

IN THE SUPREME COURT OF BELIZE, A.D. 2005

CLAIM NO. 376

SAID MUSA

Claimant

BETWEEN AND

**ANN-MARIE WILLIAMS
HARRY LAWRENCE
REPORTER PRESS LIMITED**

Defendants

—

BEFORE the Honourable Abdulai Conteh, Chief Justice.

Mr. Kareem Musa for the claimant.

Mr. Dean Barrow S.C. for the defendants.

—

JUDGMENT

Introduction

Given the dramatis personae in this case which, by any account, contains an unusual cast, I had during the hearing constantly to remind myself that this was a trial of a claim in a court of law and not a political trial, whatever this may mean. On the one hand, is arrayed the Prime Minister and leader of one of the political parties (the PUP), who has his son as his attorney. Ranged on the other side is the Leader of the Opposition and the leader of the other main political party (the UDP) as the attorney for the defendants of whom the second defendant, Mr. H.

Lawrence admitted, albeit, under cross examination, that he was a founding member of the UDP. Mr. Lawrence who struck me as an honest witness now says his newspaper, The Reporter, supports no political party and has no partisan agenda. However, given the persons involved in this case, the political overtones of the case could not be missed. However, I need hardly say that this is a court of law and the issues joined between the parties are to be decided only in accordance with the law and evidence, and nothing more and nothing less.

2. Mr. Said Musa, the claimant in this case, is the Prime Minister of Belize, the Area Representative of the Fort George Division in the House of Representatives, leader of the People's United Party (PUP), one of the two main political parties in the country, as well as a member of the bar with the rank of a Senior Counsel. He has brought the present claim against the defendants complaining that they published an editorial piece in their newspaper, The Reporter, for the 2nd October 2005 that contained defamatory words of him. Mr. Musa therefore claims against the defendants damages, including aggravated and exemplary damages, for the alleged libel. He also claims as well an injunction to restrain the defendants and their servants or agents or otherwise however, from the publication of the words he complains against or any similar words to like effect. He also claims costs against the defendants.
3. The first defendant is the editor of The Reporter, while the second defendant, Mr. Harry Lawrence, is its publisher and editor-in-chief. In both his witness statement and testimony he admitted authorship of the editorial Mr. Musa has sought to impugn by these proceedings. The third defendant is the printer of The Reporter.
4. The Reporter itself is a weekly newspaper with a publication rate of about five thousand and a countrywide readership.

The complaint of libel

5. The words Mr. Musa claims are libelous of him are contained in the editorial column of **The Reporter** for the 2nd October 2005 and are as follows:

“Six months ago in March, when he needed U.S. \$14 million to pay off a note that had become due, the Prime Minister had to commit an illegal act and write off \$16 million in back taxes of the Belize Bank as part of the sale deal!”

“Mr. Ashcroft, who reports say contributed eight million dollars to the Musa landslide election victory in March 2003, wants to make sure he had undisputed control of B.T.L.!”

“Our guess is that he will use his party’s resources, now rich from private deals, to buy the next general elections.”

6. Mr. Musa therefore, avers that these words, in their natural and ordinary meaning meant and were understood to mean:

“(a) That (he) committed an illegal act.

(b) That (he) wrote off \$16 million in back taxes of the Belize Bank.

(c) That (he) is guilty of misconduct and engages in illegal activities.

(d) That (he) is a man of disrepute and abuses his office and position for political purposes and personal motives.

- (e) *That (he) is corrupt and dishonest.*
- (f) *That (he) is above the law and thinks he is above the law.*
- (g) *That (he) received eight million dollars from Mr. Ashcroft (the principal shareholder of the Belize Bank), to fund his political campaign for the March 2003 elections. That these funds were given to (him) as part of an illegal bargain to write off the back taxes of the Belize Bank.*
- (h) *That (he) will use his party's resources, now rich from private deals resulting from (his) involvement in illegal activities with the Belize Bank, Mr. Ashcroft and others, to buy the next general elections."*

7. Mr. Musa, therefore, claims that the words he complains of have gravely injured his reputation, exposed him to public scandal and contempt, seriously injured his character, credit and reputation as the Prime Minister of Belize and leader of the PUP and have caused him considerable embarrassment and distress.

8. Mr. Musa also claims that the defendants printed and published the offending words out of malevolence or spite towards him. He proceeded in his Statement of Claim, to give particulars of what he alleges as the defendants' malice towards him.

'Particulars of Malice

- (a) *The Plaintiff is and was at all material times the Prime Minister of Belize and Leader of the People's United Party. The Defendants are opponents of*

the current administration and government and the People's United Party as well as supporters of the opposing United Democratic Party.

- (b) *The Defendants published and printed or caused to be published and printed the words complained of with an intent to embarrass, discredit, and dishonor the Claimant and to injure the reputation of the Claimant and out of political motive.*
- (c) *The Defendants have both before and since the publication of the said libel published and printed or caused to be published and printed other words and matters defamatory and derogatory of the Claimant. Examples of such defamatory and derogatory words printed and published by the Defendants include the following:*
- (1) *“In doing so the Musa government is not only breaking the law. It is also exploiting the people in various subtle ways to enrich itself and its new-found friends.” (February 22nd, 2004, page 2).*
 - (2) *“Can nothing stop the PUP’s rapacious theft and abuse of Belize’s assets and natural resources?” (July 11th, 2004, page 20).*
 - (3) *“Again and again Belizeans are confronted with the sting and stink of often illegal deals hatched behind their backs by Prime Minister Musa and Ralph Fonseca, deals often made without even the full knowledge of the Cabinet.” (October 17th, 2004, page 24).*
 - (4) *“In a stunningly blatant manner, the Government of Belize continues to manipulate the laws of the country in a manner which is not only totally illegal but also a sure path to further corruption at ever level of our society.” (November 7th, page 24).*
 - (5) *“The Musa and Fonseca government seems to actually believe that it can ride roughshod over all democratic law and practice, cheat and lie, steal and make up new rules as it goes along.” (December 26th, 2004, page 24).*

(6) *“They have to make these sacrifices, then stand back and watch as our profligate Prime Minister squanders the money by the millions on his friends, and comes back, hand outstretched, for more taxes.”* (January 23rd, 2005, page 2).

(7) *“The majority of Belizeans are being hit by higher prices for everything every day while Musa and his bunch of thugs rob the country blind.”* (October 20th, 2005, page 27).

(d) *The Claimant, before the commencement of the Claim demanded and (sic) apology and public retraction from the Defendants. The Defendants have refused to retract the words complained of and have failed and refused to apologize for same.”*

9. Mr. Musa therefore seeks damages against the defendants on an aggravated footing and relies in support of this on the editorial found on page 2 of The Reporter, Volume 38, Number 41 and dated Sunday, October 16, 2005. That is, two weeks after the publication of the editorial that has prompted the present proceedings. That editorial states among other things:

“Does the Prime Minister of Belize have the legal authority to write off taxes owed to the consolidated revenue of Belize? Prime Minister Said Musa appears to think so because he has threatened to take libel action against the Reporter for saying he committed an illegal act in writing off some \$16 million in back taxes owed by the Belize Bank.”

“So the accusation of unlawful activity is not new. But it will perhaps take a court pronouncement to convince the Prime Minister he does not have the right to barter away the country’s resources.”

“If there is no such legal authority, it means in effect the Prime Minister is doing something not sanctioned by law. He is committing an illegal act and should be legally responsible.”

10. Mr. Musa further relies on the following facts and matters to support his claim for aggravated and/or exemplary damages:
 - (a) That the defendants published the words in their newspaper he seeks to impugn calculating thereby to increase the circulation of the said newspaper with a view to making a profit from the increased sales and of advertising space therein.
 - (b) That the defendants printed and published the words complained of knowing them to be libelous of the claimant or with a reckless disregard as to whether or not the said words were libelous of him.
 - (c) That the defendants have refused to retract the publication and to apologize to the claimant.

The Defence

11. The defendants for their part while admitting publication of the words Mr. Musa seeks to impugn as libelous of him (set out in paragraph 5 above), deny however that those words bore or were understood to bear or were capable of bearing the meanings Mr. Musa contends for in his Statement of Claim (set out in paragraph 6 above of his judgment).
12. Importantly, in the context and circumstances of this case, the defendants aver that in any event the words in question were fair comment on a

matter of public interest, “*namely the government’s handling of the Belize economy and the moral and legal issues involved in its decision to write off millions in taxes owed to it.*”

13. The defendants then proceed to give what they aver as particulars of their defence of fair comment on a matter of public interest:

‘Particulars

- (i) *At the material time it had been publicly admitted by government that it had written off, as part of a settlement arrangement, 12 million dollars in taxes that it had claimed was owed by The Belize Bank.*
- (ii) *Non-official sources had claimed, and it was publicly bruited, that the sum written off was actually 16 million dollars.*
- (iii) *The said write-off occurred in the context of a continuing controversy over government’s handling of the sale of shares in Belize Telecommunications Limited, to entities related to The Belize Bank, and the perceived quid pro quo involved in that sale.*
- (iv) *Government’s fiscal and economic actions generally were the source of intense and continuing public debate, at the material time, and the relationship between the government and the political benefits derived therefrom by the political party that controlled the government, especially gripped the public consciousness.*
- (v) *In all the circumstances it was legitimate for the Defendants, making up a newspaper of record, to criticize in their editorial, the various actions of government; and in particular, the decision relating to the tax write off and the moral and legal justification of any government to agree such a huge write off.*
- (vi) *It was also legitimate for the Defendants, in expression of their opinion, to comment adversely on the manner in which the Claimant’s political party exploited its control of government and government*

resources, and to speculate on the way it would spend huge sums of money to influence the electorate at general election time.”

14. Further or alternatively, the defendants pleaded that *“in so far as the words meant that the claimant had written off million of dollars in taxes, and that such a write off, not being absolutely and objectively justifiable was illegal, they are true in substance and in fact.”* That is to say, they plead justification or truth. They further repeat the particulars they rely upon on their defence of fair comment (set put in the preceding paragraph).
15. The defendants accordingly deny that Mr. Musa has suffered any injury for which he is due any relief or is entitled to any relief he claims.

The issues joined between the parties

16. Both Mr. Said Musa, the claimant and Mr. Harry Lawrence, the second defendant filed witness statements and were cross examined at length by their respective attorneys, Mr. Kareem Musa, for the claimant and Mr. Dean Barrow S.C. for the defendants.

From their respective statements of case, arguments and submissions, including the respective written skeleton arguments of their attorneys and the respective testimony of both Mr. Musa and Mr. Lawrence it is evident, in my view, that the principal issues joined between them are first, whether the words complained of in the Editorial section of the defendants' newspaper of the 2nd October, 2005 are defamatory or not of the complainant and that secondly, even if they are, are they nonetheless rendered unactionable or harmless by the averment that they are in any event, fair comment on a matter of public interest or that they are justified. That is to say, even if the words are defamatory they nonetheless attract

the defences of fair comment on a matter of public interest and or justification.

17. In order to ground the case for libel Mr. Kareem Musa submitted that the publication in question contained four stings that were clearly libelous of Mr. Musa, the claimant.
18. It is fair however, to say that the heart of the defence in this case is one of fair comment and justification or truth. I must, however, point out that, notwithstanding the efforts of the court in the light of the provisions of Supreme Court Rules 2005, on Defamation Claims in Part 68, in particular Rule 68.3, the defence itself was not as compliant as these provisions require. These provisions states as follows:

“68.3 A defendant (or in the case of a counterclaim, the claimant) who alleges that

- (a) in so far as the words complained of consist of statements of facts, they are true in substance and in fact; and*
- (b) in so far as they consist of expressions of opinion, they are fair comment on a matter of public interest; or*
- (c) pleads to like effect, must give particulars stating*
 - (i) which of the words complained of he alleges are statements of facts; and*

(ii) *the facts and matters relied on in support of the allegation that the words are true.”*

19. I have set out above at paragraphs 13 and 14, the particulars the defendants rely upon in support of their allegations of fair comment and justification that in so far as the words complained of consist of statements of facts, they are true in substance and in fact. It is clear however that these are **generalized** particulars devoid of any indication or statement as to which of the words complained of they allege are statements of fact; nor any indication of any fact or matter they rely on in support of their allegation that the words are true. A defendant however must plead with sufficient precision the comment relied upon as constituting the defence of fair comment so that a claimant knows the case he has to meet – **Control Risks v New Library Ltd. (1990) 1 W.L.R. 183** – see in particular Nicholas LJ at p. 189, where he stated the law and the rationale for particulars in defences of justification and fair comment:

*“... The starting point is to identify the comment the defendants say is to be found in the words complained of and which they are seeking to defend as fair comment. ... A plaintiff is entitled to know what case he has to meet under a defence of fair comment just as much as he is entitled to know what case he has to meet when faced with a defence of justification. Where justification is pleaded, a defendant is now required to spell out in his pleading the meaning of the words, which if it is their true meaning, he will seek to justify. These are the so-called “Lucas-Box” particulars: see *Lucas-Box v News Group Newspapers Ltd. (1986) 1 WLR 147, 153* and the observations of Mustill LJ in *Viscount De Lisle v Times Newspapers Ltd. (1988) 1 WLR 49, 60.**

... by parity of reasoning, when fair comment is pleaded the defendant must spell out, with sufficient precision to enable the plaintiff to know what case he has to meet, what is the comment which the defendant will seek to say attracts the fair comment defence.”

20. Even though that case and the authorities cited in it were decided before the 1999 Civil Procedure Rules in England, and well before our own Supreme Court (Civil Procedure) Rules 2005, the law and rationale for precision in particulars where the defences of justification and fair comment are sought to be relied upon find reaffirmation and reinforcement in the provisions of Rule 68.3.
21. However, there was no application in the instant case by the claimant regarding the defences the defendants have sought to run in this case. I cannot help but observe how, in my view, the defence is deficient in this regard; for with the possible exception of paragraph (i) in its particulars (set out in paragraph 13 above), there is nothing to show which part of the editorial complained of is fact and which is comment. This is somewhat reminiscent of the “currant bun” defence stuff with assertions of fact alluded to in the **Control Risks Ltd.** case supra at p. 189. My task however in the circumstances is to see, if at all, the claimant has made out a case or the defendants have run defences that would successfully refute the claim.
22. Before I address the issues between the parties, it is helpful, I think, to set out the editorial in **The Reporter** for 2nd October 2005, out of which the claim arises:

“Editorial

It should not come as any surprise to the people of Belize that our Prime Minister, Mr. Musa has embarked on an arbitrary and dangerous manipulation of the Belizean economy.

He has to do this if he wants to survive as a politician, and recent events have convinced us that Mr. Musa desperately wants to survive.

In order to survive he has to weaken the power of the unions. He has to play those union leaders skillfully one against the other.

He has to maintain his control over the remaining pool of taxpayer savings still left in the Social Security Fund. He needs to cling to this only other source of easy money to use as his instrument of government policy.

He also has to maintain his relations with the rich and powerful lobby he has cultivated over the years, and on top of all that he has to head off public panic by disguising the true nature of the economic crisis facing our country today.

Having helped to ruin the Development Finance Corporation through selective investment policies which have benefited the PUP but impoverished the D.F.C., the Prime Minister must now turn to Social Security funds to bail him out of trouble.

Consider this: Two years ago the Prime Minister had no problem raising U.S. \$200 million in loan bonds on the U.S. financial market. Today he would have trouble raising \$30 million on that same market!

Six months ago in March, when he needed U.S. \$14 million to pay off a note that had become due, the Prime Minister had to commit an illegal act and write off \$16 million in the back taxes of the Belize Bank as part of the sale deal!

Last month when he needed US \$30 million to pay off another note, he had to provide Mr. Ashcroft with an ironclad majority of B.T.L. shares, even though that involved selling at a discount price, doing away with the Special Share through a controversial new law, and breaking his promise of the Communication Workers Union.

As the Prime Minister wades waist deep in a sea of red ink, his business associates and former buddies are losing their confidence in him and are becoming more aggressive in looking out for their “interests” in Belize.

Mr. Ashcroft, who reports say contributed eight million dollars to the Musa landslide election victory in March 2003, wants to make sure he has undisputed control of B.T.L.!

Mr. Barry Bowen, who came through with a million dollars in campaign financing, wants more government protection against importers and bootleggers!

Even the informal sector which used to cozy up to the Prime Minister and provide U.S. dollars on demand to ease the stress of B.T.L. overseas payments, is today demanding its pound of flesh in cash.

Prime Minister Said Musa has become a lame duck, though he is working desperately not to look like one. But his past is catching up with him, and he will have to take even more desperate measures if he is to survive.

Our guess is that he will use his party’s resources, now rich from private deals, to buy the next general elections. Already party preparations are underway for a “big bashment” to celebrate the 60th anniversary of the PUP.

Hundreds of thousands of dollars have been set aside for this event, and you can be sure that the food and the beer will be flowing freely, as in the good old days.

But these are not the good old days!

The Bowen Group of companies, which donated a million dollars last time around, is in the process of retrenching some of its workers. It is not likely to donate another million this time around!

Mr. Ashcroft is sure to donate, to both sides. But nothing in the range of the \$8 million he gave the last time, now that he has full control of B.T.L.

And what about the Princess Casino empire? Won’t they rush in to help?

Not if there is a floating casino out there in the harbour!” (The emphasis supplied being the words complained of by the claimant).

Are the words complained of in the Editorial defamatory of the Claimant?

23. It is readily apparent that the editorial itself was not written by a fan of the complainant. It pulls no punches in criticizing him in his capacity as Prime Minister. Some might even say the editorial is trenchant and very critical of the claimant. But so be it, for that in and of itself, is not necessarily defamatory. The claimant holds an office that marks him out as a person of public character whose public life or great position fairly excites public interest. This however is not to say that with public office however lofty, goes the loss of reputation or privacy. The tort of defamation exists to protect the reputation and character of individuals. In a liberal polity such as Belize with an arguably vibrant press, claims for defamation against newspapers always entail a balancing exercise between freedom of the press and need to protect the reputation and character of individuals. This case is no less so.
24. In making a determination in this case, I have, perforce, to bear in mind the context and circumstances of the publication of the words complained of as well as the meaning of the words themselves and their effect on the claimant’s character and reputation. Do the words complained of have the meaning or are capable of bearing the meaning the claimant contends for in paragraph 6 of this judgment? The expression “natural and ordinary meaning” in claims for defamation has been judicially considered before and with respect, I am inclined to accept the statement of the law on this aspect by Lord Reid in Lewis v Daily Telegraph Ltd. (1963) 2 All E.R. 151:

“There is no doubt that in actions for libel the question is what the words would convey to the ordinary man: it is not one of construction in the legal sense. The ordinary man does not live in an ivory tower and he is not inhibited by a knowledge of the rules of construction. So he can and does read between the lines in the light of his general knowledge and experience of world affairs ... what the ordinary man would infer without special knowledge has generally been called the natural and ordinary meaning of the words ... sometimes it is not necessary to go beyond the words themselves as where a plaintiff has been called a thief or a murderer. But more often the sting is what the ordinary man will infer from them and that is also regarded as part of their natural and ordinary meaning”, at p. 154.

Much earlier in **Capital and Counties Bank v Henty (1882) 7 A.C. 741**, Lord Selborne L.C. had stated the test for determining the meaning of words in a libel claim in these terms:

“The test according to authorities is whether, under the circumstances in which the writing was published, reasonable men to whom the publication was made would be likely to understand it in a libelous sense” at p. 745.

Much along the same line in the same case Lord Blackburn stated:

“The manner of publication and the things relative to which the words were published and which (the person knew or ought to have known) would influence those to whom it was published in putting a meaning on the words, are all material in determining whether the writing is calculated to convey a libelous imputation” at p. 771.

25. Indeed, in the region there are authorities for the proposition that in order to determine the meaning of a publication as defamatory, or not, the court is concerned with the effect which the totality of the publication complained of will have on the minds of ordinary reasonable readers of the publication: **United Printers Ltd. v Bernard (1967) 11 WIR 269** where Dufus P of the Court of Appeal of Jamaica approved the statement of Fox J the trial judge below when he said:

“To determine whether these statements of fact are defamatory of the plaintiff, it is not sufficient to examine each phrase of the article in isolation. The offending words must be read as a whole and considered in the entire context in which they appear. In making this consideration the words are not to be construed in their most innocent sense but must be given the fair and natural meaning which would be given to them by reasonable persons of ordinary intelligence. If under the circumstances in which the writing was published, reasonable men to whom the publication was made would be likely to understand it in a libelous sense, the words would be capable of a defamatory meaning.”

Also in **Jagan v Burnham (1973) 20 WIR 96**, Luckhoo CJ in the Court of Appeal of Guyana said:

“It is settled law that there must be added to the implications which a court is prepared to make as a matter of construction all such insinuations as could reasonably be read into them by the ordinary man, and so one must consider not what the words are, but what conclusion could be reasonably drawn from them. A man who issues a document is answerable not only for the terms of it but also for the conclusion and meaning which persons will draw from and put upon it.”

26. It follows therefore that the publication out of which a claim for libel arises must be taken as whole in construing the meaning of the words sought to be impugned and the context and circumstances must also be taken into account – see generally Gatley in Libel and Slander Ninth Edition (Sweet and Maxwell, 1998) in particular, paragraphs 3.27 – 3.28 pp 96-98.
27. What therefore would the ordinary reasonable person in Belize reading the publication the claimant complains of think or infer from the editorial in question? I had during the hearing used the figure of the ordinary person in Queen Square Market in Belize City, who, with due deference to Mr. Barrow S.C. and attorney for the defendants, is not to be taken in any derogatory sense, but rather as the epitome of the reasonable person in Belize, much along the analogy of the familiar “Man on the Clapham Omnibus”: the embodiment of all that is reasonable in the annals of English law reports. Mr. Barrow S.C., of course, is the Area Representative of the Queen Square Division in the House of Representatives. Would this ordinary reasonable person give as the natural and ordinary meaning the sense contended for by the claimant?
28. From the evidence, the words complained of were contained in an editorial of which the second defendant, Mr. Harry Lawrence, candidly admitted authorship. They were written, I think it is fair to say, at a time of some public restiveness and social ferment in the country. This involved the Government of Belize headed by Prime Minister Musa, the claimant, Trade Unions, Teachers and Students relating to the government’s policies and actions concerning shares in the Belize Telecommunications Company Ltd. (BTL), the Development Finance Corporation (DFC) and the Social Security Fund. There was, it is again, I believe fair to say, some widespread public agitation. It was hard on the heels of these developments earlier in the year that the editorial in question in these proceedings appeared in October 2005.

29. What therefore would the ordinary and reasonable reader of The Reporter put on the totality of the editorial? What meaning and conclusion would he or she put on the editorial?
30. After much careful consideration, I arrived at the conclusion that the words complained of by the claimant are, in the circumstances and context of this case, capable of bearing the defamatory meaning ascribed to them for the following reasons.
31. First, there was some semantic quibbling between the parties over the expressions “set off” and “write off”. This relates to the Government of Belize having to accept as part of a compromise in order to avoid litigation in the United Kingdom and Belize by the Carlisle Group, that the arrears of taxes of the latter, including the tax liability of the Belize Bank, were up to date. As a consequence of this, a Settlement Deed was executed between the Government of Belize and the Carlisle Group. This Deed was tendered in evidence on the insistence of the defendants. However, the arrangement was described by the claimant as a “set off” but the defendants in keeping with the tenor of the editorial, insisted that it was a “write off”. In my view, nothing much turns on this characterization of the Settlement Deed. It is the portrayal of this exercise in the editorial and its juxtaposition as part of a “sale deal” that I think fairly gives life to the claimant’s complaint as libelous. And this in the same breath as saying that *“he had to commit an illegal act”*. Also, the sum of *“\$16 million in the back taxes of the Belize Bank”* mentioned in the editorial as written off *“as part of the sale deal”* is not supported by the evidence: in my view it only added pepper and salt to the assertion that the claimant committed an illegal act.

The defendants however through the excruciating cross examination of the claimant by Mr. Barrow S.C. sought to establish that he had no

authority to execute the Settlement Deed. This contention was however not pleaded in the Defence apart from some faint allusions in the particulars at paragraph 4 (i) and (v). In any event, I do not think it was part of the Court's function to pronounce on the legality or illegality or moral justification of the Settlement Deed, nor was the court asked to pronounce on this issue. The claimant however, explained in his witness statement how the Settlement Deed was arrived at. Under cross examination, reference was made to section 95 of the Income and Business Tax Act and the claimant stated that as Minister of Finance he had authority to remit taxes owed and that he made a statement in Parliament on the Settlement Deed.

32. **Secondly**, there is nowhere stated in the editorial how the claimant came to “write off” (the expression favoured by Mr. Lawrence) or the “set off” (as the claimant insisted), came to be arrived at. But from the editorial it is reasonable to conclude that it was based on a “deal”. Whether this “deal” related to the sale by the Government of Belize of shares in BTL to the Carlisle Group or as a part of the Settlement Deed between the latter and the Government of Belize is not clear. The ordinary reasonable reader, in my view, is left to infer or conclude that the “write off”/“set off”, was a “deal” with all the connotations that that might entail. But ominously, I think, the reader would conclude a part of this “deal”, as stated in the editorial, made the claimant *“commit an illegal act and write off \$16 million in the back taxes of the Belize Bank ...”*.
33. **Thirdly**, in the context and circumstances of the publication to write that *“Mr. Ashcroft, who reports say contributed eight million dollars to (the claimant's) landslide election victory in March 2003 wants to make sure he has undisputed control of BTL”*, would, in my view, lead the ordinary reasonable reader to conclude that the claimant is unseemingly beholden to Mr. Ashcroft.

Campaign contributions are so far not regulated by law in Belize; but in the context of the editorial, this alleged contribution of eight million dollars to the claimant would leave the ordinary reader with the clear impression that it was to suborn the claimant by Mr. Ashcroft in order to gain undisputed control of BTL. The claimant however denies receipt of eight million dollars or any contribution from Mr. Ashcroft and all the defendants could say in proof of this apart from the nebulous “reports say” as stated in the editorial, was in cross examination, Mr. Lawrence admitted that there was no proof of this, it was only “a logical conclusion of (his) experience over several years.” Surely to say that a politician was given campaign contribution by a donor in order to gain some benefit is to impugn the integrity of that politician and besmirch his character; and this is more so when no evidence of the alleged contribution was forthcoming.

34. **Fourthly**, to say as the editorial stated the claimant “*will use his party’s resources, now rich from private deals, to buy the next general elections*” is, in my view, in the overall context of the publication, more than suggestive of mere political shenanigan: it is an unfounded assertion that the claimant’s party’s coffers have been filled with takings from private deals which the claimant will use to buy the next general elections. This, I hold, is defamatory of the claimant: elections provide the only legitimate way to the office of Prime Minister in Belize. Therefore to suggest that one can buy elections is to suggest that person’s unfitness for office: **Gatley op, cit** at para. 2.28.

35. Ineluctably, I arrive at the conclusion that the words the claimant complains of are, in the context and circumstances of the editorial, capable of bearing the imputations he contends for. I listened carefully to Mr. Barrow S.C. the learned attorney for the defendants in explaining away by exegesis, the innocent and innocuous nature, as he claims, of the words complained of. I am however, unpersuaded. As stated by Lord

Halsbury L.C. in Neville v Fine Arts Co. (1897) 1 A.C. 68: “*It is necessary to take into consideration, not only the actual words used, but the context of the words*” at page 72.

Again, as Lord Kinnear stated in Smith v Walker (1912) S.C. 224:

“Words in themselves apparently innocent may be shown to have a defamatory meaning when they are read with reference to the circumstances in which they were uttered or written, and with reference to the context in which they appear” at p. 228.

To say of the claimant as the editorial in context states that he “*had to commit an illegal act and write off \$16 million in the back taxes of the Belize Bank as part of the sale deal*”; and that as quid pro quo for “*contribut(ing) eight million dollars to the (claimant’s) landslide election victory in March 2003*”, Mr. Ashcroft wants to make sure that he gains undisputed control of BTL, BTL being the telecommunications company in which at the time the Government of Belize had the majority shares; and that the claimant “*will use his party’s resources now rich from private deals, to buy the next general elections*”, is in the circumstances, defamatory of him: as stated in Gatley op. cit at paragraph 3.27:

“Words which are not in themselves defamatory may, from the whole context in which they are published, convey a defamatory imputation.”

36. I am therefore satisfied that in the context and circumstances of the editorial in issue here, that the words complained of were libelous of the

claimant. This I find is a case where the sting lies in the totality and context of the editorial.

I now turn to the defences mounted in this case.

The defences put forward

37. The defendants have run two defences in these proceedings viz, justification and fair comment on a matter of public interest. I had at paragraphs 19 and 20 of this judgment referred to the unsatisfactory state of the defences put forward by the defendants in terms of their particulars. As Ackner L.J. stated in Lucas-Box v News Group Newspapers Ltd., Lucas-Box v Associated Newspapers Group Plc and others (1986) 1 All E.R. 177

“... a defendant who is relying on a plea of justification must make it clear to the plaintiff what is the case which he is seeking to set up. The particulars themselves may make this quite clear, but if they are ambiguous then the situation must be made unequivocal” at page 183.

In Viscount De Lisle v Times Newspapers (1987) 3 All ER 499, Mustil L.J. stated:

“The essence of the decision in the Lucas-Box case (and here it may have broken new ground) is that the justification must be pleaded so as to inform the plaintiff and the court precisely what meaning the defendant will seek to justify” at p. 507;

and the observation of May L.J. in Morrell v International Thomson Publishing (1979) 3 All E.R. 733 “... *the position now is that a defendant who pleads justification must do so in such way as quite clearly, without circumlocution or obfuscation, to inform the plaintiff and the Court precisely what meaning or meanings the defendant may seek to justify*” at p. 737, 738.

38. I am therefore of the considered view that the advent of the Supreme Court (civil Procedure) Rules 2005, has not exempted statements of a defendant’s case from this requirement of ordinary pleading rules. On the contrary, Part 68.3 of the Rules mandates this. However, I will consider these defences put forward by the defendants.

(i) The defence of justification

39. This is simply the synonym for “truth” in an action for defamation and if successful, it provides an absolute defence to the claim. However, before pleading justification, a defendant should (a) believe that the words a claimant complains of are true, (b) intend to support the defence at trial and (c) have reasonable evidence to support the plea or reasonable grounds to suppose that sufficient evidence to prove the allegation will be available at trial – Gatley op. cit paragraph 27.5.

In their plea of justification in these proceedings, I am afraid the defendants have failed to prove the truth of the words set out in the claimant’s statement of claim. What they have done in effect, is to set out their own version or contention that the Settlement Deed effecting in their own words, the “write off”, was “*not absolutely and objectively justifiable was (therefore) illegal.*”

40. In my view, the defendants have failed to give appropriate particulars of their defence of justification to meet what the claimant complains of as defamatory of him. These are: i) that he committed an illegal act and wrote off \$16 million in back taxes of the Belize Bank as part of the sale deal; ii) that Mr. Ashcroft contributed eight million dollars to his landslide election victory in March 2003 to make sure he has undisputed control of BTL and iii) that he (that is, the claimant) will use his party's resources now rich from private deals to buy the next general elections. The defendants have simply adopted the particulars of their defence of fair comment as those of their defence of justification. This I think is unsatisfactory for the defence of justification protects statements of facts while the defence of fair comment protects statements of opinion.

The defendants have also, on the evidence, singularly failed to prove the truth of any of these defamatory statements – Marks v Wilson-Boyd (1939) 2 All E.R. 605 and Gatley op. cit at paragraph 27.10.

For example, when Mr. Lawrence was taxed by Mr. Kareem Musa for proof about Mr. Ashcroft's alleged contribution of eight million dollars to the claimant's 2003 election victory, he candidly admitted that he had no proof. Again, when he was asked about his conclusion in the editorial that the claimant will buy the next general elections with moneys from private deal, Mr. Lawrence could only reply that that was a logical conclusion from his experience over several years. That of course, is hardly the same thing as proof of the truth of the allegation!

41. I am therefore satisfied the defence of justification can hardly avail the defendants. They fell far short of justifying what they wrote of the claimant.

(ii) The defence of fair comment

42. As I have already stated at paragraph 23 of this judgment, the claimant's position and actions in office and indeed, that of his government, are ordinarily matters that will and should attract public comments and even criticism, for they are quintessentially matters of public interest.
43. However, I find the defence of fair comment in this case lacking in precision such as to make it categorically clear in its particulars what are the facts and what expressions of opinion are the subject of fair comment. It is for the defendants to identify the particular words of the editorial which they allege to be comment.
44. I have tried to fathom nonetheless what facts there might be in the editorial complained of upon which the comments said to be fair could be based. The editorial in its entirety is full of statements purporting to be facts. However in the words complained of in the editorial, it is not easy to discern what facts the said editorialist could be said to be commenting on apart perhaps from the statement that the claimant wrote off \$16 million in back taxes. But is it a fact that he "committed an illegal act?" Is this fair comment? I do not think so.

For as Edmond Davies L.J. said in London Artists v Littler (1969) 2 Q.B. 375: "... if the alleged facts relied upon as the basis for comment turn out to be untrue, a plea of fair comment avails the defendant nothing, even though they expressed his honest views ... the very nature of the plea assumes the matter of fact commented upon to be somehow or the other ascertained. It does not mean that a man may invent fact and comment on the facts so invented, in what would be a fair and bon fide manner on the supposition that the facts were true ... the defence does not extend to cover misstatements of fact, however bona fide" at p. 395.

45. I am equally unable to find, on the evidence, to hold that it is a fact that Mr. Ashcroft contributed eight million dollars to the claimant's electoral victory in 2003. Nor is there any basis in fact that the claimant's party's resources have been enriched by private deals which will be deployed to buy the next general elections.

I am prepared to grant that these may be honest opinion sincerely held by Mr. Lawrence but on what provable facts are they based? None!

46. In the result, I find and hold that the defence of fair comment cannot avail the defendants on the facts and circumstances of this case. I regret to find that the second defendant did not fare well under cross examination on the issue of fair comment and the "write off" or "set off" in the Settlement Deed. He frankly admitted that in the editorial that has given rise to these proceedings, he gave no reason why the claimant wrote off the taxes of the Belize Bank and that by not stating reason anyone could interpret the waiver as not justified and that he did not see any reason for stating the facts of the write off or set off. I admire and applaud Mr. Lawrence's candour; he also admitted in his testimony that he did not have evidence to show that Mr. Ashcroft gave eight million dollars to the claimant. He said he only heard reports of this. There is nothing however, to ground the defence of fair comment.

Reynolds (Qualified privilege) Defence available?

47. Mr. Barrow S.C., it must be said, put up a gallant effort on behalf of the defendants and in his written skeleton argument on their behalf, he tried to deploy the defence of qualified privilege at common law in the context of newspaper publications on matters of public interest which was considered and expanded by the English House of Lords in **Reynolds v Times Newspapers (2001) 2 A.C. 127**. In that case it was decided that

(i) there is no general common law protection for defamatory statements in newspapers, merely because they concerned political or other issues of public importance but (ii) qualified privilege would be available if in all the circumstances of the particular publication there was a social duty to publish the material to the public at large so that the public could be said to be entitled to the information. Reynolds was recently expanded by the House of Lords again in Jameel v Wall Street Journal Europe (2006) UKHL 44 where the concept of responsible journalism in matters of public interest as a foil to defamation claims was further elaborated.

But as Mr. Barrow S.C. corrected pointed out, this development has come as a postscript in these proceedings and I have not had the benefit of hearing Mr. Musa on it or full or any argument and submission on it.

Conclusion

48. In the light of my findings and conclusion in this case I can only conclude that Mr. Said Musa, the claimant, was defamed by the defendants in the editorial in The Reporter for 2nd October 2005. I am satisfied that the claimant has proved his case. He has asked this court therefore to award damages on an aggravated footing against the defendant and advanced reasons for this as I stated in paragraph 10 above. The claimant claims exemplary damages as well.
49. The tort of defamation exists to afford redress for unjustified injury to reputation and by a successful action the injured reputation is vindicated: the ordinary means of vindication is by the judgment or verdict of the court and an award of damages. The claimant is undoubtedly entitled to damages for the unjustified imputations by the defendants against him. I not however accept that the defendants published the defamatory material

against the claimant with an eye to profit and increase the sale of their newspaper or boost advertising therein. On the contrary, Mr. Harry Lawrence the author of the editorial struck me as honest and candid, strong-willed and strong-headed even. But he was seriously misguided by political antipathy towards the claimant in writing the editorial that is the subject of these proceedings. This editorial however reflects ill on the claimant.

50. Yes, the claimant by his very position is subject to intense public scrutiny and comments and criticism but this must not be a licence for unfounded and unsubstantiated attacks on him. I adopt with respect in this connection the statement by Cockburn C.J. in **Campbell v Spotiswoode** (1863) 8 LT 201

“It is said that it is for the interest of society that the public conduct of men should be criticized without any other limit than that the writer should have an honest belief that what he writes is true. But it seems to me that the public have an equal interest in the maintenance of the public character of public men, and public affairs could not be conducted by men of honour with a view to the welfare of the country, if we were to sanction attacks upon them, destructive of their honour and character, and made without foundation.”

51. The claimant stands vindicated today by the judgment of the court. I think that all things considered, an award of \$25,000.00 as damages should compensate him for the distress the defendants’ publication must have caused him.

Accordingly, I enter judgment for the claimant and order as follows:

- i) the sum of \$25,000.00 as damages against the defendants for their defamatory publication against the claimant;
- ii) that each of the defendants by themselves, their servants or agents or howsoever are hereby prohibited from repeating the defamatory words or any similar words to the like effect of and concerning the claimant.

The costs of these proceedings are awarded to the claimant in the sum of \$10,000.00.

A. O. CONTEH
Chief Justice

DATED: 30th March 2007.