

IN THE SUPREME COURT OF BELIZE, A.D. 2021

CLAIM NO. 323 OF 2021

BETWEEN:

AND	(FRANK MENA	CLAIMANT
	(
	(INDIRA MEJIA	DEFENDANT

BEFORE THE HONOURABLE MADAM JUSTICE LISA SHOMAN

HEARINGS: 15th October, 2021.
8th November, 2021.

Written Submissions:
22nd October, 2021 – Claimants

APPEARANCES: Rt. Hon. Dean O. Barrow SC for the Claimant

RULING

1. The matter before this Court for resolution in this Claim is an Application by the Claimant Assessment of Damages. The Claimant has applied pursuant to Rule 12.10 (4) of the Supreme Court Civil Procedure Rules to have the terms of a Default Judgment determined.

BACKGROUND:

2. On May 12th, 2021, the Claimant filed a Claim Form and Statement of Claim claiming damages for libel upon the Claimant by the Defendant published by way of internet and social media video broadcast and transmission on April 15th, 2021.
3. The Statement of Claim alleged that on that date in April, the Defendant hosted a press conference that was covered by local radio, television and print media and it was widely

streamed, transmitted and broadcast in Belize and abroad via internet and social media, during which the Defendant uttered certain words and made allegations against the Claimant which were completely untrue and constituted a gross libel upon the Claimant. The words complained of were set out in extenso in the Statement of Claim.

4. The Claimant claimed damages, including aggravated damages for the words complained of and widely published and disseminated to the media and the public in Belize and abroad by the Defendant on April 15th, 2021; an injunction to restrain the Defendant whether by herself, her agents or servants or otherwise from publishing the same or any similar libels upon the Claimant as well as costs and interest.
5. On May 18th, 2021, the Defendant was duly served with an LS copy of the Claim Form and Statement of Claim and the Affidavit of Service attesting to the same was filed on May 19th, 2021.
6. On June 17th, 2021, the Defendant not having filed an Acknowledgement of Service to the Claim, a Default Judgment was entered in the Claim against the Defendant that the Claimant recover damages against the Defendant to be determined by the Court.
7. On July 14th, 2021, the Claimant applied pursuant to Rule 12.10 (4) of the Supreme Court (Civil Procedure) Rules to have the terms of the Default Judgment determined, and that Damages be assessed by the Court.
8. On October 15th, 2021, the Court heard the Application and ordered that Damages were to be assessed on the 8th of November, 2021 at 10.00 and permitted the Claimant to file any additional affidavit evidence by October 22nd, 2021. The Court also ordered that the Defendant would be permitted to file affidavit evidence on the issue of costs and the time of payment and enforcement of the judgment debt in accordance with Rule 12.10 (4) of the Supreme Court (Civil Procedure) Rules. Both parties were permitted to file written submissions on or before November 4th, 2021.

9. On November 2nd, 2021, an Affidavit of Service was filed by the Claimant attesting that service of the Order of the Court which was made and dated October 25th, 2021 was personally served on the Defendant on November 2nd, 2021.
10. On November 8th, 2021, the Defendant did not appear in person or by a legal representative. Counsel for the Claimant was heard on the matter of the assessment of damages in this claim.

ASSESSMENT OF DAMAGES:

11. The Application for the Assessment of Damages was supported by an Affidavit of Frank Mena, the Claimant, dated and filed on July 14th, 2021.
12. The Claimant says that in their natural and ordinary meaning, the words which are complained of meant and were understood to mean that:
 - a. The Claimant had swindled two businesspersons out of their multimillion dollar investment in a company known as Recological Systems Limited;
 - b. The Claimant had abused his recently demitted office as Minister of Government to obtain for himself a prime piece of national land;
 - c. The Claimant was a fraudster and a corrupt individual.
13. As the Complainant points out, an award of damages in cases of defamation ought to be compensatory in nature; and in assessing damages for the publication of libelous material the Court should follow the principles of law relating to damages in defamation cases. As set out in the decision of Sir Thomas Bingham (as he then was) in the UK Court of Appeal case of **John v. MGN Ltd**¹ as follows:

“The successful plaintiff in a defamation action is entitled to recover, as general compensatory damages, such sum as will compensate him for the wrong he has suffered. That sum must compensate him for the *damage to his reputation; vindicate his good name;*

¹ John v MGN Ltd - [1996] 2 All ER 35 at pages 47-48

and take account of the distress, hurt and humiliation which the defamatory publication has caused. In assessing the appropriate damages for injury to reputation the most important factor is the gravity of the libel; the more closely it touches the plaintiff's personal integrity, professional reputation, honour, courage, loyalty and the core attributes of his personality, the more serious it is likely to be. The *extent of publication is also very relevant*: a libel published to millions has a greater potential to cause damage than a libel published to a handful of people. A successful plaintiff may properly look to an award of damages to vindicate his reputation: but the significance of this is much greater in a case where the defendant asserts the truth of the libel and refuses any retraction or apology than in a case where the defendant acknowledges the falsity of what was published and publicly expresses regret that the libelous publication took place. It is well established that compensatory damages may and should compensate for additional injury caused to the plaintiff's feelings by the defendant's conduct of the action, as when he persists in an unfounded assertion that the publication was true, or *refuses to apologise*, or cross-examines the plaintiff in a wounding or insulting way.” (Emphasis added)

14. In the Trinidadian High Court case of **Heidi Joseph v. Ama Charles**² per the decision of Margaret Mohammed J, “once a person is libeled, without any lawful justification or excuse, it will be presumed that he suffered injury to his reputation and his feelings, for which he may recover damages. It follows that there is no explicit requirement for the person libeled to produce any evidence to prove such injury as he starts off with a presumption of damage. However, to attract a substantial award of damages evidence must be provided.”
15. In another case from Trinidad and Tobago, **TnT News Centre Ltd v John Raphael**³, Kangaloo JA stated that “the purpose of an award of damages in a defamation action is threefold in nature:
 - a. to compensate for the distress and hurt feelings;

² Claim No. CV 2016-02996 at paragraph 75

³ Civ Appeal No 166 of 2006

- b. to compensate for any actual injury to reputation, which must be proved or may reasonably be inferred; and
- c. to serve as an outward and visible sign of vindication.”

16. The Court is therefore to assess compensation to the Claimant, Mr. Mena for the injury done to his reputation, and the injury caused to his feelings. The Court must also consider any aggravating factors in order to arrive at an award that is not only compensatory, but if warranted, vindicatory.
17. In order to assess damages for injury to reputation, the Court must examine the gravity of the defamation in arriving at its determination. If the defamatory words impinge on the personal integrity of the Claimant and his professional reputation, our touch on his honor, courage or other core attributes of his personality, the more serious the injury is likely to be.
18. The evidence shows that the Claimant is a businessman, a former educator and a politician, and was, until November 11th, 2020, the Area Representative for Dangriga (an elected Member of the House of Representatives) and a Minister of State in the Government of Belize. The defamatory words used by the Defendant were said by the Claimant in his Affidavit Evidence in support of this Application for Assessment of Damages to be “egregious in saying that I was a swindler and a crook who had defrauded businesspersons and who had abused my position as a Minister of Government in order to enrich myself.” The Claimant described the effect as being “devastating in the extreme” and as “outrageous calumny”. He averred that the words had been published at a “live streamed press conference where all the prominent Belizean media houses were gathered” and deposed that he felt that “the damage done to my reputation and standing was irreparable”. The Defendant has chosen not to defend and therefore the Court may proceed on the Claimant’s unchallenged particulars of claim, and in the premises, the Court concludes that the words were defamatory of the Claimant.

19. The Claimant provides evidence to show that as a result of the offending material, he did suffer distress and hurt feelings; and from the affidavit evidence provided to the Court, it may be reasonably inferred that there was actual injury to the reputation of the Claimant.
20. In arriving at an assessment of damages, the Court must also take into account the extent of the publication and the evidence is that the publication within Belize was widespread and caused the Claimant to be obliged to rebut the “outrageous calumny of the Defendant” to Channel 7, my family and friends”. The press conference at which publication took place was said to have been attended by media houses in Belize, and at least one major media house republished the Defendant’s libel without a response by the Claimant; but subsequently apologized publicly for doing so. No additional evidence was provided as to the extent of the publication outside of Belize, even though the publication was via the internet and could be seen by anyone who was viewing the live stream of the press conference held to publish the assertions made by the Defendant against the Claimant. As the **John v MGN Ltd.** case (cited supra) puts it “a libel published to millions has a greater potential to cause damage than a libel published to a handful of people.”
21. The absence or refusal of any retraction or apology is an aggravating factor. The Claimant’s affidavit evidence is that in an effort to salvage his reputation, he sought legal advice and had his Attorney write to the Respondent demanding a retraction and apology. He states that “The Defendant did not even acknowledge my demands and compounded my hurt and humiliation by treating me with contempt.”
22. The Claimant also says that “the Defendant has ignored my filed legal claim and has continued to treat me with disdain by refusing to acknowledge the grievous wrong she has done me...” He further deposes that “her behavior subsequent to her defamation has constituted the rubbing of salt into the open wound of the defamation. Treating me the way she has, increased my anguish and humiliation.”
23. The **John v MGN Ltd** decision (supra) states that “A successful plaintiff may properly look to an award of damages to vindicate his reputation: but the significance of this is much

greater in a case where the defendant asserts the truth of the libel and refuses any retraction or apology than in a case where the defendant acknowledges the falsity of what was published and publicly expresses regret that the libelous publication took place. It is well established that compensatory damages may and should compensate for additional injury caused to the plaintiff's feelings by the defendant's conduct of the action, as when he persists in an unfounded assertion that the publication was true, or *refuses to apologise*, or cross-examines the plaintiff in a wounding or insulting way.”

24. The conduct of this particular Defendant in refusing to apologize and in refusing to respond to the Claimant’s claim are an additional injury caused to the Claimant; are aggravating factors and will be taken into account in this assessment of damages.

AWARD OF DAMAGES:

25. In arriving at an award of damages in this assessment, I have had regard to several Belizean cases which are of assistance to the Court by providing a helpful guide. In particular, I find the case of **Anwar Barrow v Michael Rudon et al** useful. This case is one in which default judgement was entered for the Claimant against the Defendants, and in which the Court determined the terms of the award. The Claimant, a well-known businessman and son of the then Prime Minister, was accused of corruption and of using his relationship with his father to get a Minister fired, and of having conspired to cover up the alleged corruption. He was awarded \$40,000.00 and \$10,000.00 in aggravated damages.⁴
26. I have also considered those cases which are referred to in the **Anwar Barrow** case, which included **Lois Young Barrow v Andrew Steinhauer, Belize Times Press Limited**⁵ in which \$30,000.00 was awarded; **Said Musa v Ann Marie Williams, Harry Lawrence & Reporter Press Ltd.**⁶ in which \$25,000.00 was awarded; **Belize Times & Amalia Mai v**

⁴ Claim No. 254 of 2018

⁵ Claim No.561 of 2006

⁶ Claim No. 376 of 2005

Manuel Esquivel,⁷ in which \$25,000.00 was awarded; and **Sittee River Wildlife Reserve et al v Thomas Hershowitz & Independent Owners of Sanctuary Belize**⁸ in which the First Defendant was ordered to pay \$30,000 to the Claimants and the Second Defendants were ordered to pay \$60,000 to the Claimants, plus \$30,000.00 aggravated damages.

27. The awards in these cases range from \$25,000.00 to \$60,000.00 in general damages. I have regard to the fact that these cases were decided some time ago and that the Court must take account must be taken of inflation as was done in the **Anwar Barrow** case.
28. I have also considered the recent case of **Karen Bevans v Hon. John Briceno & Ors**⁹, in which the Court awarded the Claimant total damages of \$60,000.00 - \$90,000.00 in general damages and \$30,000 in aggravated damages.
29. Having considered the above cases, adjusted for inflation as appropriate, in all the circumstances of this case as set out above, the Court finds that an award of \$50,000.00 to be appropriate compensation for the publication and the injury and the distress caused to the Claimant by the Defendant's defamatory remarks. An Injunction to restrain the Defendant whether by herself, her agents or servants or otherwise from further publishing or disseminating the same or any similar libel on the Claimant will also be ordered.
30. Since the Defendant has refused to apologize or retract the offending material, aggravated damages will also be awarded, and are assessed at \$20,000.00.

⁷ Civil Appeal No. 7 of 1993

⁸ Claim No. 131 of 2016

⁹ Claim 771 of 2020

ORDERS:

31. It is ordered as follows:

1. The Defendant pay to the Claimant damages for defamation in the sum of \$60,000.00 and aggravated damages of \$20,000.00;
2. The Defendant, whether by herself, her agents or servants or otherwise, is restrained and prohibited, from further publishing or disseminating the same or any similar defamatory words concerning the Claimant;
3. Interest thereon at the rate of 6% per annum from April 15th, 2021; and
4. Costs on the prescribed basis based on the award of damages.

Dated December 16th, 2021.

Lisa M Shoman

Justice of the Supreme Court of Belize