THE EASTERN CARIBBEAN SUPREME COURT
IN THE COURT OF APPEAL

COMMONWEALTH OF DOMINICA

DOMHCVAP2020/0006

BETWEEN

[1] MATHIAS PELTIER
[2] WEST INDIES COMMUNICATION ENTERPRISES LTD

Appellants

and

MATTHEW LEBLANC

Respondent

Before:

The Hon. Mde. Gertel Thom	Justice of Appeal
The Hon. Mde. Georgis Taylor-Alexander	Justice of Appeal [Ag.]
The Hon. Mr. Eddy D. Ventose	Justice of Appeal [Ag.]

Appearances:

Ms. Cara Shillingford for the Appellants
Mrs. Heather Felix-Evans the Respondent

2023: December 4;
2024: April 18.

Civil appeal – Defamation – Libel – Assessment of damages after entry of judgment in default of defence – Whether on an assessment of damages after entry of judgment in default of defence the court is to assume that the facts pleaded have been established and proceed to assess damages on that basis – Mitigating factors – Whether the learned master failed to consider any of the mitigating factors submitted by the appellants – Award of damages – General and Aggravated damages – Whether the award of damages by the learned master was disproportionately high

While hosting a call-in programme on Q95 FM Radio ("Q95") on 2nd February 2015, the appellants broadcasted and published alleged defamatory statements made by Mr. Lennox

Honore ("Mr. Honore") concerning the respondent. According to a letter written by the respondent's counsel and addressed to the General Manager of Q95, the words, in their natural and ordinary meaning meant, *inter alia*, that the respondent was: using his public office for financial gain; engaged in unethical conduct; involved in the racketeering of visas and/or work permits; and not a fit and proper person to hold public office. At the time the statements were made the respondent served as Labour Commissioner in the Division of Labour and Immigration, Ministry of Justice, Immigration and National Security of the Government of the Commonwealth of Dominica (the "Division"). He was also a Minister of the Gospel with the Pentecostal Assemblies of Dominica.

In the letter, the respondent's counsel sought a retraction of the allegations, an apology, and an undertaking not to further broadcast the defamatory statements. On 27th February 2015, the first appellant publicly acknowledged receipt of the letter but instead of retracting the statements, the appellants rebroadcasted the defamatory words on the said date.

On 10th April 2015, the respondent initiated proceedings in the lower court seeking, in summary, damages including aggravated and/or exemplary damages for libel (or alternatively slander) for the words broadcasted. On 14th May 2015, as the appellants had failed to file a defence, the respondent filed a request for judgment in default of defence. This was granted by the court on 22nd May 2015. On 16th July 2019, the appellants filed an application to consolidate this claim with another claim brought by the respondent against Mr. Honore. The assessment of damages came on for hearing before the master who on 17th July 2019, determined that as the application for default judgment had already been dealt with, it was too late to consolidate the claim. The master then proceeded to hear evidence from the witnesses and submissions from both counsel and reserved his decision on the assessment.

In a judgment dated 5th February 2020, the master stated that since the matter before him was an assessment of damages and not a trial on liability, the court must assume that the facts pleaded have been established and must therefore proceed to assess damages on that basis. The master found that the allegations seriously undermined the integrity of the office held by the respondent and brought his character and professional reputation into disrepute. He also found that the broadcast was of very wide circulation and the respondent's evidence was that he was embarrassed and seriously affected by the slander of his reputation. After examining the comparable decisions within the Eastern Caribbean, the master awarded $120,000.00 to the respondent in general and aggravated damages.

Being dissatisfied with the master's decision, the appellants appealed. On the appeal the following issues arose for determination: (i) whether the learned master was correct in stating that, on an assessment of damages, the court is to assume that the facts pleaded have been established and proceed to assess damages on that basis; (ii) whether the learned master erred in not considering any of the mitigating factors submitted by the appellants; and (iii) whether the amount of damages awarded was disproportionately high.

Held: dismissing the appeal, affirming the decision of the learned master and ordering that two thirds of the prescribed costs in the court below be awarded to the respondent on the appeal, that:

1. An entry of judgment in default is conclusive on the issue of liability of the defendant as pleaded in the statement of claim. On an assessment of damages following the entry of default judgment, all issues that concern the issue of damages are open to the defendant to prove on a balance of probabilities as long as they are not inconsistent with the issue of liability as determined by the default judgment. On the facts, the learned master clearly recognised these principles as evidenced by his statements made at paragraph 4 of his judgment. There was nothing which he stated that was inconsistent with the principles emerging from the English Court of Appeal decision in **Lunnun v Singh and others** and the appellants' ground of appeal that the learned master erred in this regard, consequently fails.

   Lunnun v Singh and others [1999] Lexis Citation 2979 applied; **Charles Hunte v Loretta Phillip et al** ANUHCV2014/0449 (delivered 11th January 2017, unreported) distinguished.

2. In determining an award for damages for defamation, a trial judge ought to consider any mitigating factors placed before him by the defendant. The absence of any discussion or findings concerning mitigation of damages and the mitigating value of a defendant's evidence equates with a failure to consider whether a defendant had mitigated the damages. On the facts, the issue of whether the damages to be awarded to the respondent should be reduced on account of any mitigating factor(s) was a live one before the learned master. However, the learned master failed to consider the issue as evidenced by his failure to consider or pronounce on the issue of mitigation of damages in circumstances where both parties had filed evidence and submissions on the issue. This was an error by the learned master and the appellate court was thus empowered to consider afresh the issue of whether any mitigating factors existed which would reduce the amount of damages payable to the respondent.

   Elwardo Lynch v Ralph Gonsalves SVGHCVAP2009/002 (delivered 21st June 2011, unreported) followed.

3. Issues that are inconsistent with the issue of liability as determined by a default judgment are irrelevant on a subsequent assessment of damages. Any defence to a claim for defamation affects the issue of liability and so would be of no relevance to the assessment of damages. On the facts, the appellants could not rely on a possible defence of qualified privilege had they been able to file a defence, since this issue was inconsistent with the issue of liability as had been determined by the default judgment. As a result, the appellants' defence of qualified privilege was not a relevant mitigating factor on the assessment.

4. A court, in assessing damages for defamation, should receive evidence to the effect that the claimant's conduct has directly provoked the publication of which he

complains. If such evidence of provocation is found, this could justify a reduction in damages to be awarded. On the facts, the appellants asserted that the defamatory statement was published by Mr. Honore in response to an attack on him by the respondent. However, the respondent's statement that Mr. Honore's activities were not limited to farming was neither false nor defamatory. Thus, it could not reasonably be said that the statements broadcasted by the appellants were provoked by statements made by the respondent. There was no evidence of any provocation and thus, this was not a mitigating factor that could reduce the damages awarded.

5. In any action for libel or slander, a court may take into consideration evidence concerning the mitigation of damages that: (i) the claimant has recovered damages; (ii) the claimant has brought other actions for damages for defamation in respect of the publication of words to the same effect as the words on which the action is founded; or (iii) the claimant has received or agreed to receive compensation in respect of any such publication. This is the position reflected in section 12 of the United Kingdom Defamation Act 1952 (the "1952 UK Act"), which traces its origins to section 6 of the United Kingdom Law of Libel Amendment Act 1888. Both sections 6 and 12 were meant to abridge the common law position since prior to 1888 the law did not permit the consolidation of actions in respect of the same libel where there were multiple defendants. In Dominica, there is no reason in principle why the current position as reflected in section 12 of the 1952 UK Act should not be a part of the common law in Dominica. It is sensible that a claimant should not recover damages twice for the same libel. If damages are meant to repair a claimant's reputation, it follows that once damages are obtained, a court can properly take that into account in determining whether to award a claimant further damages. On the facts, there was no evidence that the respondent received any damages in respect of the defamatory statements in any other proceedings for defamation and this therefore was not a mitigating factor.

   Section 12 of the **United Kingdom Defamation Act 1952** applied.

6. In an action for defamation and in mitigation of damages, a defendant may give evidence of an apology made or offered to the claimant. The apology must be made or offered before commencement of an action or as soon afterwards as the defendant had an opportunity for doing so. On the facts, there was no evidence that the appellants made or offered an apology to the respondent before he initiated proceedings in the lower court or at any time after the proceedings had commenced. This therefore was not a mitigating factor.

   Section 2 of the **Libel and Slander Act** Chap. 7:04 of the Laws of the Commonwealth of Dominica applied.

7. A defendant may adduce evidence of a claimant's general bad character to mitigate damages payable to a claimant in an action for defamation. Such evidence is

admissible since a person is only entitled to damages for defamation commensurate with the reputation that he or she has. The claimant must therefore, in answer, adduce evidence at trial of his good reputation or character. Evidence of rumors or suspicion to the same effect as the defamatory matter about which the claimant complains are only admissible if they have affected the claimant's reputation. Once this is proved, such evidence is admissible as evidence of general bad character. The evidence which the appellants referred to as being evidence of bad character was a statement made by the respondent in his report to the Prime Minister that he was the victim of false accusations. This was not evidence of a general bad reputation and in fact, there was no evidence before the learned master that the respondent had a bad reputation for being involved in racketeering in the Division. This therefore was not a mitigating factor so as to reduce the award of damages.

Scott v Sampson [1881-85] All ER Rep 628 applied.

8. An assessment of damages in defamation cases is an exercise of discretion by a trial judge or master. It is not quasi scientific and there could never be any precise, arithmetical formula to govern the assessment of general damages in defamation. The mere fact that a judge's award is for a larger or smaller sum than an appellate court would have given is not a sufficient basis for disturbing the award. Consequently, an appellate court will only interfere in exceptional circumstances. Such circumstances include where there is no reasonable proportion to the amount awarded and loss sustained; the damages are out of proportion to the circumstances of the case and where the trial judge misapprehended the facts, took irrelevant factors into consideration, applied a wrong principle or applied a wrong measure of damages which made his award a wholly erroneous estimate of the damage suffered. Unless it can be said that the judge's award exceeded the generous ambit within which reasonable disagreement is possible and was blatantly wrong, an appellate court will not disturb the trial judge's exercise of discretion.

Alphonso and Others v Deodat Ramnath (1997) 56 WIR 183 followed; **Keith Mitchell v Steve Fassihi et al** GDAHCVAP2003/0022 (delivered 22nd November 2004, unreported) followed; **Elwardo Lynch v Ralph Gonsalves** SVGHCVAP2009/002 (delivered 21st June 2011, unreported) followed; **Jenny Lindsay et al v Harriet Carty** AXAHCVAP2015/0007 (delivered 7th December 2021, unreported) followed; **Vaughn Lewis v Kenny D. Anthony** SLUHCVAP2006/0002 (delivered 14th May 2007, unreported) followed.

9. On the facts, the learned master properly considered the relevant factors including: (1) the gravity of the publication which would seriously undermine the integrity of the respondent and the office he held at the material time; (2) the broadcast was on the radio and of wide circulation; (3) the defamatory statements were rebroadcasted by the appellants after they had received correspondence from the legal practitioner for the respondent seeking a retraction of the defamatory statements and an

apology; (4) the refusal by the appellants to apologise or retract the defamatory statements; (5) the standing of the respondent and the impact on his reputation as a Minister of the Gospel; and (6) the embarrassment and effect the publication had on the respondent. While the award was on the higher end of the scale, no basis could be found to interfere with the award of damages made by the learned master. The learned master took into account the relevant factors in the exercise of his discretion to make the award of damages and therefore did not err.

JUDGMENT

[1] **VENTOSE JA [AG.]:** This is an appeal against the decision of the learned master dated 5th February 2020 in which he awarded Mr. Matthew Leblanc (the "respondent") the sum of $120,000.00 in general and aggravated damages for defamatory statements made by Mr. Lennox Honore ("Mr. Honore") during a call-in programme that was hosted on Q95 FM Radio ("Q95 Radio") by the first appellant, Mr. Mathias Peltier, and owned by the second appellant, West Indies Communication Enterprises Ltd (together the "appellants").

Background

[2] While hosting a call-in programme on Q95 Radio on 2nd February 2015, the appellants broadcasted and published the following words concerning the respondent:

> "Caller: … and if Mr. LeBlanc is saying now that I sour with him and I not speaking to him, I know my reason why I not speaking to him, because there is certain, there is one person who there is another Haitian lady gave me passports to can bring for the person, the civil servant, to bring for Mr. LeBlanc and money under the table and he receive it and issue the visa every week. So tell Mr. LeBlanc don't tackle me because there is plenty more, I not talking more. I halt there Matt. I will not go further because I will not throw my trump card. I holding my trump card for any other further investigation. I have my trump card to throw when for me to be able to talk. Thank you Matt.
>
> Mr. Peltier: But hold on, I know you want to go but let me clarify what you just said. You said that you um you have given some

Haitian lady monies for Mr. LeBlanc? Now how much money that we are talking about here?

Caller: Ok, I didn't give. I say that a Haitian lady had wanted some visa. Then I talked to a certain civil servant and the person tell me that he and Mr. LeBlanc was good friend he can talk to Mr. LeBlanc. Mr. LeBlanc tell him no problem bring the visa. The visa passed through my hand, the passports and documents pass through my hand, straight to the civil servant and then to Mr. LeBlanc and every week that woman was receiving visas, about 15 to 20 visas every week.

Mr. Peltier: But you don't know how much money was paid for these visas?

Caller: I know how much money Matt but I will not say. I leaving that for further ...

Mr. Peltier: Ok, so you keeping your trump card?

Caller: I keeping my trump card... there is plenty more Matt …

Mr. Peltier: Mr. Cocky, thank you very much.

Caller: Thank you.

Mr. Peltier: So there is more I imagine as the investigation continues to ...

Caller: There is plenty more Matt.

Mr. Peltier: … move along?

Caller: Yeah.

Mr. Peltier: Thank you very much. You see what I'm talking about?"

[3] The legal practitioner for the respondent wrote to the General Manager of Q95 Radio on 26th February 2015, seeking among other things, a full and unequivocal retraction of, and apology for, the defamatory allegations as approved by the legal practitioner for the respondent, and an undertaking not to repeat, broadcast or rebroadcast the defamatory statements on or before 6th March 2015. On 27th February 2015, Mr. Peltier, the first appellant, publicly acknowledged receipt of the letter from the

respondent's legal practitioner, indicating that he would not be intimidated by "legal letters" when he was communicating on a matter of public interest. Rather than retract the defamatory statements and issue an apology to the respondent, the appellants, on 27th February 2015, rebroadcasted and republished the defamatory words. The legal practitioner for the appellants responded on 4th March 2015 indicating that the appellants would not be acceding to any of the demands and that the broadcast and publication were matters of significant public interest.

[4] The respondent, on 10th April 2015, filed a claim form and statement of claim against the appellants seeking, in summary, damages, including aggravated and/or exemplary damages, for libel, alternatively slander, for the words broadcasted and published or caused to be broadcasted and published by the appellants on The Hot Seat on Q95 Radio on 2nd February 2015 and rebroadcasted and republished by the appellants on 27th February 2015.

[5] The respondent, at the time of the broadcast and publication of the defamatory statements by the appellants, was the Labour Commissioner in the Division of Labour and Immigration, Ministry of Justice, Immigration and National Security of the Government of the Commonwealth of Dominica (the "Division"). He was also a Minister of the Gospel with the Pentecostal Assemblies of Dominica in numerous churches in Roseau and the surrounding villages.

[6] The respondent alleged that the words mentioned above in their natural and ordinary meaning meant and were understood to mean that the respondent was: (1) using or had been using his public office for personal and financial gain or profit; (2) clandestinely accepting or had clandestinely accepted monies for performing his duties and/or functions as Labour Commissioner; (3) engaged in the practice of issuing visas not on merit but on the basis of who was willing and able to pay him personally for these visas; (4) engaged in unethical, dishonest and/or corrupt practices in the exercise of his duties or functions as Labour Commissioner; (5) engaged in other and/or more unethical, dishonest and/or corrupt practices or

activities as Labour Commissioner, the specifics or details of which the respondent knows but had not yet disclosed; (6) a hypocrite; (7) involved in the racketeering of visas and/or work permits that he was asked by the Prime Minister to investigate; and (8) not a fit and/or proper person to hold the office of Labour Commissioner.

[7] On 14th May 2015, the respondent filed a request for judgment in default of defence which was granted by the court on 22nd May 2015. On 5th June 2015, the appellants applied to set aside the default judgment which application was dismissed by the court on 3rd December 2015. On 1st July 2019, the court also dismissed an application by the respondent to strike out parts of the appellants' witness statements and to expunge certain exhibits that were attached to the witness statements filed for the assessment of damages. On 16th July 2019, the appellants filed an application seeking to consolidate the claim in the proceedings below with another claim that was brought by the respondent against Mr. Honore the person who made the defamatory statements during the call-in programme that was hosted on Q95 Radio. The assessment came on for hearing before the learned master on 17th July 2019 who noted that the application for default judgment was already dealt with by the court and that it was too late to entertain the application to consolidate both claims. The learned master proceeded to hear evidence from the witnesses and submissions from counsel for the parties and reserved his decision.

The judgment below

[8] The learned master, in his judgment dated 5th February 2020, stated that since the matter before him was assessment of damages and not a trial on liability of the substantive issues pleaded, the court must assume that the facts pleaded have been established and proceed to assess damages on that basis. The learned master stated that the purpose of general damages in defamation claims was to: (1) console the claimant for the distress suffered; (2) repair the harm to his reputation; and (3) vindicate his reputation. He proceeded to consider the factors which the court would take into consideration when determining the amount of damages to be awarded in defamation cases, including: (a) the gravity of the allegation; (b) the extent of the

publication; and (c) the effect of the publication on the claimant. Each of these factors were examined seriatim. The learned master found that: (i) the appellants' allegation that the respondent was willing to accept payments for the fast tracking of visa requests and permits seriously undermined the integrity of the office which he held and brought his character and professional reputation into disrepute; (ii) the broadcast was of very wide circulation; and (iii) the evidence of the respondent was that persons expressed concern about his reputation after the broadcast and publication of the defamatory words and the respondent was embarrassed and seriously affected by the slander of his reputation.

[9] The learned master then examined comparable decisions in the Eastern Caribbean in order to maintain certainty in defamation cases in the subregion and took into account the following: (1) the case related to words which defamed the respondent in his professional life; and (2) the broadcast was extensive throughout Dominica and was repeated on several occasions, notwithstanding the respondent's demand for an apology. After considering some authorities and noting that the decision of **Victoria Alcide v Helen Television Systems Limited et al**[1] was similar to the facts of the instant case, the learned master awarded the respondent the sum of $120,000.00 in general and aggravated damages.

The appeal

[10] On 18th March 2020, the appellants filed a notice of appeal against the decision of the learned master on the following ten (10) grounds: (1) the amount of damages awarded by the learned master was disproportionately high in light of the facts of the case; (2) the learned master did not consider the mitigating factors which the appellants highlighted through evidence and submissions; (3) the learned master erred in law and in his finding of facts when he disregarded submissions made by counsel for the appellants on mitigating factors as "matters which are no longer to be resolved by the court at this stage in the proceedings"; (4) the learned master erred in law when he held that pleaded facts cannot be disputed or found to be untrue in

[1] SLUHCV2011/0398 (delivered 25th October 2017, unreported).

an assessment of damages hearing; (5) the learned master did not give sufficient weight to the fact that prior to the publication the respondent, by his own admission, had a reputation of having committed the very acts that the caller accused him of committing; (6) the learned master did not consider or give appropriate weight to the fact that the statements were made by a caller and not by the appellants; (7) the learned master erred in law and in his finding of fact by failing to consider the apology offered by the appellants as a mitigating factor; (8) the learned master erred in refusing to set aside the default judgment in circumstances where the default judgment was irregularly obtained since the respondent did not provide service of the claim form, defence form and acknowledgment of service form prior to obtaining default judgment; (9) the learned master erred in failing to consolidate the present claim with claim DOMHCV 085 of 2015 since the two claims concerned the same facts and same allegedly defamatory statements; and (10) the learned master erred by failing to consider that the respondent had filed separate proceedings against the publisher of the statements and that there was a real risk that the respondent might receive double compensation and of injustice to the appellants by not consolidating DOMHCV 085 of 2015 with the instant claim and in determining the quantum of damages in the instant claim.

[11] In submissions filed on 1st March 2023, the appellants indicated that they would not be pursuing grounds of appeal 8, 9 and 10.

[12] The following issues arise for consideration in respect of the other seven (7) grounds of appeal: (1) whether the learned master was correct in stating that, on an assessment of damages, the court is to assume that the facts pleaded have been established and proceed to assess the damages on that basis; (2) whether the learned master erred in not considering any of the mitigating factors submitted by the appellants; and (3) whether the amount of damages awarded by the learned master to the respondent was disproportionately high.

Jurisdiction of the Court of Appeal

[13] The assessment of damages in defamation cases is an exercise of discretion by a trial judge or master. Consequently, the same principles which underpin judicial restraint by this Court in relation to the exercise by a trial judge of his or her discretion will also apply in relation to an appeal in respect of the amount of damages awarded in a claim for defamation. In **Alphonso and Others v Deodat Ramnath**,[2] this Court explained (at p. 191) that:

> "In appeals, comparable in nature to the present one, it must be recognised that the burden on the appellant who invites interference with an award of damages that has commended itself to the trial judge is indeed a heavy one. The assessment of those damages is peculiarly in the province of the judge. A Court of Appeal has not the advantage of seeing the witnesses, especially the injured person, a matter which is of grave importance in drawing conclusions as to the quantum of damage from the evidence that they give. If the judge had taken all the proper elements of damage into consideration and had awarded what he deemed to be fair and reasonable compensation under all the circumstances of the case, we ought not, unless under very exceptional circumstances, to disturb his award. The mere fact that the judge's award is for a larger or smaller sum than we would have given is not of itself a sufficient reason for disturbing the award.
>
> But, we are powered to interfere with the award if we are clearly of the opinion that, having regard to all the circumstances of the case, we cannot find any reasonable proportion between the amount awarded and the loss sustained, or if the damages are out of all proportion to the circumstances of the case. This court will also interfere if the judge misapprehended the facts, took irrelevant factors into consideration, or applied a wrong principle of law, or applied a wrong measure of damages which made his award a wholly erroneous estimate of the damage suffered. The award of damages is a matter for the exercise of the trial judge's judicial discretion and unless we can say that the judge's award exceeded the generous ambit within which reasonable disagreement is possible and was therefore clearly and blatantly wrong we will not interfere (see the judgment of this court in Nicholas v Augustus (1996) (unreported))."

[14] Although **Ramnath** dealt with damages for personal injuries, this Court in **Keith Mitchell v Steve Fassihi et al**[3] held that the above-mentioned principles enunciated in **Ramnath** are equally applicable to appeals in respect of the assessment of

[2] (1997) 56 WIR 183.
[3] GDAHCVAP2003/0022 (delivered 22nd November 2004, unreported).

damages in defamation cases. These principles have been restated and applied in other decisions of this Court dealing with damages for defamation: **Elwardo Lynch v Ralph Gonsalves**[4] and **Jenny Lindsay et al v Harriet Carty**.[5] In **Gonsalves**, this Court stated:

> "[29] It is clear then that in reviewing the award of damages made by the learned master, we should in general be reluctant to interfere with her award unless we come to the conclusion that the master has acted on some wrong principle of law, by taking into account some irrelevant factor, or leaving out of account a relevant factor, or has misapprehended the facts or law, or made a wholly erroneous estimate of the damage suffered, or if there is no reasonable proportion between the amount awarded and the loss sustained, or if the damages are out of all proportion to the circumstances of the case, or that her award exceeded the generous ambit within which reasonable disagreement is possible and was therefore clearly and blatantly wrong. Further, if this court thinks that the damages are radically wrong, it ought to interfere even if the error cannot be pinpointed."

In **Carty**, this Court also stated that:

> "[34] I also keep in mind that the process of assessing damages is not quasi scientific and there is rarely a single right answer. There could never be any precise, arithmetical formula to govern the assessment of general damages in defamation. The court's task is to assess the proper level of compensation, taking into account all the relevant factors, which includes any element of aggravation. The compensatory award granted can properly reflect any additional hurt and distress caused to the claimant by the conduct of the defendant and may reflect any proved elements of aggravation."

Issue one – Whether the default judgment is determinative of all issues

[15] The appellants complain that the learned master erred in law when he held that pleaded facts cannot be disputed or found to be untrue in an assessment of damages hearing. They cited the decision of this Court in **George Blaize v Bernard La Mothe**[6] that establishes that there is a constitutional right to be heard even in default judgment cases. However, the decision more directly related to this issue is the decision of the Court of Appeal of England and Wales in **Lunnun v Singh and**

[4] SVGHCVAP2009/002 (delivered 21st June 2011, unreported).
[5] AXAHCVAP2015/0007 (delivered 7th December 2021, unreported).
[6] GDAHCVAP2012/004 (delivered 9th October 2012, unreported).

others.[7] In **Singh**, the issue was whether it was open to the defendants, notwithstanding the default judgment, to raise, at the damages hearing, the issue whether water damage from another source was responsible for damage to the claimant's basement. Jonathan Parker J stated (at pp. 6-7):

> "In my judgment, the position in this respect is as follows. The default judgment is conclusive on the issue of the liability of the defendants as pleaded in the Statement of Claim. The Statement of Claim pleads that an unspecified quantity of effluent escaped from the defendants' sewer into the basement of the claimant's property. In addition it is, Mr. Exall accepts, inherent in the default judgment that the defendants must be liable for some damage, resulting therefrom. But that, in my judgment, is the full extent of the issues which were concluded or settled by the default judgment. It follows, in my judgment, that in the instant case all questions going to quantification, including the question of causation in relation to the particular heads of loss claimed by the claimant, remain open to the defendants at the damages hearing. Direct support for this conclusion is, in my judgment, to be derived from the decision of this court in Turner v Toleman. Equally, the Vice-Chancellor's decision in Maes Finance, as I read it, is entirely consistent, as I read it, with that conclusion.
>
> In my judgment, the underlying principle is that on an assessment of damages all issues are open to a defendant save to the extent that they are inconsistent with the earlier determination of the issue of liability, whether such determination takes the form of a judgment following a full hearing on the facts or a default judgment. In this case the judgment was a default judgment. I accordingly accept Mr. Exall's submissions in relation to the first point."

[16] Peter Gibson LJ stated that it was not in dispute that when judgment in default is entered for damages to be assessed, the question of liability is thereby determined and cannot be challenged while the unappealed judgment still stands. He continued that the true principle is that on an assessment of damages any point which goes to quantification of the damage can be raised by the defendant, provided that it is not inconsistent with any issue settled by the judgment. The applicable principles are as follows: first, the default judgment is conclusive on the issue of the liability of the defendant as pleaded in the statement of claim; and second, on an assessment of damages following the entry of default judgment all issues that concern the issue of

[7] [1999] Lexis Citation 2979.

damages are open to the defendant to prove on a balance of probabilities as long as they are not inconsistent with the issue of liability as determined by the default judgment. The learned master at paragraph [4] of his judgment stated that:

> "[4]. At the hearing of the assessment the defendants led evidence from the caller of the radio programme which appeared to address the possible defences to the claim commenced by the claimant. Indeed, a perusal of the submissions of counsel for the defendants appears to address this issue. Counsel seeks to persuade the court that the caller had a right in law to respond to issues which were raised about him in the claimant's report to the Prime Minister and provide some basis for his contribution to the radio programme. It must be observed, however that judgment has been entered in default against the defendants. This is an assessment of damages and not a trial of the substantive issues pleaded insofar as liability is concerned. On an assessment the court is to assume the facts pleaded have been established and proceed to assess the damages on that basis. Therefore, some of the submissions of the submissions of counsel for the defendants relate to matters which are no longer to be resolved by the court at this stage in the proceedings."

[17] There is nothing in this statement by the learned master that is inconsistent with the principles emerging from **Singh**. In fact, the passage shows that the learned master was aware of the applicable principles when he made that statement. The learned master then proceeded to state that for the purposes of this analysis the effect of judgment in default is that the defendants are deemed to have admitted the truth of all the allegations made against them in the statement of claim, citing **Douglas v The Democrat Printing Company Limited**[8] at paragraph [21].

[18] Nothing in the decision of **Charles Hunte v Loretta Phillip et al**[9] on this point assists the appellants. Although the master in **Phillip** noted that in cases dealing with damages following the entry of default judgment, the defendant is deemed to have admitted the truth of the allegations against them, the master did not go on to point out, as was stated in **Singh**, that it was open to the defendants to prove on the balance of probabilities all issues that concern the issue of damages provided they

[8] SKBHCV2012/0076 (delivered 8th October 2013, unreported).
[9] ANUHCV2014/0449 (delivered 11th January 2017, unreported).

are not inconsistent with the issue of liability as determined by the default judgment. This ground of appeal therefore fails.

Issue two – Whether any mitigating factors existed
The appellant's submissions

[19] The appellants submit that the learned master erred when he failed to consider the mitigating factors highlighted by the appellants through their: (1) witness statements; (2) oral evidence at the hearing; and (3) submissions. The appellants cite the following from **Gonsalves** where this Court stated that:

> "[16] It is permissible at common law for a defendant to seek to mitigate the damages which may be awarded against him, by proving circumstances which show that he did not act with deliberate malice. A defendant may prove facts in mitigation of damages without pleading such facts."

[20] The appellants submit the following as mitigating factors: (1) Mr. Honore was in fact responding to an attack against his reputation by the respondent; (2) the offer by the appellants of an apology to the respondent; (3) the appellants were not the speakers of the defamatory words and the respondent had filed a separate action against Mr. Honore; (4) the respondent suffered no financial or other harm; (5) the defamatory statements had no effect on the respondent's job or on his position as a Minister of the Gospel; and (6) the appellants proved at the assessment of damages hearing that the respondent had a general bad reputation prior to the broadcast and publication, which was a major part of the appellants' mitigation of damages.

[21] In relation to the last factor, the appellants submit that the learned master made no reference to the appellants' submission and evidence on bad reputation in his judgment. The appellants contend that the respondent prepared a report for the Prime Minister of the Commonwealth of Dominica in which the respondent admitted that there was racketeering within the Division but sought to blame certain employees within the Division for the racketeering. The appellants also contend that the respondent admitted that he was considered responsible for the racketeering in the Division and that there were several accusations being circulated about him. In the appellants' view, the evidence demonstrated that long before the radio publication,

the respondent, as head of the Division, had a reputation for being involved in racketeering.

The respondent's submissions

[22] The respondent submits that the absence of mention of the appellants' submissions on the context of the publication in the judgment of the learned master is not a basis for contending that the learned master did not consider these submissions. The respondent also submits that the context of the publication in any event is not in itself a mitigating factor. The respondent submits that no evidence of general bad reputation was led by the appellants and certainly none by the respondent. The respondent also submits that the appellants could not possibly "prove that the respondent has a general bad reputation prior to the impugned publication". The respondent contends that when one reads the paragraphs in the memo preceding and following the statement quoted by the appellants, it is evident that the respondent was not referring to allegations of racketeering and the respondent never admitted that he was considered responsible for racketeering in the Division. The respondent submits that the law is that evidence of rumours and/or reports and or suspicions to the same effect as the defamatory matter complained of are not evidence of bad reputation. The respondent cites the decisions of **Scott v Sampson**,[10] **Plato Films Ltd v Speidel**[11] and **Associated Newspaper Ltd v Dingle**[12] to illustrate the distinction the courts have made and recognized between evidence of rumours or suspicion and evidence of bad reputation.

[23] The respondent submits that the evidence does not show that the appellants offered an apology and that the only evidence relating to offer of amends was in relation to unsuccessful court-ordered attempted settlement talks that occurred just before the hearing on the assessment of damages. The respondent also submits that the fact that the appellants were not the speakers (original publishers) of the defamatory material was not a mitigating factor and the learned master correctly rejected this

[10] (1882) 8 QBD 491.
[11] [1961] 1 All ER 876.
[12] [1962] 2 All ER 737.

submission, particularly in view of the evidence that the appellants republished the defamatory statements after they knew the contents of the publication and had received the pre-action letter from the respondent's legal practitioner warning against republication and requesting, among other things, an apology and retraction of the defamatory statements. The respondent contends that the appellants, therefore, took ownership of the publication separate and apart from Mr. Honore, the maker of the defamatory statements. The respondent also contends that, at common law, the fact that a separate lawsuit was brought in respect of Mr. Honore for the same publication is not a mitigating factor and there was no evidence before the learned master that the respondent had already recovered damages in respect of the same publication.

[24] The respondent concludes that the learned master correctly rejected the appellants' submissions that there were mitigating factors which should reduce the quantum of damages as these factors were not in the evidence or were irrelevant or unimpactful to the question of mitigation of damages.

Discussion and Analysis

[25] In **Gonsalves**, when considering the issue of whether the master erred in not directly considering whether there was any evidence of any of the factors which might have mitigated damages to be awarded to the claimant, this Court stated that:

> "[39] It is quite clear from the master's treatment of the appellants' witness statements and submissions on damages that she did not consider whether or not any of the appellants' evidence could mitigate the damages. She certainly did not recognize the submissions of counsel as touching on mitigation of damages. The absence of any discussion or findings concerning mitigation of damages and the mitigating value of the appellants' evidence equates with a failure to consider whether the appellants had mitigated the damages in my view. In all fairness to the master, she did not have the benefit of the cases cited by Mr. John in support of this issue, and it does not appear from the submissions on damages that she was assisted by counsel on either side with this aspect of the law. Notwithstanding this, I am of the view that the master should have at least acknowledged that the damages could be mitigated by the appellants; and then pronounce on whether the evidence before her was of persuasive value for the purposes of mitigating the damages to be awarded. However, it does not follow that because the master made this error her award in damages must be disturbed."

[26] It must first be determined whether the issue of mitigating factors ought properly to have been considered by the learned master in determining the award of damages payable by the appellants to the respondent. The appellants, in submissions filed on 4th July 2017 in the court below for the assessment of damages before the learned master, submitted that the following mitigating factors should be taken into consideration by the court when assessing damages: (1) had the appellants filed a defence or had the default judgment been set side, the appellants would have successfully relied on the defence of qualified privilege; (2) the defamatory statement was published by a third party in response to a defamatory attack on that third party by the respondent; (3) the respondent, prior to the publication, had a reputation for being involved in the alleged racketeering and as such his reputation was not altered; (4) the respondent brought separate proceedings against Mr. Honore, the person who actually uttered the defamatory statement; and (5) the appellants, through their solicitor, responded to the respondent's pre-action letter in an attempt to logically resolve the dispute.

[27] The respondent, in his submissions filed on 19th April 2017 in the court below, did not deal with any of the factors that might mitigate damages payable by the appellants to the respondent. However, in supplemental submissions filed on 31st July 2019, the respondent dealt with the following: (1) whether the appellants were provoked by the respondent to make the defamatory statements; (2) whether there was any apology or retraction by the appellants of the defamatory statements; and (3) whether the respondent admitted to having a reputation for being responsible for racketeering in the Division. The respondent submitted that the evidence of the appellants had no persuasive value in determining whether the amount of damages to be awarded to the respondent should be mitigated or reduced.

Analysis and Conclusion

[28] There was no question that the issue of whether the damages to be awarded to the respondent should be reduced on account of any mitigating factor(s) was a live one before the learned master. What is also clear is that the learned master did not

consider the issue of whether there was evidence of any mitigating factor(s) that could reduce or mitigate the damages payable to the respondent. The words of this Court in **Gonsalves** ring true, namely, that the absence of any discussion or findings concerning mitigation of damages and the mitigating value of the appellants' evidence equates with a failure to consider whether the appellants had mitigated the damages. This was an error made by the learned master because the appellants' submissions focused almost exclusively on mitigation of damages and the supplemental submissions of the respondent also dealt with the issue of mitigation of damages. The Court in **Gonsalves** noted that, even in the absence of submissions from the parties on mitigating damages, the master should have at least acknowledged that the damages could be mitigated by the appellants; and then pronounce on whether the evidence before her was of persuasive value for the purposes of mitigating the damages to be awarded. The learned master in the court below erred in not considering or pronouncing on the issue of mitigating damages in circumstances where both parties had filed evidence and submissions on that issue, and erred in principle in not considering whether there was evidence before him that was of persuasive value for the purposes of mitigating damages to be awarded to the respondent.

The mitigating factors

[29] This Court must now consider afresh whether there were any mitigating factors that ought properly to have been considered by the learned master in determining the award of damages that was payable to the respondent.

Reliance on Defence of Qualified Privilege

[30] The appellants submitted before the learned master that had the appellants filed a defence or had the default judgment been set side, the appellants would have successfully relied on the defence of qualified privilege. This is not a mitigating factor recognised in law. The fact that the appellants could have had this defence does not matter at the assessment of damages stage because it is not a mitigating factor which serves to reduce the damages payable. As mentioned earlier in this judgment,

Jonathan Parker J in **Singh** stated that, first, the default judgment is conclusive on the issue of the liability of the defendant as pleaded in the statement of claim; and second, on an assessment of damages following the entry of default judgment all issues that concern the issue of damages are open to the defendant to prove on a balance of probabilities as long as they are not inconsistent with the issue of liability as determined by the default judgment. Any defences that might have been available to the appellants are of no relevance to the assessment of damages following entry of the default judgment.

Provocation by a Third Party

[31] The appellants also submitted that the defamatory statement was published by a third party, Mr. Honore, in response to a defamatory attack on that third party by the respondent. It cannot be seriously argued that the appellants are not liable because the defamatory statement was made by a third party. Defamation actions are not concerned primarily with only making defamatory statements but their publication. The appellants do not dispute that they published the defamatory statements on two occasions. In the court below, Mr. Honore admitted in cross-examination that he was a businessman in addition to being a farmer. Consequently, I agree with counsel for the respondent that the statement by the respondent that the activities of Mr. Honore were not limited to farming, is neither a false statement nor a defamatory statement of Mr. Honore. It could not, therefore, reasonably be said that the defamatory statements made by the appellants were provoked by the statements made by the respondent. It is correct that a court assessing damages for defamation should receive evidence to the effect that the claimant's conduct has directly provoked the publication of which he complains. However, in this case, in addition to not having any evidence of provocation, the appellants could only point to alleged provocation by Mr. Honore. If any provocation was found to have existed, it might have justified a reduction in damages to be awarded for the first publication, but it could hardly reduce damages for the second publication by the appellants of the defamatory statements. Consequently, this is not a mitigating factor that could reduce the damages awarded by the learned master to the respondent.

Compensation Recovered for Similar Libels

[32] The appellants also submitted that the respondent brought separate proceedings against Mr. Honore in relation to the same defamatory words, and that this fact should significantly reduce any award since the respondent will obtain a remedy, if deserved, against Mr. Honore. For this submission, the appellants cite **Gately on Libel and Slander**[13] ("damages already recovered for the same libel") and **Commonwealth Caribbean Tort Law**[14] ("whether the plaintiff had already recovered damages or brought actions for the same or similar libels"). Both publications represent the law as if it was the position at common law. However, the statutory authority for those statements is section 12 of the United Kingdom Defamation Act 1952 which states as follows:

> "12. **Evidence of other damages recovered by plaintiff.**
> In any action for libel or slander the defendant may give evidence in mitigation of damages that the plaintiff has recovered damages, or has brought actions for damages, for libel or slander in respect of the publication of words to the same effect as the words on which the action is founded, or has received or agreed to receive compensation in respect of any such publication."

[33] Section 12 traces its origins to section 6 of the United Kingdom Law of Libel Amendment Act 1888 which states as follows:

> "**6 Power to defendant to give certain evidence in mitigation of damages.**
> At the trial of an action for a libel contained in any newspaper the defendant shall be at liberty to give in evidence in mitigation of damages that the plaintiff has already recovered (or has brought actions for) damages or has received or agreed to receive compensation in respect of a libel or libels to the same purport or effect as the libel for which such action has been brought."

[34] In 1952, the Defamation Act 1952 was passed in the United Kingdom to give effect to the recommendations contained in the report of the Porter Committee on the Law

[13] Gately on Libel and Slander 10th Edition (United Kingdom: Sweet & Maxwell Ltd., 2007).
[14] Gilbert Kodilyne, Commonwealth Caribbean Tort Law 3rd edition (United Kingdom: Cavendish, 2003).

of Defamation 1948[15] (the "Porter Committee Report"). At pages 34-35 of the Porter Committee Report, it is stated that:

> "**X. MITIGATION OF DAMAGES**
> *(1) Evidence that plaintiff has recovered compensation for similar libels*
> 142. At common law, the defendant in an action for defamation has no right to give evidence in mitigation of damages that the plaintiff has already recovered damages in respect of other libels to the same purport or effect, or has received or agreed to receive compensation in respect thereof. Consequently, damages are assessed by the jury upon the basis that the libel sued upon was the only defamatory statement which had been made about the plaintiff, and that any damages which they were to award him would be the only recompense which he was receiving for the injury to his reputation.
>
> 143. An exception to this rule was made by the Law of Libel Amendment Act, 1888, in respect of libels contained in "newspapers" as defined in that Act; but the common law rule continues in force in respect of all other libels or slanders.
>
> 144. While libels contained in newspapers, no doubt, provide the commonest case of a number of different publications of the same libel, e.g. where the libel is contained in an agency report or syndicated feature, we see no logical reason for drawing a. distinction between these and other cases. The rule is, in effect, only a rule of evidence. It is for the Judge or Jury, as the case may be, having taken into consideration the nature and scope of any previous publication of a similar libel in respect of which the plaintiff has already recovered or brought an action for damages, or received or agreed to receive compensation, to decide to what extent this should affect the amount of damages which they should award in respect of the publication sued upon.
>
> 145. We accordingly recommend that, in any action for defamation, whether or not the matter complained of is published in a newspaper, the defendant should be entitled to give evidence in mitigation of damages that the plaintiff has recovered, or brought other actions for, damages or has recovered or agreed to recover compensation, in respect of any defamatory statement to the same purport or effect as the defamatory statement for which such action has been brought."

[35] Since 1888, the United Kingdom law of defamation has contained an exception to the common law rule to allow a defendant to give evidence in mitigation of damages that the plaintiff has already recovered damages in respect of other libels to the same

[15] Cmd. 7536/48.

purport or effect, or has received or agreed to receive compensation in respect of the same, first in relation to libel contained in newspapers only (section 6 of the UK Law of Libel Amendment Act 1888) and subsequently in relation to any libel or slander (section 12 of the UK Defamation Act 1952).

[36] For our purposes what is clear is that section 6 of the UK Law of Libel Amendment Act 1888 and section 12 of the UK Defamation Act 1952 were intended to abrogate the common law position. It seems that prior to 1888, the law did not permit the consolidation of actions in respect of the same libel where there were multiple defendants: see **Tucker v Lawson**[16] and **Colledge v Pike**.[17] Each defendant was liable for whatever damages were awarded in that action. Since the passage of the 1888 Law of Libel Amendment Act such consolidation was permitted, and the damages awarded were apportioned among the various defendants. It made sense, therefore, to allow the defendant (in either section 6 of the 1888 Act or section 12 of the 1952 Act) to mitigate his damages by giving evidence to show that the claimant had either already received, or agreed to receive, damages in respect of the same libel. Section 20 of the Libel and Slander Act[18] contains a similar provision as section 12 of the UK 1952 Act.

[37] While the history of the English common Law position prior to 1888 did not permit evidence of any prior award of damages in mitigation of damages in a subsequent action, there is no reason in principle why the current position as reflected in section 12 of the UK Defamation Act should not be part of the common law in Dominica. That common law is not shackled by the previous limitation concerning evidence that plagued the United Kingdom in the 1800s. It is sensible that a claimant should not recover damages twice for the same libel. If compensatory damages are meant to repair his or her reputation, it follows that once damages are obtained, a court can properly take that into account in determining whether to award him or her further damages in another or subsequent action for defamation.

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[16] (1886) 2 TLR 593.
[17] (1886) 56 LT 124, 3 TLR 126.
[18] Chap. 171 of the Laws of Grenada.

[38] There was no evidence that the respondent received any damages in respect of the defamatory statements in any other proceedings for defamation. This is therefore not a mitigating factor.

Response to Pre-Action Letter

[39] The appellants also submitted that the appellants, through their solicitor, responded to the respondent's pre-action letter in an attempt to logically resolve the dispute. It is not immediately clear to which established mitigating factor this point relates.

Apology

[40] The appellants submit that the learned master failed to consider that the appellants offered an apology to the respondent and that this was admitted by the respondent during cross examination when he said, "Yes, the first Defendant and the Director of Q95 offered to publish an apology. This was part of the negotiation settlement". The appellants further submit that this is a mitigating factor that should have reduced the award of damages payable by the appellants. The respondent submits that the only evidence in relation to an offer of amends was in respect of court ordered mediation which was unsuccessful. The respondent also submits that the first appellant, under cross examination at the hearing in the court below, admitted that he did not apologize publicly or privately to the respondent.

[41] Section 2 of the **Libel and Slander Act**[19] states as follows:

> "2. In any action for defamation the defendant (after notice in writing of his intention to do so, duly given to the plaintiff at the time of filing or delivering the plea in the action) may give in evidence, in mitigation of damages, that he made or offered an apology to the plaintiff for the defamation before the commencement of the action, or as soon afterwards as he had an opportunity of doing so, in case the action had been commenced before there was an opportunity of making or offering the apology."

[42] There is no evidence that the appellants made or offered an apology to the respondent before the respondent filed his claim form and statement of claim. It will

[19] Chap. 7:04 of the Laws of the Commonwealth of Dominica.

be remembered that the respondent wrote the appellants a pre-action letter seeking, among other things, a retraction and apology for the libel. The appellants' response was to republish the defamatory statements. There is also no evidence that the appellants made or offered an apology at all since the commencement of the action. It cannot therefore be said that this is a mitigating factor.

General Bad Reputation

[43] The main mitigating factor relied upon by the appellants is the alleged existence of the respondent's general bad reputation. The leading decision relating to bad reputation is **Scott v Sampson**[20] where the defendant sought to have the judgment granted in favour of the plaintiff set aside because of the existence of evidence of the plaintiff's general bad character and of rumours that the plaintiff was guilty of misconduct before the libel was published. The issue for the court was whether evidence of: (1) bad reputation; (2) rumours; or (3) circumstances tending to show the disposition of the plaintiff, were admissible in mitigating damages. In relation to general bad reputation, Cave J stated (at p. 634):

> "Speaking generally, the law recognizes in every man a right to have the estimation in which he stands in the opinion of others unaffected by false statements to his discredit, and if such false statements are made without lawful excuse, and damage results to the person of whom they are made, he has a right of action. The damage, however, which he has sustained must depend almost entirely on the estimation in which he was previously held. He complains of an injury to his reputation and seeks to recover damages for that injury, and it seems most material that the jury who have to award those damages should know, if the fact is so, that he is a man of no reputation. As is observed in STARKIE ON EVIDENCE:
>
> > "To deny this would be to decide that a man of the worst character is entitled to the same measure of damages with one of unsullied and unblemished reputation. A reputed thief would be placed on the same footing with the most honourable merchant, a virtuous woman with the most abandoned prostitute. To enable the jury to estimate the probable quantum of injury sustained a knowledge of the party's previous character is not only material but seems to be absolutely essential."

[20] [1881-85] All ER Rep 628.

> It is said that the admission of such evidence will be a hardship upon the plaintiff, who may not be prepared to rebut it, and under the former practice, where the damages could not be pleaded to and general evidence of bad character was allowed to be given under a plea of not guilty, there was something in this objection, which, however, is removed under the present system of pleading which requires that all material facts shall be pleaded, and a plaintiff who has notice that general evidence of bad character will be adduced against him, can have no difficulty whatever, if he is a man of good character, in coming prepared with friends who have known him to prove that his reputation has been good. On principle, therefore, it would seem that general evidence of reputation should be admitted; and on turning to the authorities previously cited, it will be found that it has been admitted in a great majority of those cases, and that its admission has been approved by a great majority of the judges who have expressed an opinion on the subject."

[44] In relation to rumours and suspicions, Cave J explained (at pp. 634-635) that:

> "As to the second head of evidence, or evidence of rumours and suspicions to the same effect as the defamatory matter complained of, it would seem that on principle such evidence is not admissible as only indirectly tending to affect the plaintiff's reputation. If these rumours and suspicions have, in fact, affected the plaintiff's reputation, that may be proved by general evidence of reputation; if they have not affected it, they are not relevant to the issue. To admit evidence of rumours and suspicions is to give any one who knows nothing whatever of the plaintiff, or who may even have a grudge against him, an opportunity of spreading through the means of the publicity attending judicial proceedings what he may have picked from the most disreputable sources, and what no man of sense, who knows the plaintiffs character, would for a moment believe in. Unlike evidence of general reputation, it is particularly difficult for the plaintiff to meet and rebut such evidence; for all that those who know him best can say is that they have not heard anything of these rumours. Moreover, it may be that it is the defendant himself who has started them.
>
> …
>
> Upon the whole, both the weight of authority and principle seem against the admission of such evidence."

[45] It is important to articulate clearly what **Scott v Sampson** decided in relation to the first two categories discussed therein. In respect of the first category, namely, bad reputation or character, Cave J explained that such evidence is properly admitted because a person is only entitled to damages for defamation commensurate with the reputation that he or she has. A person with a bad reputation cannot claim injury to a reputation that he or she does not possess. The claimant must adduce evidence at

trial of his good reputation or character. A defendant can adduce evidence of the claimant's general bad character or reputation to mitigate the damages payable to the claimant. It is perfectly logical that this should be so because, as this Court made clear in **Carty** (at paragraph [10]), an award of damages in defamation is required to serve one or more, and usually all, of three interlocking purposes of compensation: (1) to repair harm or damage to his reputation; (2) vindication of his good name or reputation; and (3) taking account of the distress, hurt and humiliation caused by the defamatory publication. Injury to reputation is the focal point of an action for defamation and the repair and vindication of that reputation lies at the heart of damages payable for defamatory statements.

[46] In respect of the second category, Cave J also reasoned that evidence of rumours or suspicion to the same effect as the defamatory matter about which the claimant complains are not admissible as affecting the claimant's reputation. The only way in which they are admissible is if they have affected the claimant's reputation and once this is proved, such evidence is admissible as evidence of general bad character or reputation under the first category.

[47] The third category considered by Cave J, namely, the evidence of facts and circumstances tending to show the disposition of the plaintiff, is not material here. Decisions such as **Plato Films Ltd v Speidel**, **Associated Newspaper Ltd v Dingle**, **Pamplin v Express Newspapers Ltd (No 2)**,[21] **Burnstein v Times Newspapers Ltd**[22] related to the first and third categories identified by Cave J in **Scott v Sampson**; the focus was therefore on whether it was possible to distinguish evidence of general bad reputation and evidence of particular facts tending to show the character and disposition of the plaintiff as exclusive of each other. May LJ in **Burnstein** stated (at paragraph [28]) in relation to the third category that "the exclusion of evidence of particular facts and circumstances tending to show the

[21] [1988] 1 WLR 116.
[22] [2001] 1 WLR 579.

disposition of the plaintiff would not extend to exclude particular facts directly relevant to the context in which a defamatory publication came to be made."

[48] The appellants, on one hand, submit that the respondent had a general bad reputation prior to the publication of the defamatory statements. The respondent, on the other hand, submits that evidence of rumours and/or reports and/or suspicions to the same effect as the defamatory matter complained of is not evidence of general bad reputation. The evidence relied on by the appellants in submitting that the respondent had a general bad reputation is contained in the respondent's report dated 12th January 2015 to the Prime Minister of the Commonwealth of Dominica concerning matters of immigration and labour in which he (the respondent) stated (at p. 6) that:

> "As the Labour Commissioner I have been the victim of countless false accusations, libelling (sic), assaults and threats, especially from person[s] who feel that I am hindering them from prospering in their business of making money out of visas. It is the price I've had to pay for my efforts to attempting (sic) to maintain the integrity of the system and safeguard the public's trust and confidence in the services that we render."

[49] In the notes of hearing for the hearing before the learned master on 17th June 2019, the respondent during cross-examination stated that he was not aware of any accusations made against him of racketeering. The respondent continued that there were complaints relating to the process, for example, delays in the applications and arbitrary disapprovals of applications by the respondent. However, the respondent asserted that he did not believe that these matters affected his reputation and that these statements were being made since 2015. What is clear about the evidence of the appellants is that it was not evidence of the respondent's general bad reputation. The evidence was merely a statement by the respondent in his report to the Prime Minister that he was the victim of false accusations. There was no evidence at the hearing before the learned master that the respondent had a bad reputation for being involved in racketeering in the Division. This evidence is not evidence of a general bad reputation that is permissible in accordance with the principles enunciated in **Scott v Sampson**. The evidence of the appellants, in my view, amount to rumours

and suspicions to the same effect as the defamatory matter complained of and that evidence, according to Cave J in **Scott v Sampson**, is, in principle, not admissible, as only indirectly tending to affect the respondent's reputation. Additionally, nothing about the background or context in which the defamatory statements came to be made can be considered as a mitigating factor such as to reduce the damages payable to the respondent.

Conclusion

[50] While the appellants succeeded in their ground of appeal that the learned master erred by failing to consider any of the mitigating factors which they had submitted before him in the court below, the appellants have failed to show how any of these factors would have mitigated the damages awarded by him.

Issue three – Whether the award of damages was disproportionately high

(1) Approach of the Court of Appeal in appeals from assessment of damages

[51] This Court is reminded of its statement in the early decision of **Ramnath** where the Court stated (at pp. 191-192) that:

> "In appeals, comparable in nature to the present one, it must be recognised that the burden on the appellant who invites interference with an award of damages that has commended itself to the trial judge is indeed a heavy one. The assessment of those damages is peculiarly in the province of the judge. A Court of Appeal has not the advantage of seeing the witnesses, especially the injured person, a matter which is of grave importance in drawing conclusions as to the quantum of damage from the evidence that they give. If the judge had taken all the proper elements of damage into consideration and had awarded what he deemed to be fair and reasonable compensation under all the circumstances of the case, we ought not, unless under very exceptional circumstances, to disturb his award. The mere fact that the judge's award is for a larger or smaller sum than we would have given is not of itself a sufficient reason for disturbing the award.
>
> But, we are powered to interfere with the award if we are clearly of the opinion that, having regard to all the circumstances of the case, we cannot find any reasonable proportion between the amount awarded and the loss sustained, or if the damages are out of all proportion to the circumstances of the case. This court will also interfere if the judge misapprehended the facts, took irrelevant factors into consideration or applied a wrong principle of law, or applied a wrong measure of damages which made his award a

> wholly erroneous estimate of the damage suffered. The award of damages is a matter for the exercise of the trial judge's judicial discretion and unless we can say that the judge's award exceeded the generous ambit within which reasonable disagreement is possible and was therefore clearly and blatantly wrong we will not interfere (see the judgment of this Court in Nicholas v Augustus (1996) unreported))."

[52] This principle was reiterated by this Court several times including in **Fassihi** and **Vaughn Lewis v Kenny D. Anthony**.[23] In **Carty**, this Court, citing **Ramnath**, stated (at paragraph [33]) that an appeal court is not justified in substituting a figure of its own for that awarded below simply because it would have awarded a different figure if it had tried the case at first instance. In **Gonsalves** the Court, after examining numerous authorities including **Ramnath** and **Vaughn Lewis**, stated that:

> "[29] It is clear then that in reviewing the award of damages made by the learned master, we should in general be reluctant to interfere with her award unless we come to the conclusion that the master has acted on some wrong principle of law, by taking into account some irrelevant factor, or leaving out of account a relevant factor, or has misapprehended the facts or law, or made a wholly erroneous estimate of the damage suffered, or if there is no reasonable proportion between the amount awarded and the loss sustained, or if the damages are out of all proportion to the circumstances of the case, or that her award exceeded the generous ambit within which reasonable disagreement is possible and was therefore clearly and blatantly wrong. Further, if this court thinks that the damages are radically wrong, it ought to interfere even if the error cannot be pinpointed."

[53] What **Gonsalves** makes clear is that this Court should pay the usual deference to the trial judge or master in the court below in their assessment of damages in defamation cases. The reasons for this approach are too well known to be repeated here. Whether the Court would have awarded a lower or higher sum than that awarded by the trial judge or master is not a good reason to justify interference by this Court with the sum awarded by the trial judge or master. However, this Court will only interfere with such an award in exceptional circumstances where the trial judge or master has erred in principle. Examples of such errors were outlined in **Gonsalves**, namely where: (1) the trial judge or master took into account irrelevant factors or failed to take into account material or relevant factors; (2) the trial judge or

[23] SLUHCVAP2006/0002 (delivered 14th May 2007, unreported).

master made an error of fact or an error of law; (3) where the trial judge or master made a wholly erroneous estimate of the damage or loss suffered by the claimant; (4) where the award is so high or low that it must be a wholly erroneous estimate of the damages payable; (5) the amount awarded as damages is not proportionate to: (a) the repair of the harm or damage to the claimant's reputation; (b) the vindication of good name or reputation of the claimant; and (c) the distress, hurt and humiliation suffered by the claimant caused by the defamatory publication; or (6) the award exceeded the generous ambit within which reasonable disagreement is possible and was therefore clearly and blatantly wrong.

[54] This Court in **Gonsalves** stated further that if this Court thinks that the damages are radically wrong, it ought to interfere even if the error cannot be pinpointed. In my view, this Court should only justify interfering with an award of damages where it can identify the error made by the trial judge or master. Any rule which allows this Court to depart from this approach would undermine the principle that this Court should not interfere with an award merely because it would have awarded a lower or higher sum awarded by the trial judge or master. In any event, I do not see how this Court can conclude that "damages are radically wrong" without being able to identify the error made by the trial judge or master.

(2) Awards in Defamation Cases in the Commonwealth Caribbean

[55] In determining whether the award made by the learned master was disproportionally high, it is necessary to examine the comparable awards made in decisions cited by the parties in their submissions before this Court. This will enable a determination to be made as to whether these decisions support the respective contentions of the parties concerning whether the award to the respondent of the sum of $120,000.00 inclusive of aggravated damages was disproportionately high or was appropriate. Before doing so, it is necessary to reiterate the salutary statements of this Court in **Carty** that:

> "[34] I also keep in mind that the process of assessing damages is not quasi scientific and there is rarely a single right answer. There could never be any precise, arithmetical formula to govern the assessment of general damages

> in defamation. The court's task is to assess the proper level of compensation, taking into account all the relevant factors, which includes any element of aggravation. The compensatory award granted can properly reflect any additional hurt and distress caused to the claimant by the conduct of the defendant and may reflect any proved elements of aggravation.
>
> [35] The real question is whether the claimant can demonstrate, by admissible evidence which the court accepts, that the damage to her reputation and or her distress or upset has been increased by conduct of the defendant. In Bray v Ford, Lord Herchell stated that damages in defamation cases must be determined by "a consideration of all the circumstances of the case, viewed in the light of the law applicable to them. The latitude is very wide. It would often be impossible to say that the verdict was a wrong one, whether the damages were assessed at 500 pounds or 1000 pounds."
>
> [36] Also, the appropriate amount of compensation depends on the nature and extent of the harm done to the claimant's reputation, and feelings, and must take account of any award to vindicate reputation. The extent of injury to reputation will depend upon matters such as gravity, its prominence, circulation and any repetition. Matters tending to reduce harm to reputation include an apology. Injury to feelings may be aggravated by the conduct of the defendant after publication and should properly be reflected in the award. The total must be proportionate and no more than is necessary to serve these functions.
>
> [37] It is a general principle of the law of damages that the amount require to serve the three interlocking functions identified in John v MGN Limited, will be reduced by an apology, retraction, or correction. This is because such steps will prevent or reduce any continuing harm to reputation, should assuage hurt feelings, and ought to achieve something by way of vindication."

(3) Comparable Awards: Decisions cited by the appellants

[56] The appellants submit generally that, in the circumstances of this case, the award of damages was excessive. The first decision cited by the appellants is **Phillip** where the master awarded the claimant general damages in the sum of $25,000.00 for the libel published by the defendants. In **Phillip**, like here, the proceedings before the master related to assessment of damages following the entry of default judgment in a claim in which the claimant brought an action against the defendants for defamatory statements made by the first and third defendants which were broadcasted on a radio

station owned by the second defendant. The claimant was the President of the Antigua and Barbuda Pensioners' Association ("Association") and the defendants' statement alleged that he was acting criminally and fraudulently and had misused or put to their personal use the funds of the Association and that the claimant as President of the Association was in complete control of the Association's finances and did not account for the expenditure of the monies of the Association. In assessing the damages payable, the master considered the way the defamatory statements were communicated, namely, via broadcast on the radio and the fact that the defendants had not apologized for the defamatory statements made. Consequently, the master awarded the sum of $25,000.00 to the claimant. In the first decision considered by the master, damages in the sum of $25,000.00 was awarded including aggravated damages, and in the second, the sum of $7,500.00 was awarded as general damages. The claimant sought the sum of $75,000.00 to $100,000.00 as damages including aggravated damages. It must be noted that the position of the claimant in **Phillip** is not comparable to that of the respondent here although the sting of the libel is essentially similar.

[57] The appellants also cite the 2007 decision of **Vaughn Lewis** where this Court reduced the sum of $60,000.00 as aggravated and exemplary damages awarded by the trial judge to the respondent for slander of the defendant, a former Prime Minister of Saint Lucia, by the appellant who was also a former Prime Minister of Saint Lucia. At the time of the slander, both parties were leaders of opposing political parties and the respondent's party was in government. The ordinary meaning of the words spoken by the appellant, which was accepted by the trial judge and upheld on appeal, was that the respondent was guilty of: (a) taking a bribe; (b) fraudulently diverting public funds for his personal benefit contrary to law; (c) corruption; (d) serious criminal offence punishable by imprisonment; and (e) dishonesty in the discharge of his office as Prime Minister and Minister of Finance. The trial judge, in her judgment dated 11th January 2006, indicated that, in the absence of submissions from counsel for the parties on the question of the quantum of damages, she considered the relevant principles and comparative awards in defamation cases in this and other

jurisdictions in arriving at the sum of $60,000.00. As mentioned earlier, this sum included aggravated and exemplary damages.

[58] This Court concluded that the learned trial judge arrived at her award of damages on an entirely rational footing, and it therefore upheld the trial judge's award of compensatory damages. The Court set aside the award of exemplary damages, holding that the award of exemplary damages would not have increased the global award of $60,000.00 by more than $15,000.00. Consequently, this Court reduced the global sum by that figure. The decision of this Court in **Vaughn Lewis** does not shed any light on the comparable awards made in this jurisdiction at the date of the decision of the learned trial judge since she mentioned none in her decision. This Court found no basis to interfere with the award of compensatory damages. This decision would have to be limited in its general application since one cannot properly extrapolate any basis for the award based on comparable awards previously made in this jurisdiction. In any event, the award made by the trial judge was in the context of a political figure and the award was made approximately 18 years ago.

[59] Reference is also made by the appellants to the 2012 decision of **Dr. Edmond Mansoor v Eugene Silcott**[24] where the learned trial judge awarded the claimant the sum of $10,000.00 as damages for defamatory statements made by the defendant in a calypso song. The words in the natural and ordinary meaning would convey to the ordinary reasonable reader that the claimant as the Minister of Government was involved in bribing other Ministers of Government. The low amount awarded is the result of the finding by the trial judge that the claimant's reputation had not been harmed to require repair and vindication. The sum awarded in compensatory damages related only to the claimant's feelings of hurt, offence, embarrassment and distress. Consequently, there was no need for the trial judge to refer to any comparable awards in decisions emanating from this jurisdiction in his judgment. Given the nature of the sum awarded, this decision does not assist the appellants.

[24] ANUHCV2010/0209 (delivered 1st March 2012, unreported).

[60] The appellants also cite the 2002 decision of **Murio Ducille v Robert Hoffman et al**[25] where the claimant claimed damages for a libel contained in a newspaper that was edited, published and printed by the defendants. The claimant was an attorney at law in active practice in the Commonwealth of the Bahamas and was previously the Chief Magistrate in Antigua and Barbuda. The defamatory statement was as follows: "Informants say a magistrate of Jamaican origin who worked here has been jailed in the United States for pushing drugs." The defendant did not file and serve a defence, so default judgment was entered in favour of the claimant. The defendant: (1) did not contest the claimant's claim for damages; (2) published a retraction of the offending statement; (3) wrote to the claimant's solicitor expressing their deep sorrow for having printed and published the statement; (4) offered to publish a formal apology in suitable language acceptable to the claimant, with a draft apology for review; (5) indicated their willingness to pay compensation to the defendant; and (6) shortly after publication of the offending article, discontinued any further publication of the column in which the offending article had appeared. The trial judge accepted that, after the publication of the defamatory statement, the defendant acted in good faith. In assessing the compensation payable to the claimant, the learned trial judge considered the following: (1) the gravity of the allegation; (2) the extent of the publication; (3) the effect of the publication; (4) the extent and nature of the claimant's reputation; (5) the behavior of the claimant; and (6) the behavior of the defendant. After considering all the circumstances of the case and the awards that were made in recent years throughout the region, the trial judge concluded that the sum of $20,000.00 was adequate and proper. This decision does not assist the appellants because the sum awarded to the claimant as compensatory damages was mitigated by the many factors considered by the trial judge. No mitigating factors exist in this case. Additionally, an award made in 2002, 22 years ago, could hardly be a useful indicator of damages to be awarded in 2024.

[25] ANUHCV1998/0151 (delivered 28th June 2002, unreported).

[61] Another decision cited by the appellants is that of **David Carol Bristol v Dr. Richardson St Rose**[26] which related to an appeal against the dismissal by the trial judge of a claim for damages for defamation, which the appellant brought against the respondent, alleging that the respondent libeled him in a letter that was addressed to the President of the St. Lucia Medical and Dental Association. The letter was copied to other persons, namely, the Minister of Health, the Permanent Secretary in the Ministry of Health, the Chief Medical Officer and the Administrator of the St. Jude's Hospital. The trial judge found that although the letter was defamatory of the claimant, it was published on an occasion of qualified privilege. This Court allowed the appeal on the issue of qualified privilege and assessed the damages itself, awarding the appellant the sum of $40,000.00. The Court noted that it considered the mitigating and aggravating factors identified by the trial judge, the presence of express malice and the professional standing of the claimant. The sum awarded by the court in 2006,18 years ago, was based on the peculiar facts of that case and is not comparable to the instant case.

[62] The appellants also referred to **Carty** where this Court confirmed the award of $15,000.00 awarded to the appellant on an assessment of damages for slander. The words uttered by the respondent of the appellant were as follows: (1) "Jenny Lindsay is a thief"; (2) "Jenny Lindsay has not done anything on my file" and (3) "other lawyers are saying Jenny Lindsay is no good". The appellant urged this Court to increase the award of damages because it was manifestly low. This Court did not find fault in the findings of fact of the master that: (1) the appellant suffered no or minimal actual damage; and (2) the defamatory statements were published to only two persons. In addition, this Court, in refusing to interfere with and confirming the award of $15,000.00 as compensatory damages, accepted that there was no basis to interfere with the discretionary evaluation of the master in assessing the damages payable. This decision does not assist the appellants since the award of damages was based on a consideration of the express findings of fact by the master which are not applicable here.

[26] SLUHCVAP2005/0016 (delivered 20th February 2006, unreported).

[63] The last decision to which the appellants refer is the decision of this Court in **Gonsalves**. In that decision, the appellant, during a political radio programme, published false and malicious statements about the respondent who was then (and still is) the Prime Minister and Minister of Finance for St. Vincent and the Grenadines. This Court explained that, first, the slanderous/defamatory statements in their natural and ordinary meaning alleged, in essence, that the respondent caused money from the State's consolidated fund to be used to purchase airline tickets for his mother and daughter to travel to Rome to see the Pope; and, second, the slanderous words meant that the respondent was corrupt and that, in his capacity as Prime Minister and Minister of Finance, he caused public funds to be used to pay the airline tickets and thereby had committed the criminal offences of misconduct in public office, obtaining services by deception, obtaining a pecuniary advantage by deception and false accounting which were offences punishable by imprisonment under the Criminal Code. An application made at trial to strike out the appellant's defences was successful and summary judgment was entered against the appellant with damages to be assessed.

[64] After the hearing of the assessment, the master awarded the respondent the sum of $160,000.00 for damages as an "aggravated award". This Court noted that the master's award of $160,000.00 to each appellant would be inclusive of an unstated amount for general damages. The Court then examined decisions in which damages were awarded to several heads of government in the OECS over the years in defamation suits brought by them for damage to their reputation because of defamatory statements made by others. The damages awarded to the respondent was reduced by $20,000.00 to $140,000.00 because of the errors made by the master concerning the extent of the publication and the effect of the slander on the reputation of the respondent. The award was made by the master in 2008, 16 years ago, and no doubt in 2024, this sum would be much higher.

(4) Comparable Awards: Decisions cited by the respondent

[65] The respondent submits that considering all the important facts of this case and awards made in cases which are similar in nature to the important facts of this case, the award made by the learned master was not disproportionately high. The respondent also submits that the learned master applied the correct principles in his assessment of damages and that the decisions to which the appellants referred are not similar and/or can be distinguished. The respondent contends that the award is reasonable and in keeping with awards made in decisions with similar important facts, citing the decisions of **Roxane Linton v Louisiana Dubique et al**,[27] **Dr. Philbert Aaron v Abel Jno. Baptiste**[28] and **Alcide** that were included in his submissions filed in the court below.

[66] In **Linton**, a 2013 decision, the claimant claimed damages against the defendants for damages including aggravated and exemplary damages for publishing defamatory words of the claimant. The first defendant in an email to approximately over 100 business houses and other persons published a script which contained statements which were highly defamatory of the claimant in her professional calling as a customs officer by branding her as a dishonest and corrupt person who facilitates, colludes, aids and abets persons to evade custom duties and tariffs in exchange for monetary bribes. Judgment in default of acknowledgment of service was entered against the defendants. In assessing the damages payable to the claimant, the master considered the following: (1) the extent of the publication; (2) the gravity of the allegation; (3) the extent and nature of the impact upon the claimant's feelings, reputation or career; and (4) the conduct and behavior of the defendant taking into consideration matters of aggravation or mitigation of damages. The master then examined comparable awards in decisions of the OECS and elsewhere, noting that the claimant did not hold a high and distinguishable profile as was the case with the claimants/appellants in **Gonsalves**, **Fassihi** and **Alcide**. Consequently, the master awarded the claimant the sum of $120,000.00 as general

[27] DOMHCV2011/0062 (delivered 15th April 2013, unreported).
[28] DOMHCV2013/0015 (delivered 28th March 2014, unreported).

damages including aggravated damages. The award in this decision does seem high given the statement concerning the profile of the claimant as compared to the claimants in the other decisions cited by the master and the proximity in time the award was made to those decisions.

[67] In **Jno. Baptiste**, a 2014 decision, the claimant filed a claim against the defendant alleging libel and slander with respect to a song called "Bug Her" which was written and sung by the defendant. Judgment in default was entered for the claimant for the failure by the defendant to file a defence. The trial judge noted that the witnesses who gave evidence at the hearing on the assessment of damages about hearing a song on radio understood the lyrics to refer to the claimant and his involvement in buggery. The trial judge cited and applied the six (6) factors considered by the court in **Ducille** in assessing the damages payable to the claimant. The learned trial judge considered the following facts: (1) the qualifications of the claimant and his standing as an Ambassador; (2) the defendant published a new version of the song instead of sending an apology to the claimant after receiving a letter from the claimant's attorney at law; (3) the song was sung throughout the calypso season; and (4) the defendant was motivated by malice. Having regard to circumstances of what the claimant had to endure, and the period involved, the trial judge awarded the claimant the sum of $75,000.00 as general damages. The learned trial judge also awarded the sum of $50,000.00 for aggravated damages for the conduct of the defendant before and after he received the letter from the claimant's attorney at law. In addition, the court also awarded the sum of $5,000.00 as exemplary damages because there was evidence that one of the reasons for the new version of the song with the up-tempo was that the defendant wanted to win the prize of $5,000.00 for the carnival road march. Although the sting of the libel is not similar, this decision is comparable only insofar as the claimant in that case republished the defamatory statements after receiving correspondence from the claimant's attorney at law. Otherwise, the factors considered by the master are not comparable to the instant case.

[68] In **Alcide**, the claimant, who was the deputy director at the Bordelais Correctional Facility, a prison in Saint Lucia, brought an action against the defendants who broadcasted a story on the evening news on 23rd August 2010 in which it was alleged that the claimant was intimately involved with an inmate and brought contraband items into the prison for him and encouraged the female prison officers to have sexual relations with the male inmates. The claim was not defended and judgment in default was entered in favour of the claimant. The first trial judge awarded the claimant the following: (1) general damages in the sum of $140,000.00; (2) aggravated damages in the sum of $50.000.00; and (3) exemplary damages in the sum of $50,000.00. On appeal, this Court allowed the appeal against the award of damages and remitted the matter to the High Court to allow the first defendant to be heard on the assessment of damages. The second trial judge hearing the assessment noted that, while the OECS has many decisions concerning assessments of damages in defamation cases involving politicians, there appeared to be a paucity of cases not involving politicians. The trial judge also noted that although the case before him fell outside the usual run of cases for which the court is called upon to assess damages for libel, a comparative analysis must inevitably be done of awards in political cases. The trial judge considered the decisions of **Vaughn Lewis**, **St. Rose**, **Fassihi** and **Gonsalves**, concluding that an award of general damages should be reasonably adequate for the purpose of assuaging the injury to a claimant's reputation and to her hurt feelings and that an appropriate award of compensatory damages was $100,000.00. In arriving at that award, the trial judge explained that: (1) the defamatory statements were a full-scale attack on the claimant's personality, her professional integrity and ethics and her personal life; and (2) the gravity of the allegation combined with the extent of the publication and the injury to the claimant registered the case at the high order of magnitude on the libel scale. I do not agree with the learned master that the circumstances of the **Alcide** decision is somewhat similar in nature to the present case. The sting of the libel in **Alcide** is not at all comparable to the one in the instant case. It must be noted however that **Alcide** was decided 14 years ago.

[69] The respondent also cited the decision of **Rishatha Nicholls v Arnhim Eustace**[29] which concerned an assessment of damages following a successful claim for defamation by the claimant against the defendant for defamatory statements made by the defendant on two subsequent radio broadcasts. The claimant was the former secretary of the defendant who was then the Leader of the Opposition in St. Vincent and the Grenadines. The trial judge held that the words in their natural, ordinary and inferential meaning were understood by the reasonable listener to mean that the claimant had committed the criminal act of theft and was involved in corrupt practices. The master who conducted the assessment of damages considered factors such as the gravity and extent of the publication and the effect of the publication on the claimant. The master also considered comparable awards made in **Alcide**, **Phillip**, **Gonsalves**, distinguishing **Phillip** on the basis that the words spoken there were milder thereby entitling the claimant to a higher award than the $25,000.00 awarded in **Phillip**. The master explained that the only distinguishing feature was that the claimants in **Alcide** and **Gonsalves** had a higher public profile. The master awarded the sum of $120,000.00 as general damages to the claimant.

[70] Another decision to which the respondent refers is **Mary John v Cliff Williams**[30] where the claimant brought an action against the defendant for damages for libel for publishing the following statement on Facebook, namely, "… You on the other hand …was running a sex trade …". The claimant argued that the words "was running a sex trade" were meant and understood to mean that the claimant was: (1) involved in sex trafficking; and (2) involved in trading humans for the purpose of sexual slavery. The claimant was a businesswoman and social and political activist. She had suffered from the disease of drug addiction for approximately 18 years but overcame it and had been clean for approximately 14 years. In assessing the damages payable, the trial judge considered **St. Rose**, **Gonsalves** and **Fassihi**, noting the age of these authorities and the need to award damages to the claimant in line with today's values. Consequently, the learned trial judge awarded the

[29] SVGHCV2014/0240 & 0242 (delivered 30th September 2019, unreported).
[30] ANUHCV2016/0356 (delivered 5th March 2020, unreported).

claimant the sum of $100,000.00 in general damages and $40,000.00 in aggravated damages.

[71] The last decision that the respondent cites is **Georgia Kouda v Dimitrios Adamopoulos**[31] which concerned the assessment of damages following the entry of default judgment in a defamation claim in which the claimant brought proceedings against her former husband for defamatory statements he made about the claimant over a period of time during their divorce proceedings. The master described the defamatory statements as casting direct aspersions on the claimant's motherhood and her lifestyle, and that they painted a picture of an unvirtuous woman who abused, molested and imprisoned her children. After reviewing **Kathleen Huggins v Ulric Smith**,[32] **Dubique**, **St. Rose** and **Alcide**, the master stated that these decisions all fall short of the gravity and impact of the statements made by the defendant. The master explained that the statements made by the defendant: (1) concerned not only the claimant personally but also, her ability and qualification to hold the office she did; and (2) also alleged the commission of criminal offences by her of abusing, molesting and imprisoning her children. The master also considered that the following factors suggested a higher award: (1) the nature of slander, the persons in whose presence the statements were made and also the places they were uttered; (2) the frequency of the verbal "attacks" on the claimant by the defendant with no discernable mitigating factors; and (3) the egregious conduct of the defendant towards the claimant. I take the word "conduct" here to mean the reference to all the circumstances in which the defamatory statements were made by reference to points (1) and (2). The master, therefore, awarded $100,000.00 in general damages and $30,000.00 in aggravated damages.

Analysis and Conclusions

[72] This Court in **Gonsalves** accepted that in determining the quantum of damages to be awarded, it was preferable for a trial judge or master to consider parallel awards

[31] SLUHCV2017/0635 (delivered 11th May 2022, unreported).
[32] SVGHCV1992/0146 (delivered 7th February 2000, unreported).

for general damages in the jurisdictions served by the Eastern Caribbean Supreme Court since the circumstances relevant to the social and economic conditions in the islands of the OECS are relevant and critical in assessing such damages. This was stated against a complaint by counsel for the appellant in that case that the master was influenced by the awards made in cases from Trinidad and Tobago and Jamaica in deciding on the quantum of damages. No doubt that where comparable cases from the OECS are not available, it would be preferable to source these cases from other Commonwealth Caribbean countries which share a common history, culture and generally similar social and economic conditions.

[73] The respondent submits that, in determining the award, the learned master considered the proper elements of damages and awarded what was fair and reasonable compensation in all the circumstances. The appellants have not appealed against the manner in which the learned master assessed the factors in determining the award of damages to the respondent, namely, the gravity of the publication, the extent of the publication, the effect of the publication on the respondent. Their primary concern was that the learned master did not consider any mitigating factors. As discussed above, the appellants have succeeded in establishing that the learned master did not consider any mitigating factors but were unsuccessful in providing any evidence of any of the mitigating factors they allege were engaged in this case. Since no mitigating factors were found to exist, it follows that the damages awarded by the learned master cannot be reduced on that account.

[74] The appellants' second main ground of appeal is simply that the award was excessive. In alleging that the award of damages was excessive, the appellants are seemingly suggesting that the award made by the learned master is so high that it must be a wholly erroneous estimate of the damages payable to the respondent. To show that the award was excessive, the appellants cited various decisions of this Court and decisions of trial judges or masters where awards were made in successful defamation actions. The decisions cited by the appellants do not show conclusively that the award in the court below was excessive because they are broadly

comparable with the case here. The approach reminds me of the saying in the context of legislative history, namely, of "looking over the crowd and picking your friends". The decisions cited by the respondent, are broadly comparable except for decisions of **Adamopoulos** or **Williams** where the sting of the defamatory statements was more egregious than in this case.

[75] The learned master properly considered the following relevant factors: (1) the gravity of the publication which would seriously undermine the integrity of the respondent and the office he held at the material time; (2) the broadcast was on the radio and of wide circulation; (3) the defamatory statements were rebroadcasted by the appellants after they had received correspondence from the legal practitioner for the respondent seeking a retraction of the defamatory statements and an apology; (4) the refusal by the appellants to apologise or retract the defamatory statements; (5) the standing of the respondent and the impact on his reputation as a Minister of the Gospel; and (6) the embarrassment and effect the publication had on the respondent. While the award is on the higher end of the scale, no basis can be found to interfere with the award of damages made by the learned master. The learned master took into account the relevant factors in the exercise of his discretion to make the award of damages.

[76] The appellants have not succeeded in persuading this Court that: (1) the award of damages made by the learned master was excessive or that the sum of $120,000.00 awarded to the respondent by the learned master was so high that it must be a wholly erroneous estimate of the damages payable; or (2) the learned master erred such that his discretion in the award of damages should be set aside by this Court. This ground of appeal also fails.

Disposition

[77] Based on the forgoing, I would dismiss the appeal and affirm the decision of the learned master and order that two thirds of the prescribed costs in the court below are awarded to the respondent in this appeal.

[78] I am grateful for the assistance provided by learned counsel.

I concur.
Gertel Thom
Justice of Appeal

I concur.
Georgis Taylor-Alexander
Justice of Appeal [Ag.]

By the Court

Deputy Chief Registrar