



[2019] JMSC Civ 232

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. 2018HCV02914

| | | |
|----------------|--|---------------------------------|
| BETWEEN | JULIE BLAIR-JOHNSON | CLAIMANT |
| AND | TREND MEDIA LIMITED | 1st DEFENDANT |
| AND | AVANDO MITCHELL T/A JARADIO MEDIA | 2nd DEFENDANT |

IN CHAMBERS

Mr. Lemar Neale instructed by Neal Lex for the Claimant

Mr. Maurice Manning and Mrs. Gabrielle Warren instructed by Nunes Scholefield Deleon & co for the 1st Defendant

29 May and December 5, 2019

Civil Procedure – Notice of Application for Court Orders – Civil Procedure Rules (CPR) 69.4 – Whether words complained of are capable of bearing meaning attributed to them – The Defamation Act 2013

THOMPSON-JAMES J

INTRODUCTION

[1] By way of notice of application for court orders filed December 21, 2018, the applicant seeks the following orders:

“1. A declaration that the words complained of by the Claimant as being published by the 1st Defendant on the 7th day of December

2017 on its website “Loop News” in an article under the heading “Female cop under fire for ordering breastfeeding mom out of station”, are capable of falling within the spectrum of meanings attributed to them by the Claimant at paragraph 9(a)-(i) of the Claimant’s statement of case.

2. Costs of this application be costs in the claim.

3. Such further and other relief as this Honourable Court deems just.

[2] The orders are sought on the following grounds:

“1. Rule 69.4 of the Civil Procedure Rules, 2002 (as amended) (“the CPR”) empowers the Court to make an order determining whether words complained of are capable of bearing the meanings attributed to them.

2. The Claimant contends that the words complained of are capable of bearing the defamatory meanings attributed to them [in] her statement of case.

3. The 1st Defendant contends that the said words complained of are not capable of bearing the meanings attributed to them.

4. The Court’s ruling on the meaning of the words complained of is therefore necessary to determine whether the proceedings should go to trial or dismissed summarily so as to save costs and resources in keeping with the overriding objectives of the CPR.”

[3] The application is supported by an affidavit sworn to by the claimant filed December 21, 2018 wherein she refers to the allegations of defamatory words published by the defendants in her statement of case, and the 1st defendant’s denial in its defence that the words complained of are capable of bearing the meaning that she has attributed to them in her statement of case.

BACKGROUND

[4] The claimant, who was at all material times a police officer in the Jamaica Constabulary Force stationed at the Half Way Tree Police Station, filed a claim on August 2, 2018 against the defendants for damages for defamation in respect of statements she alleges were made by the defendants on December 7 and 9, 2017

that were defamatory of her, and from which she has suffered injury, loss and damage.

- [5] The allegations, as set out in the Amended Particulars of Claim filed December 21, 2018, are that the 1st defendant, who was at all material times a company duly incorporated under the laws of Jamaica and owners and/or operators of the “Loop News” website, “recklessly and/or maliciously published or caused to be published” an article containing the following words on its website, which the claimant contends were “false and defamatory” of the claimant:

“Female cop under fire for ordering breastfeeding mom out of station

Within only days, the Jamaica Constabulary Force (JCF) has again been placed under the microscope for the actions of one of its member, this time for a recent development at the Half Way Tree Police Station in St Andrew, where a mother was reportedly ordered out of the station by a policewoman because she attempted to breastfeed her young baby while at the facility.

Only days ago, the Police High Command launched an investigation into the harsh words that were used by a traffic cop to a motorist who was found with a driver’s licence, but clearly could not read. The cop got enraged by the fact that the motorist could not spell the word ‘IT’.

Reports from an alleged eyewitness, who highlighted the matter of the breastfeeding mother on her Twitter account, indicated that the mother went to the station and was waiting to report a matter, when the child started to cry for attention.

That was when the mother attempted to breastfeed the child.

What took place thereafter has left persons asking questions about the customer service stance from the police force which has the words ‘to serve, protect and reassure’ in its motto.

The woman who highlighted the case said that when she saw what was happening to the mother and child, she was so moved that she offered the use of her car in the station’s parking lot for the mother to breastfeed the baby in some comfort and dignity.

‘So I told the lady to feed her starving baby in my car...my heart hurts,’ elaborated the lady who came to the rescue from what persons are labelling as a grossly ‘unmotherly act’ by the female cop.

'When I saw what took place, it really left me concerned,' added the social media user.

The matter triggered widespread condemnation from social media users in general, and has even attracted the attention of the top cop, Commissioner Quallo, who advised of an ongoing investigation of the matter via his Twitter page.

'It is a matter that is being investigated,' the commissioner said.

However, the commissioner's statement has not been very effective in quelling the anger of some members of the public who used the

Twitter platform twitter to vent their feeling on the matter.

That was very uncaring on the part of the police,' said one user, who noted that the situation was made worse by the fact that it was done by a woman, who happened to be a member of the JCF."

[6] It was further alleged that the 2nd defendant, who was at the material time the owner and operator of the 'popular and widely viewed' website JARADIO, published similar defamatory statements. The 2nd defendant, however, was not served, and as such the matter is not being pursued against it.

[7] The claimant has contended that the words published by the 1st defendant, in their 'natural and ordinary meaning, and/or by way of innuendo, bore and were capable of bearing the following meanings:

"(a) the Claimant's actions were unethical, improper and inappropriate;

(b) the Claimant's actions have humiliated and embarrassed the members of the Jamaica Constabulary Force;

(c) the Claimant is not a fit and proper person to be a Police Office [sic] and by extension a member of the Jamaica Constabulary Force;

(d) the Claimant cannot be entrusted to carry out the mandate of the Jamaica Constabulary Force whose motto is to 'serve, protect and reassure';

(e) the Claimant is an untrustworthy person;

(f) the Claimant's actions have brought the Jamaica Constabulary Force into disrepute;

(g) the Claimant behaved in an unprofessional matter [sic] which was unbecoming of any member of the Jamaica Constabulary Force;

(h) the Claimant's actions warrant disciplinary actions to be taken by the Commissioner of Police and the Police Services Commission;

(i) the Claimant is not a fit and proper person to be a mother."

[8] She further contended that the aforementioned words 'referred, were referable and were understood to refer to the claimant', and they "*were calculated to disparage the Claimant in her profession as a Police Officer and member of the Jamaica Constabulary Force. The intended effect of the publications was to lower the Claimant in the estimation of right-thinking members of society generally or to expose her to public odium, contempt and ridicule.*"

[9] The claimant has made a claim for exemplary damages and aggravated damages, and has set out particulars in respect thereof. I do not think it is necessary to set them out for the purposes of this application.

[10] In its defence filed October 12, 2018, the 1st defendant admitted publishing the words complained of, but, denied that:

- i. the 1st defendant was reckless and/or malicious in publishing or causing the words to be published;
- ii. the words published were false;
- iii. the words published were defamatory and/or that they were defamatory to the claimant;

[11] The defendant further relies on the defences of truth, fair comment and qualified privilege.

[12] December 21, 2018, the claimant amended her particulars of claim, to, materially, aver that at the time of the incident the claimant was one of two female officers on duty in the guardroom at the Half Way Tree Police Station, and to deny that the

alleged “breast-feeding mom” was there waiting to report a matter. In that regard, she contends that:

“...the “alleged breast-feeding mom” was a relative of hers who was at the Police Station at the invitation of the Claimant in a private capacity and was not there waiting to report a matter as alleged...”

“...that at no point did she order any “breast-feeding mom” out of the Police Station who was waiting to report a matter.”

THE SUBMISSIONS

The Claimant’s Submissions

[13] The claimant relies primarily on the authority of **Khemlani Mart Limited and anor v Radio Jamaica Limited** (unreported), Supreme Court, Jamaica, Claim No. 2007HCV03326, judgment delivered May 26, 2008, and the cases cited by McDonald Bishop J (as she then was), for the test to be applied in respect of applications under CPR 69.4, which is, that which the words would convey to the ordinary man. Counsel for the claimant, Mr. Neale, submitted that what is for consideration before the court is not whether the words are defamatory, but rather, whether the words are reasonably capable of bearing a defamatory meaning.

[14] In that regard, the claimant has submitted that the words used *“in their natural and ordinary meaning impute improper conduct on the part of the Claimant and therefore bear and are capable of bearing all the meanings attributed to them in her statement of case”*. In counsel’s view, the term ‘under fire’ created the sting of the publication, from which any reasonable man would glean that the claimant did something wrong. He submitted that the publication as a whole, through its headline context and tone, conveys to the public that the claimant did something wrong and attracts public condemnation. Having regard to the role, function, and duty of police officers and their motto ‘to serve, protect and reassure’, persons of fair mind and ordinary intelligence would perceive that the ‘female cop’ did something improper, unethical and inappropriate, and that she is ‘someone who acts contrary to the mandate and motto of the JCF’. This is evidenced by the

comments made by social media users that were also published by the 1st defendant.

- [15] Counsel argued that there is no requirement that the claimant be identified by name, and that the claimant could have been sufficiently identified by the reference to her gender, occupation, exact place of work, and the fact that it was stated she turned out someone who was there to make a report. Further, it did not matter whether they intended to refer to her, but rather, what was important was whether the publication was capable of referring to her.
- [16] It is further submitted that the publication went beyond reporting allegations made about the claimant's conduct, in that the headline, words used and how they were written were 'plainly and reasonably' capable of imputing to the ordinary man improper conduct on the claimant's part and lowering the claimant in the estimation of right-thinking members of society.
- [17] Although the claimant has accepted that the substance of the publication came from the twitter account of an alleged eyewitness, the claimant relies on the discourse of McDonald Bishop J in **Khemlani Mart** (para 54), and the learned judge's reliance on **Stern v Piper and others** [1996] EWCA Civ 1291, in respect of the repetition rule which intimates that a repetition of defamatory words is no less defamatory than the original publication.
- [18] In respect of whether the claimant was identifiable by the publication, the claimant has submitted that this is not relevant at this stage, but nonetheless, relies on **Morgan v Odhams Press Ltd** [1971] 2 All ER1156 and **Knupffer v London Express Newspaper Limited** [1944] AC 116 for the proposition that it is not required for the claimant to be referred to by name once there are sufficient words to connect the publication to the claimant.

The Defendant's Submissions

- [19] The defendant maintains that the impugned words are not capable of bearing the defamatory meanings complained of on three main bases: (1) the essence of

defamation is that the statements made are false and the claimant has not averred that the impugned article contains false statements; (2) the words used were not capable of identifying the claimant; and (3) neither the reasonable ordinary man nor persons acquainted with the claimant would ascribe to the words the meanings attributed to them by the claimant.

[20] **Percival James Patterson v Cliff Hughes and Nationwide News Network Ltd.**

[2014] JMSC Civ 167, is relied on for its statement as to what is required to be proved in respect of the tort of defamation, that is, (1) that the statement was defamatory, (2) it referred to the claimant, and, (3) the statement was published. In respect of ascertaining the meaning of the words complained of, the defendant has intimated that the court must determine whether the words are defamatory in law and not whether they are capable of bearing the meaning ascribed to it by the claimant. In doing so, based on **Halsbury's Laws of England**, Volume 32(2019), para. 543-545, it is contended that, whilst there may be a multitude of meanings, the court must select the single and average meaning that a reasonable man would ascribe to the words.

[21] As to how to determine such a meaning the defendant has relied on the words of Lord Reid in **Rubber Improvement Ltd. and Anor v Daily Telegraph Ltd; Associated Newspapers Ltd.** (*subnom* Lewis v Daily Telegraph Ltd) [1964] AC 234, and those of the Privy Council in **Bonnick v Morris and the Gleaner** [2003] 1 AC 300 (at para. 9) in respect of how to treat with the concept of the ordinary man in the Jamaican context. **Patterson v Hughes** (at para. 51) is also relied on for the approach the court should adopt in analyzing the words complained of.

[22] In the context of the above framework, the defendant has contended that not only must the claimant prove that the publication was defamatory, but also, that she was capable of being identified by the words published (**Khemlani Mart and Kay Mart Ltd v Radio Jamaica Limited**). **Knupffer v London Express Newspaper Ltd** (at pg. 497) is relied on for the proposition that, not only must the court consider the ordinary reader, but also, whether persons having special knowledge of the

claimant would take the words as referring to her. The burden of proof, it is alleged, is on the claimant (*Khemlani Mart*).

- [23] It is asserted that the claimant has not denied the truth of the actions of the unidentified police officer, nor that the matter was under investigation. It is noted that in the letter of April 24, 2018 from the claimant's counsel to the defendant (attached to her particulars of claim), her only grouse was that the article stated that the lady run out of the station was a relative of the officer and not a private citizen waiting to make a report. At paragraph 11 of the amended particulars of claim, the claimant again noted that the alleged victim was a relative. Outside of that, the claimant has not identified what aspects of the publication are true or untrue. Counsel sought that the court pays keen attention to the language used in that paragraph, which he asserted was very deliberate, in that, it did not state that the claimant did not order any breastfeeding mom out, but rather, that she 'did not order any breastfeeding mom out who was waiting to report a matter'.
- [24] Counsel argued that the article did not prompt the investigation or else the reference to the investigation could not have been in the article. Further, notwithstanding that counsel did not agree that the words conveyed that the claimant did something wrong, he submitted that the fact that there was an investigation by the commissioner of police is sufficient to justify the sting 'female cop under fire for ordering breast feeding mom out of station'.
- [25] Consequently, counsel contended, reasonable persons would not believe from that one incident that the claimant is unfit to be a mother. The reasonable man would not have known that the claimant is one of only two females on duty in the guardroom at the police station, nor would he or she have known on what day the alleged incident took place. That date has not been stated in the case of either party. According to counsel, the only known facts in relation to the incident are that the cop was female and that the incident triggered an investigation by the high command. The ordinary man would not know that the claimant is a stepmother and mother of biological children and adopted children.

[26] Further, it is argued that ‘in no way does the article, by its ordinary meaning or innuendo, raise any question of ethics, morality or indecency’. Even if there was a question of inappropriateness of the relevant behaviour, it raised a discussion as to how a breast feeding mother should be treated. There was no agreement on this. Counsel disagreed with the notion that a reasonable man would believe that a police officer who chased a breastfeeding mother out of a police station is unfit to carry out her duty to protect, serve and perform other core functions of a police officer.

[27] The defendant relies on the case of *Bonnick v Morris* in support of the proposition that the colour and context in which the words were used is important.

The Claimant’s Response

[28] Counsel for the claimant in response, argued that the *Daily Telegraph* case is distinguishable from the instant case in that ‘there are no allegations there to impute anything, unlike in this case where it goes further to outline what “she came under fire for’. In respect of the defendant’s submission that the court must find the single meaning of the words used, the claimant has relied on the above case for the proposition that the court must consider all meanings pleaded”.

THE LAW

[29] The law governing defamation claims is set out in the **Defamation Act** of 2013 and **Part 69** of the **Civil Procedure Rules (CPR) 2002**. **Section 5(2)** of the **Defamation Act** preserves the law as that relating to the tort of defamation except as is provided otherwise in the Act. In respect of the tort of defamation, it has generally been accepted that words are defamatory if they “*would tend to lower the plaintiff in the estimation of right-thinking members of society generally*” **Slim v Stretch** [1936] 2 All ER 1237, at 1240].

[30] This application is made pursuant to rule **69.4**, which provides that:

“(1) At any time after the service of the particulars of claim, either party may apply to a judge sitting in private for an order determining whether or not the words complained of are capable of bearing a meaning or meanings attributed to them in the statements of case.

“(2) If it appears to the judge on the hearing of an application under paragraph (1) that none of the words complained of are capable of bearing the meaning or meanings attributed to them in the statements of case, the judge may dismiss the claim or make such other order or give such judgment in the proceedings as may be just.”

[31] In respect of the assertion that the words are defamatory by way of innuendo Rule **69.2(b)** provides:

“where the claimant alleges that the words or matters complained of were used in a defamatory sense other than their ordinary meaning, give particulars of the facts and matters relied on in support of such sense;”

[32] The Court of Appeal in the case of **Deandra Chung v Future Services International Limited and Yaneek Page** [2014] JMCA Civ 21 has given clear guidance as to how an application of this nature should be approached. In that case, Morrison JA (as he then was), took as the starting point, the approach as outlined by Lord Nicholls in the Privy Council case of **Bonnick v Morris** et al [2002] UKPC 31. He stated (at para. 9):

*“As to the meaning, the approach to be adopted by a court is not in doubt. The principles were conveniently summarised by Sir Thomas Bingham MR in **Skuse v Granada Television Ltd** [1996] EMLR278, 285-287. In short, **the court should give the article the natural and ordinary meaning it would have conveyed to the ordinary reasonable reader of the [newspaper], reading the article once. The ordinary, reasonable reader is not naive; he can read between the lines. But he is not unduly suspicious. He is not avid for scandal. He would not select one bad meaning where other, non-defamatory meanings are available. The court must read the article as a whole, and eschew over-elaborate analysis and, also, too literal an approach. The intention of the publisher is not relevant...**” [Emphasis added]*

[33] Having perused several other authorities, including **Griffiths v Dawson** (1968) 10 JLR 398, **Charleston and Another v News Group Newspapers Ltd** and

Another [1995] 2 All ER 313 (at pgs 317-318), and the **Daily Telegraph** case (*supra*), Morrison JA outlined the following conclusions in respect of an application of this nature:

“[37] It seems to me that, from this brief and necessarily selective review, to advance at least the following propositions:

1. *On an application for a determination on meaning under rule 69.4 of the CPR, the court’s immediate concern is whether the words complained of are capable of bearing the meaning attributed to them by the claimant; however, for this purpose, the test to be applied by the court is **no different from that applied in deciding whether words are capable of having any libellous meaning.***
2. *In considering a publication that is alleged to be libellous, the court should give the words complained of **the natural and ordinary meaning which they would have conveyed to the ordinary, reasonable and fair-minded reader**; that is, a person who is not naive, unduly suspicious or avid for scandal.*
3. *Applying this criterion, the judge must determine **the single meaning which the publication might be apt to convey to the notional reasonable reader** and to base his consideration on the assumption that this was the one sense in which all readers would have understood it.*
4. *Either in addition, or as an alternative, to the natural and ordinary meaning of the words complained of, the claimant may rely on extrinsic facts, which must be pleaded, to show that the words convey a meaning defamatory of her which, without such evidence, they would not bear in their natural and ordinary meaning.*
5. *...” [Emphasis added]*

[34] Further, in respect of the purpose of rule **69.4**, Morrison J, endorsed the following words of Hirst LJ in **Mapp v News Group Newspapers Ltd** [1995] QB 520 (at pg 526):

*“In my judgment, **the proper role for the judge**, when adjudicating a question under Ord. 82, r. 3A, [equivalent rule to rule 69.4], **is to evaluate the words complained of and to delimit the range of meanings of which the words are reasonably capable**, exercising*

his own judgment in the light of the principles laid down in the above authorities and without any Ord. 18, r. 19 overtones. If he decides that any pleaded meaning falls outside the permissible range, it is his duty to rule accordingly. It will, as is common ground, still be open to the plaintiff at the trial to rely on any lesser defamatory meanings within the permissible range but not on any meanings outside it. The whole purpose of the new rule is to enable the court in appropriate cases to fix in advance the ground rules on permissible meanings which are of such cardinal importance in defamation actions, not only for the purpose of assessing the degree of injury to the plaintiff's reputation, but also for the purpose of evaluating any defences raised, in particular, justification or fair comment. This applies with particular force in a case like the present where there is a defence of justification of a lesser meaning than that pleaded in the statement of claim”.

- [35] The above makes clear that, in deciding whether the words complained of carry a defamatory meaning, the court is to consider the ‘single’ meaning the words convey rather than all the meanings. This view is supported by ***Bonnick v Morris*** in which the board made clear that, although artificial and although readers are likely to read words in different senses, the rule to be applied when determining whether words used carry a defamatory meaning is the “single meaning” approach [para.21]. In that case, which was an appeal from the Court of Appeal of Jamaica, the Board was concerned with the meaning to be ascribed to the impugned words published in the Jamaica Gleaner, whether that meaning was defamatory, and whether the defence of qualified privilege could avail the offending newspaper company and its editor. It was not an application similar to the one at hand, but rather the court was dealing with the substantive issues in the defamation claim. The facts were that the newspaper company published an article in relation to a court matter in respect of contracts entered into by the government owned company with a Belgian company, and also in relation to the termination of the employment of the claimant, who had been the managing director of the government company around the time the contracts were brokered. It was alleged that the article imputed impropriety in the handling of the contracts, and that the claimant had been involved in this impropriety which led to the termination of his employment. In finding that the words used were defamatory by implication, and assessing whether a responsible journalist ought to have realized this, the Board

distinguished between the rules applicable in deciphering the meaning of words used when it was a question as to whether they are defamatory, as opposed to determining whether a journalist acted reasonably for the purposes of the defence of qualified privilege.

[36] I am of the view that, whilst this is the approach in respect of a substantive defamation claim, an application under rule 69.4 requires a consideration of all the meanings attributed to the words by the claimant, as the rule requires the judge to determine “*whether or not the words complained of are capable of bearing a meaning or meanings attributed to them in the statements of case*”. If this hurdle is passed, then the ultimate determination of the single meaning the words published convey, is to be determined by the tribunal of fact at trial.

[37] In the case of ***Lewis v Daily Telegraph*** ([1964] AC 234, at page 258), Lord Reid stated the following:

“There is no doubt that 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 worldly affairs. I leave aside questions of innuendo where the reader has some special knowledge which might lead him to attribute a meaning to the words not apparent to those who do not have that knowledge. That only arises indirectly...there is no question of innuendo in the truest sense.

What the ordinary man would infer without special knowledge has generally been called the natural and ordinary meaning of the words. But that expression is rather misleading in that it conceals the fact that there are two elements in it. Sometimes it is not necessary to go beyond the words themselves, as where the plaintiff has been called a thief or a murderer. But more often the sting is not so much in the words themselves as in what the ordinary man will infer from them, and that is also regarded as part of their natural and ordinary meaning. Here there would be nothing libellous in saying that an inquiry into the appellants’ affairs was proceeding: the inquiry might be by a statistician or other expert. The sting is in inferences drawn from the fact that it is the fraud squad which is making the inquiry.

What those inferences should be is ultimately a question for the jury, but the trial judge has an important duty to perform.

- [38] Lord Reid then went on, at pg. 259, to state the law as that accepted in the cases of **Capital and Counties Bank Ltd. v Henty & Sons** (1882) 7 App. Cas. 741, and **Nevill v Fine Art & General Insurance Co. Ltd** [1897] A.C. 68. In the former case it was stated that:

“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 libellous sense”;

In the latter case, Lord Halsbury said:

“...what is the sense in which any ordinary reasonable man would understand the words of the communication so as to expose the plaintiff to hatred, or contempt or ridicule...it is not enough to say that by some person or another the words might be understood in a defamatory sense.”

Lord Reid then stated:

“...[It] is, I think, sufficient to put the test this way,. Ordinary men and women have different temperaments and outlooks. Some are unusually suspicious and some are unusually naive. One must try to envisage people between these two extremes and see what is the most damaging meaning they would put on the words in question.”

- [39] In ***Khemlani Mart Limited & Kaymart Limited v Radio Jamaica Limited***, relied on by the claimant, the approach taken by McDonald-Bishop J(Ag.) (as she then was) in dealing with application under rule 69.4 was similar to that espoused in ***Chung v Future Services*** and relied on in several of the same cases. I would, however, like to make special reference to some points made by the learned judge in ***Khemlani Mart Ltd*** case with which I agree as to the requisite approach.
- [40] Firstly, the duty of the court at this stage is not to determine whether the words are defamatory, but rather, whether the words are capable of bearing the meanings as alleged (para 14, ***Khemlani Mart***)

- [41] Secondly, the standard of assessment in deciding whether words are capable of bearing a defamatory meaning should be one of reasonableness (paras 16 and 17; **Jones v Skelton** [1963] 1 W.L.R. 1362; **Mapp**; **Gillick v British Broadcasting Corporation** [1996] E.M.L.R. 267), that is, whether the words are ‘reasonably’ capable of conveying the meaning ascribed to them.
- [42] Thirdly, relying on the authorities of **Charleston v News Group Newspaper Ltd** [1995] 3 All ER 313 and **English and Scottish Co-operative Property Mortgage and Investment Society v Odham’s Press** [1940] 1 K.B. 440, though the court must take into account the headline of the publication, this must not be done in isolation. All the words of the publication and the context within which they are used must be considered. So too, in looking at the text of the publication, the court must not take the meaning of any particular word in isolation, but must look at the overall meaning conveyed by the words taken collectively. This is so as the words and context of the text may very well neutralize the defamatory effect of a particular word when taken by itself. [paras. 38-41]
- [43] From the foregoing, the role of the court at this stage, is to delimit, from the meanings attributed by the claimant, those that a reasonable and ordinary reader could have gleaned from the 1st defendant’s article. In doing so, the court is to look at the headline and text of the article as a whole, not singling out words that may or may by themselves carry a defamatory meaning. The pertinent question “is it possible that an ordinary and reasonable reader of the article would take the words used in the article in their natural and ordinary meaning, or by innuendo, as imputing any of the defamatory meanings attributed to them by the claimant?” The natural and ordinary meaning of the words includes that which is not explicitly stated, but which can be inferred by the context and way in which the words have been stated, but which does not require special knowledge. Whether words are capable of meaning by innuendo depends on whether with the knowledge of special facts (as pleaded), individuals would take the words used as defamatory of the claimant (**Lewis v Daily Telegraph**). The court is not here concerned with any possible defences.

Are the words used capable of bearing the meanings attributed to them by the claimant in their natural and ordinary meaning

- [44] The words used in the headline “[f]emale cop under fire for ‘ordering’ breastfeeding mom out of the station’ does in my view create a sting that imputes that the ‘female cop’ did something wrong. However, what is important is the overall meaning that the text along with the headline conveys. The 1st paragraph of the article gives a synopsis of what the entire report is about. The use of the word ‘reportedly’ makes clear that what is being reported are allegations. Essentially, a mother was ‘reportedly ordered out of the halfway tree police station by a female cop for attempting to breastfeed her baby whilst at the facility. These actions according to loop had brought the Jamaica Constabulary Force (JCF) back under scrutiny for the second time for the actions of one of its members within a matter of days.
- [45] The article went on to outline that the source of the allegations was an alleged eyewitness who had tweeted the details of the incident on twitter, and who had been so moved by what had happened that she sought to allow the mom to feed her ‘starving baby’ in her car, ‘in some comfort and dignity’. The eyewitness had stated on twitter that the mother had been waiting to report a matter when her baby started crying prior to the incident. The authors of the article then went on to outline the reactions from persons on social media who were described as being concerned and having labelled the act as ‘a grossly ‘unmotherly’ act’’. One person stated that the act was a very uncaring one, made worse by the fact that it was a female officer. It was reported that persons were also asking questions about the customer service stance of the police force whose motto is ‘to serve, protect and reassure’. The response of social media users was described as ‘widespread condemnation’ which ‘even attracted’ the attention of the Commissioner of Police who tweeted that the matter was the subject of an ongoing investigation. This, according to loop was not enough to quell the anger of some members of the public.

[46] The following is clear:

- i. Although the name of the police station was stated, the name of the claimant and her rank were not identified. Nor was the time of the day and day of week. There was no indication, as stated by the claimant in her amended particulars, that there were only two female officers on duty in the guardroom at the time. There are simply no other facts identifying the claimant to the public in general.
- ii. The matters stated in the article were allegations made not by loop but by an alleged eyewitness, who publicized what she saw on twitter. The claimant has not challenged this assertion, nor has she materially challenged the veracity of the eyewitness' account. As pointed out by the defendant, she has only denied that the 'breastfeeding mom' was not waiting to report a matter, and asserted that she was her relative.
- iii. The descriptions and criticisms of the 'act' were those of twitter users and not those of Loop. The claimant has not disputed this.
- iv. The matter had already gained the attention of the police commissioner and was the subject of an ongoing investigation prior to Loop's article.

[47] In my view, the meaning that an ordinary and reasonable user would take from the reading the article at the time it was published is that a **'female cop'** at the halfway tree police station ordered a mom who was breastfeeding her baby out of the station, and that these actions have resulted in a public outcry on twitter by persons who consider the act to be 'unmotherly' and not in keeping with good customer service standards by the JCF. The outcry was so bad it prompted an investigation by the police commissioner. Although the word 'reportedly' was used, which means the speaker does not necessarily believe the information is true (Oxford University Press, online dictionary, Lexico.com, 2019), as well as the term 'alleged eyewitness' (imputing that the author was not sure the person was truly an eyewitness), the way in which the article was framed, and the great reliance placed

on the alleged eyewitness' testimony, gives the impression that the matters stated therein are true. So too does the reference to the investigation by the police. I believe that whether this is actually true, particularly in light of the fact that the claimant has not substantially denied the matters stated in the article, is a matter to be dealt with in respect of the defence of truth at trial. The court is not here concerned with the possible defences.

- [48] The claimant has attributed several meanings, she contends, the words used in the article bore and were capable of bearing in their natural and ordinary meaning and/or by way of innuendo. However, the 1st defendant has argued that the impugned words could not be capable of bearing the meanings alleged, whether by their natural and ordinary meaning, by inference or by innuendo, as the words in the article are not capable of identifying the claimant. Further the 1st defendant did not publish the claimant's name, rank or service number, and did not even know the identity of the claimant at the material time. The words used, it is alleged, did not refer to the claimant, nor did they seek to do so.
- [49] The claimant, in relation to this issue, has argued that, for the purposes of this application it is not necessary for the court to deal with the question of whether the words are capable of identifying the claimant.
- [50] The defendant has submitted that, for the tort of defamation to be made out, the claimant must show that (1) the statement complained of was defamatory; (2) the statement referred to the claimant; and (3) the statement was published. The task before the court is to determine whether the words are capable of bearing the meanings attributed for the purposes of establishing whether the words are capable of being found defamatory at trial. If the words are prima facie not capable of referring to the claimant, they could not be found to be defamatory, and a trial would serve no useful purpose. All the meanings attributed by the claimant contain references to the 'claimant' personally and her actions, or some imputation on her personal character. Therefore, of necessity, to determine whether the statements

are capable of bearing the defamatory meanings attributed to them, it must also be determined whether the statement is capable of referring to the claimant.

[51] Whilst the court accepts that it is not required that the claimant be named in the article, and that it matters not what the intention of the defendant was in publishing the article, I am aware as stated by the defendant that there are no words in the article that would sufficiently identify the claimant to the ordinary and reasonable user. It bears repeating that claimant's name and rank were not identified. Neither were the time of day nor day of the week the incident occurred. There was no indication that she was only one of two female officers on duty in the guardroom at the time. So that, the public would have no way of identifying the claimant as the 'female cop' in question. There are simply no other facts outlined in the article identifying the claimant to the public in general. As it relates to her fellow colleagues across the island who may have known where she is stationed, I would also venture to say that unless those persons had additional information about the claimant or were informed of the incident by some other means, there was nothing in the article that would cause them to believe or know that the claimant was the one involved. The lack of information about the time of day and day of week would make it difficult to pinpoint which female cop was being spoken about, particularly in light of the claimant's pleadings which intimate that, although only two female cops were on duty at the time, there may well be other female cops who work at the station. However, the application in my view, does not end there.

Are the words used capable of bearing the meanings attributed by way of innuendo

[52] I am, however, of the view that some of the words are capable of bearing a defamatory meaning by way of innuendo, if the claimant proves at trial that the words are untrue, as well as extrinsic facts to show that certain readers had 'special knowledge' of the claimant which might lead him to attribute a meaning to the words not apparent to those who do not have that knowledge' [**Lewis v Daily Telegraph**, pg. 258]. In this respect, I take note of and agree with the 1st defendant's submissions:

“If the court disagrees with any or all of the 1st defendant’s submission and finds that some of the words are capable of bearing defamatory meanings, the 1st defendant contends that the party’s will still need to lead evidence at a trial to determine the context in which the words were used of the unidentified police woman and further whether the claimant was capable of being identified from the words published or whether they were understood to refer to her.”

The claimant’s actions were unethical, improper and inappropriate

- [53] None of the words used explicitly mean or could infer that the cop’s actions were unethical. ‘Unethical’ is defined by the Oxford English Dictionary (online) as ‘not morally correct. I agree with the defendant that no issue as to morality was raised. ‘Improper’ means “not in accordance with accepted standards, especially of morality or honesty” and “lacking in modesty or decency”; and inappropriate means “not suitable or proper in the circumstances” (Oxford University Press, online dictionary, Lexico.com, 2019).
- [54] The defendant has argued that nothing of the sort was raised, as the impugned actions raised a debate, and people will differ on whether the actions were appropriate or inappropriate. It seems to me that a debate was not raised, as the article gave reactions only of persons who disapproved of the cop’s actions, I do agree that the words published were not capable of raising any question as to the morality or decency of the claimant’s actions, much less giving any conclusion as to same. I am not aware of any clear cut standard of decency or morality concerning breastfeeding in public in Jamaica. A question I think was raised as to the appropriateness of the cop’s actions in respect of her customer service skills as an officer.

The Claimant's actions have humiliated and embarrassed the members of the Jamaica Constabulary Force;

- [55] There are no words in the article to indicate this is so. The question raised in respect of the force had to do with its customer service stance.

The Claimant is not a fit and proper person to be a Police Office [sic] and by extension a member of the Jamaica Constabulary Force

- [56] Again, the words used are not capable of bearing such a meaning. The article questions the customer service stance of the JCF. The act of a police officer displaying poor customer service in a single incident, one that is not so grave as in the circumstances of this case, could hardly be considered by a reasonable and ordinary man as that officer being unfit to be in the force. This is not minimizing the importance of customer service in the guard room of a police station, the first place the customer arrives at and interfaces with members of the JCF.

The Claimant cannot be entrusted to carry out the mandate of the Jamaica Constabulary Force whose motto is to 'serve, protect and reassure';

- [57] No ordinary and reasonable person, in my view, would possibly think that an act of poor customer service by a police officer means that that officer cannot be entrusted to 'serve, and protect, similarly 'to reassure.'

The Claimant is an untrustworthy person

- [58] There is absolutely nothing in the article to suggest or imply that the claimant or the female cop is untrustworthy. 'Trustworthy' is an adjective which describes a person who is "able to be relied on as honest or truthful" (Oxford University Press, online dictionary, Lexico.com, 2019). Poor customer service in the circumstances of this case, in my view has nothing to do with trustworthiness.

The Claimant is not a fit and proper person to be a mother."

[59] The relevant words are that the act of the female cop was an ‘unmotherly act’. ‘Unmotherly’ is defined as “not having or showing the affectionate feelings associated with a mother” (Oxford University Press, online dictionary, Lexico.com, 2019). Such an assertion in my view simply means what it says. The act itself was unmotherly. Even if it were to be said that the female cop had acted unmotherly, this would not in my view, lead an ordinary and reasonable person to glean that she is not fit to be a mother at all. The inference could only be that during this single incident she did not display the characteristics of a mother, such as care and understanding. I agree with the defendant that there is nothing in the article to indicate that the claimant is **generally** known to be ‘unmotherly’ by nature.

The Claimant behaved in an unprofessional matter [sic] which was unbecoming of any member of the Jamaica Constabulary Force; and

The Claimant’s actions warrant disciplinary actions to be taken by the Commissioner of Police and the Police Services Commission;

[60] This meaning, in my view is capable of being attributed to the words used in the article. The criticism as to the customer service stance of the JCF and the juxtaposition of the actions of the female cop to those of the officer in the other incident mentioned, seemed to draw a parallel or point out a trend of poor customer service in the police force. The tone of the article is that such poor service is unbecoming of officers in the police force. There was no variation in the views of the twitter users that were published in the article.

[61] That the words used show that the claimant’s actions warrant disciplinary action is not so clear cut. Outside of the commissioner’s statement that the matter was being investigated there is nothing in the article that suggests the female cop should be punished. The commissioner did not indicate the stance of the force as to the whether or not the behaviour of the female cop was unprofessional or that it breached any accepted standard or rule of the force. However, since the matter was stated to be the subject of an investigation, it may be inferred that the actions

could warrant disciplinary action. I would therefore leave it open to the tribunal of fact to decide whether this was indeed so.

[62] In my view the words used are not, in their ordinary and natural meaning, capable of bearing the meanings attributed to them. However, those words, in my view, are capable of bearing two (2) of the meanings attributed by way of innuendo, once the claimant is able to prove the special facts relied on, to show that (1) persons who have special knowledge of her could identify her from the article and (2) that the words complained of are untrue.

[63] I find that three of the meanings outlined in the Particulars of Claim are capable of being attributed to the words used in the article. These are:

- i. The claimant's actions were inappropriate.
- ii. The Claimant behaved in an unprofessional matter [sic] which was unbecoming of any member of the Jamaica Constabulary Force; and
- iii. The Claimant's actions warrant disciplinary actions to be taken by the Commissioner of Police and the Police Services Commission.

CONCLUSION

[64] My task is not to determine whether the actual meaning of the words alleged is defamatory but to determine whether the words are capable of bearing the meanings alleged. It seems to me that there are triable issues which ought not to be determined on a preliminary consideration. It is for the triers of fact to determine whether the words complained of are reasonably capable of being understood to refer to the claimant and whether they in fact refer to her. At the trial the claimant will have to place before the court evidence capable on a balance of probability, of establishing this. This ruling is only in relation to whether the words are capable of bearing the meaning alleged.

RULING

- (1) The application is granted.
- (2) The matter proceeds to trial providing that the applicant places before the court within 28 days' sufficient material to establish that the words complained of are reasonably capable of being understood to refer to the claimant and in fact refer to her.
- (3) Matter referred to mediation. Mediation to be completed and a report submitted within 90 days of today's date.
- (4) Case Management Conference fixed for July 14, 2020 at 12 noon for 1 hour.
- (5) Leave to appeal granted to both applicant and respondent.
- (6) Applicants attorney to prepare, file and serve orders herein.