumstance in the extraneous facts pleaded which could cause any ordinary or average person, or even a person within the legal field, to comprehend the words complained of in terms of the specific offences listed under section 2 of the Minors Act. It has to be noted that by way of extraneous facts, the Claimant pleaded the specific offences for which she was charged which were under the Police Act, Cap 167 and the Trespass to Property (Reform)

Act, Cap. 155B. The fact of these offences having been pleaded as extraneous facts, in the Court's view, dispels any possible connection or meaning derived in relation to the Minor Offences Act. The second limb of the Claimant's case therefore also fails. It is noted once more that this aspect of the Claim was not pursued at the trial, however it was pleaded, put in issue, and therefore fell to be disposed of.

- [13] The third aspect of the Claim which the Court disposes of summarily, is the statutory defence of comment. As submitted by Counsel for the Claimant, this defence must demonstrate that the words complained comprised of comment. The Court agrees with no difficulty, that there is no part of the extracted article which actually comprises any comment. The defence cannot be sustained within the factual content of the words complained of as published by the Defendant. This defence therefore fails.
- [14] Finally, the Court considers what is left of the Claimant's case<sup>17</sup>. The Claimant's remaining charge of defamation is that the words complained of, by way of innuendo, bear the meanings as hereinafter set out. The Court will address whether any or all of these asserted meanings are capable of being defamatory of the Claimant and whether they arise by way of innuendo (arising from the extraneous facts pleaded):-

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<sup>17</sup> Paragraph 7 of the Claimants SOC and paragraph 2 of her Reply.

- (i) Paragraph 7(a) of the SOC and 2(a) of the Reply - the Claimant re-appeared in court in respect of a charge of disorderly conduct, separate and apart from the charge of misconducting herself in an annoying manner. This meaning is capable of being defamatory, however it cannot be said to arise by way of a true innuendo. To be accused of disorderly conduct can be disparaging of any person, and there is no special meaning to be attributed to these words from the extraneous matters pleaded by the Claimant. The fact that the Claimant is an attorney-at-law appears from the words complained, thus the Court considers that the defamatory meaning arises as an inference borne out of the ordinary and natural meaning of the words complained. This imputed defamatory meaning will be allowed to stand for consideration, albeit not by way of innuendo;
- (ii) 7(b) of SOC - The Claimant was on a different and new charge and was appearing in Court on that new charge, having previously answered the charges laid against her. Again, the Court finds that the imputed meaning asserted would arise not by way of innuendo, but by inference arising from the natural and ordinary meaning of the words complained read as they ought to be, as a whole. The question would still remain as to whether such an inference is capable of being distilled from the words complained.

If so found however, the inference is capable of being defamatory of the Claimant, by means of the imputation of commission of a further criminal offence;

- (iii) 7(c) – The Claimant will reappear in Court on March 21<sup>st</sup>. Likewise to paragraphs 7(a) and (b) of the Claimant’s SOC, this meaning would not be an innuendo, but an inference arising from the words complained. The Court finds that within the context of the article, this inference has no defamatory meaning on its own but can be addressed within the context of the meaning alleged that the Claimant was charged afresh;
- (iv) 7(d) – The Claimant was on bail for the sum of \$3000 with one surety. Within the context of the words complained this allegation printed against the Claimant is not capable of a defamatory meaning. However the Court understands the Claimant’s complaint to be that the misstated amount of the bail as higher than that imposed is what is asserted as defamatory of the Claimant as it would convey that she had been charged with a more serious offence. The Court will consider this inference as capable of adding to the defamatory meaning attributed to the words complained;

[15] For the avoidance of doubt, insofar as there were defamatory meanings asserted in the submissions made on the Claimant's behalf<sup>18</sup>, these inferences were not pleaded and will not form part of the Court's consideration. The defamatory inferences alleged in submissions and not by way of pleadings were that the Claimant was -

- (i) Drunk and disorderly in a public area;
- (ii) Involved in a physical altercation or behaving aggressively; and
- (iii) Behaving in a manner that did not befit her profession.

The words capable of a defamatory meaning as pleaded by the Claimant are restricted to those at paragraphs 14(i), (ii), (iii) and (iv) above. The Claimant is bound by her pleadings and cannot enlarge the scope of the defamatory allegations after the close of the evidence and by submissions.

### **Consideration of defamatory meanings and defences**

[16] From what is left of the Claimant's pleaded case<sup>19</sup>, the Court must consider whether the defamatory meanings are properly attributed to the words complained as extracted from the Defendants' article; and if so, whether the pleaded defences of truth or qualified privilege absolve the Defendants from liability for the defamatory content of the article. The first alleged defamatory meaning considered is as follows:-

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<sup>18</sup> Claimant's submissions dd 7<sup>th</sup> September, 2020 para. 6(b), (c) & (d).

<sup>19</sup> Paragraphs 14(i) through (iv) supra

- (a) The meanings attributed as appear at paragraphs 14(i), (ii) & (iii) can conveniently be dealt with together as follows:- The Claimant re-appeared in respect of a new charge of disorderly conduct [i.e.] - separate and apart from the charge of misconducting herself in an annoying manner; and was to re-appear on that new charge on March 21<sup>st</sup>.
- (i) Counsel for the Claimant argues that as illustrated by the evidence of the Claimant's witnesses, the words complained implied that separate from the offences for which she was charged in September, 2012, the Claimant was charged anew, with the offence of disorderly conduct. Further, that this new offence was different and more serious than the offence for which she was in fact charged - namely, that she misconducted herself in an annoying manner as charged pursuant to the Trespass to Property (Reform) Act, Cap. 155B.
- (ii) The Claimant has produced as witnesses, several persons who thought she had been charged with another offence as a result of the article. However, such evidence cannot assist the Court in coming to its conclusion on whether the words complained are defamatory of the Claimant in the manner alleged.

In deciding whether or not words complained bear the defamatory meaning alleged, the Court is guided by **Slim v. Daily Telegraph Ltd**<sup>20</sup> as authority for the principle that what any one person may view as the natural and ordinary meaning of words is irrelevant. The meaning to be attributed is that found by the Court, as well as that words must be read within the context within which they are written.

(iii) In this regard, the Court recalls its earlier finding that the defamatory meaning alleged as pertains to having been charged with another offence, does not arise as an innuendo, but as an inference from the natural and ordinary meaning of the words complained. As a consequence when read as a whole, the article as complained by the Claimant in the Court's view is incapable of conveying to the ordinary and reasonable reader of the article that the Claimant had been charged afresh.

(iv) The Court would consider such a conclusion to be drawn by a careless as opposed to reasonable reader of the article. The Court holds this view based on the following which arise from the words complained:-

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<sup>20</sup> [1968] 2 Q.B.157, @ 171-174 per Lord Diplock applying *Chalmers v. Payne* (1835) 2 C.M.& R.156 @ 159 (namely, 'bane and antidote must be taken together').

- (a) The headline announces that the lawyer is to ‘reappear’... the natural and ordinary meaning of ‘reappear’ ought to suggest to an ordinary and reasonable reader that the appearance arose in connection with prior proceedings;
  - (b) the first paragraph identifies the lawyer with reference to charges arising out of conduct at the Bridgetown Port, which is the site of the actual offences charged;
  - (c) the third paragraph of the words complained outlines the Claimant’s charges and clearly refers to them as having arisen on September 12, thereby referencing the already existing charges.
- (v) For clarity, the Court refers to the headline ‘Lawyer to reappear in conduct case’, and acknowledges the authority of **Lewis v Clement**<sup>21</sup>, with reference to headlines being capable of forming separate libels. As explained in **Charleston et anor v News Group Newspapers Ltd. et anor**<sup>22</sup> however, the example of *Lewis v Clement* is to be viewed within a limited context of a headline which is not neutralized by the wider text of its article. The Court considers in the instant case that the headline is benign on its own but even if that is disagreed, when read in the context

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<sup>21</sup> 1822 3 Brod. & Bing 297 as reported in Gatley on Libel & Slander 8<sup>th</sup> Ed. Para 360

<sup>22</sup> [Court of Appeal Citation per Lord[1995] 2 All ER 313 (HL)]

of the words complained, the headline is neutralized by the clear references in the article to the appearance arising out of the Claimant's prior charges. The headline is not accepted as defamatory of the Claimant, neither by itself nor in the wider context of the article.

- (vi) The Claimant also complains that the nature of the offence charged is defamatory of her in that she was not charged with disorderly conduct but with misconducting herself in an annoying manner. The Court repeats that the defamatory meanings alleged (in submissions) that the Claimant having behaved badly, unbecoming of a lawyer or in some way related to the colloquial context of 'drunk and disorderly' – were not pleaded and therefore do not arise for consideration.
- (vii) With reference to what was pleaded, the Claimant's case is for the Court to find that she has been defamed as a result of the use of the words 'disorderly manner' as opposed to 'annoying manner'. Counsel for the Defendant submits that the words are true in substance or are a fair and accurate report of the court proceedings which transpired.
- (viii) Counsel for the Claimant directs the Court's attention to the ordinary dictionary meanings of 'disorderly' versus 'annoying'. They are not the same, and generally have different connotations.

The connotations of ‘disorderly’ in the sense of being different from ‘annoying’, would be defamatory of the Claimant once established. This meaning must therefore be considered with reference to the pleaded defences of truth and qualified privilege.

[17] The final meaning which arises for consideration on the Claimant’s case as pleaded is the report that she was placed on bail in the sum of \$3000 as opposed to \$1500. This issue in the Court’s view became a non-issue at the trial. The Claimant produced no evidence that she was in fact on \$1500 bail and it was her case to prove. Further, the defamatory meaning imputed to the reference to the alleged erroneous amount of bail reported is considered strained as to any sting alleged and the Claimant’s failure to adduce any evidence in that regard renders the issue nugatory.

### **The Court’s Consideration – The Remaining Case for the Claimant**

[18] The above exercise has resulted in the contraction of the Claimant’s case according to the pleadings, after the Court’s assessment of (i) the defamatory meaning of the words complained; and (ii) whether the words complained were in fact defamatory of the Claimant. This exercise has resulted in a single defamatory meaning remaining for the Court’s consideration - namely, that the report alleged that the Claimant had been charged with ‘disorderly conduct’ as opposed to having ‘misconducted herself by behaving in an annoying manner’.

The defences pleaded are truth and qualified privilege, however, the Court is of the view that the defence of truth in this circumstance, is subsumed by the defence of qualified privilege. Given that the subject matter of the defamatory material is indisputably the report of a court proceeding, the operative question is not whether the words complained are true, but whether they are a fair and accurate report of the proceedings. If the words are found not to be fair and accurate, they cannot rise to the level of truth. Consideration of the defence of qualified privilege therefore would be dispositive of the matter.

- [19] Counsel for the Claimant alleges that the report in terms of the words complained was inaccurate, given the difference between the meanings of ‘disorderly’ versus ‘annoying’. Counsel cited **Tsikita v Newspaper Publishing plc**<sup>23</sup> and acknowledged that whilst the report need not be verbatim and a summary may suffice, the summary is to be fair and accurate in order for the defence to be successful. Counsel commended unto the Court the evidence in cross-examination of one of the Defendant’s witnesses, to the effect that the Claimant’s charge sheets did not contain the word ‘disorderly’. Further, that the Defendant’s other witness accepted that the words disorderly and annoying, were not the same (albeit similar).

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<sup>23</sup> [1997] 1 All ER 655

[20] The Claimant has a bit of a dilemma. The meanings attributed to the word ‘disorderly’ as attested to by the Claimant’s witnesses were not pleaded. The meanings the Claimant did plead, have all but for the exception of the reporting of the charge as ‘disorderly conduct’ as distinct from ‘misconducted herself in an annoying manner’, been ruled as not defamatory or not capable of being defamatory in the context of the words complained. The Court’s task really, is therefore reduced to finding defamatory content from the use of the words ‘disorderly’ versus ‘annoying’ within the context of the material circumstances of the case. In a claim for defamation, words do make a difference, but the law does not operate in a vacuum.

[21] The proper application of the law requires the Court to take into account not only the actual words, their context, and the defamatory meaning alleged; but also to consider those aspects, bearing in mind the nature and purpose of the defence. In relation to the defence, the Court firstly observes that there is an underlying public policy behind the qualified privilege afforded to reports of judicial proceedings. One such aspect of that public policy, is the public interest in the administration of justice being served by the fair and accurate reporting of judicial proceedings<sup>24</sup>.

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<sup>24</sup> **Webb v The Times Publishing Co.** [1960] 2 QB 535 per Pearson J.

More particularly put, the public interest is served by the desirability of proper reporting of judicial proceedings, in lieu of rumours or inaccurate information circulating within the public domain<sup>25</sup>. Against the underlying public policy, there is the requirement that the report be fair and accurate, and the Court must consider what that means.

[22] In **Cook v Alexander**,<sup>26</sup> the meaning of ‘unfair’ as it pertains to the defence of qualified privilege was stated to mean ‘unbalanced’; and that the question of ‘balance’ is to be determined with reference to the Claimant’s reputation.<sup>27</sup> In this regard, given that the defamatory meanings imputed to the report of disorderly conduct have not been established as pleaded by the Claimant; and the fact that the offences with which the Claimant was actually charged<sup>28</sup> can fairly be viewed under an umbrella of ‘disorderly’, the Court cannot in the circumstances find that there was any additional sting occasioned by the use of the word ‘disorderly’ versus ‘annoying’. Further, the Court also considers that there is not an offence of ‘disorderly conduct’ that was established. It is therefore found that the report of the Claimant being accused of ‘disorderly conduct’ was in the circumstances of the case, not unfair.

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<sup>25</sup> Ibid

<sup>26</sup> [1974] QB 279

<sup>27</sup> Ibid @ 291

<sup>28</sup> Assaulting a Police Office in the Execution of Duty; Resisting a Police Officer in the Execution of Duty (2 charges); Failing to leave premises after being directed to do so.

[23] In relation to the question of whether the report was accurate, the Court has no difficulty finding that annoying and disorderly are not natural synonyms, however the context of their use is important. The Court considers that appropriate guidance on the issue can be found in Gatley's discussion on qualified privilege as it pertains to reports of judicial proceedings.<sup>29</sup> Reference is therein made to the following paragraph on 'slight inaccuracy':-

*“If the whole report is a substantially accurate account of what took place, the fact that there are a few slight inaccuracies or omissions is immaterial. A report in a daily newspaper is ‘not to be judged by the same strict standard of accuracy as a report coming from the hand of a trained lawyer’ Unless a fair and reasonable latitude is given there would be no safety in reporting the proceedings in courts of justice”*

Gatley thereafter goes on to speak of the contrary position where there is a substantial inaccuracy, even when resulting from an honest mistake.<sup>30</sup>

[24] The Court is of the view that the question in this case ultimately turns on whether the inaccuracy asserted by the Claimant is to be regarded as substantial or slight. In light of the fact that it has been established that there is no offence termed 'disorderly conduct', it cannot be said that reference to the claimant being accused of 'disorderly conduct' is a substantial inaccuracy in the sense of being a different offence than those

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<sup>29</sup> 8<sup>th</sup> Ed. @ paras 605-606

<sup>30</sup> Ibid

actually charged. This position is contrasted with **Nyika Marshall v The Nation Publishing Com. Ltd.**<sup>31</sup> which was referred to by the Claimant. The claim therein arose out of a newspaper report that a young man had been charged along with others for a series of offences including robbery, burglary, theft, as well as offences of violence against the person. The claimant therein had in fact been charged with a single count of damage to property, and had no connection to the group of young men with whom he had been cast.

[25] This case considered only a defence of triviality and not qualified privilege (presumably there was no attempt to plead the latter, for good reason), but the Court finds the circumstance pertaining to the difference in charges to be illustrative of what a substantial inaccuracy would look like within the context of criminal charges. The Court however, is clear that a substantial inaccuracy can be established even in relation to offences far less serious than those occasioned in *Nyika Marshall*. Further on the question of accuracy, the Court refers to **Alsaifi v Amunwa**<sup>32</sup> in which the report of judicial proceedings pertaining to the claimant's appeal from a statutory disciplinary process was under consideration. The relevant references to the fairness and accuracy of the report are contained at paragraphs 61-69 of the judgment.

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<sup>31</sup> Barbados High Court Civil No. 780/2010

<sup>32</sup> [2017] 4 WLR 172

Slight inaccuracies and even omissions favourable to the claimant were acknowledged to have existed in the report, but within the context of the report and the circumstances, they were found to fall within the acceptable boundaries of what was fair and accurate.

[26] As was the case with consideration of unfairness, the question of accuracy can also be viewed from the standpoint that evident from the words complained themselves, the Claimant was charged with offences to which the moniker ‘disorderly conduct’ is appropriately applied. Finally with respect to the question of accuracy, the Court finds that the terminology ‘annoying’ versus ‘disorderly’ is limited in scope of defamatory meaning attributable to it, based on the Claimant’s own pleadings. In the context of what remains for consideration on the Claimant’s case, coupled with the narrow scope of the defamatory meanings which were pleaded, the Court finds that the difference in terminology between ‘disorderly conduct’ and ‘misconducted herself in an annoying manner’, is inconsequential and as such can be treated as a slight inaccuracy. It is therefore found that in the circumstances of the case, the Defendant’s newspaper report of the Claimant’s appearance in Court on the 18<sup>th</sup> January, 2013, was neither unfair nor inaccurate.

[27] Finally, the Claimant’s case was that the Defendants falsely and maliciously published the article complained of her. Malice defeats qualified privilege, however there were no particulars of malice pleaded,

nor any evidence led as to what constituted the malice averred by the Claimant. Malice of course is understood in the **Horrocks v Lowe**<sup>33</sup> sense of publication for some dominant purpose other than that for which the privilege is afforded. In this case the privilege is afforded by virtue of the report being of a judicial proceeding. In the absence of any evidence led regarding any possible improper motive for publication on the part of the Defendants, or any other evidence of actual malice, the privilege found by the Court is sustained. The case for the Claimant as pleaded, and in the Court's consideration reduced to its singular defamatory meaning that the Claimant was charged with 'disorderly conduct' as opposed to having 'misconducted herself in an annoying manner', is therefore dismissed.

### **Disposition**

[28] The matter is disposed of as follows:-

- (i) The article published by the Defendants in the Saturday Sun of 19<sup>th</sup> January, 2013 was not defamatory of the Claimant;
- (ii) The Claim is dismissed in its entirety with costs awarded to the Defendants;
- (iii) Counsel will report to the Court on the quantum of costs, failing which costs are to be assessed if not agreed.

**SHONA O. GRIFFITH**  
Judge of the High Court

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<sup>33</sup> [1975] AC 125