



[2022] JMSC Civ 1

**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA**

**IN THE CIVIL DIVISION**

**CLAIM NO. 2017 HCV 01940**

<b>BETWEEN</b>	<b>AINSLEY LOWE</b>	<b>CLAIMANT</b>
<b>AND</b>	<b>MICHAEL RICKETTS</b>	<b>DEFENDANT</b>

**IN CHAMBERS**

**Harrington McDermott instructed by Patterson Mair Hamilton Attorneys-at-law for the Claimant**

**Jeromha Crossbourne instructed by Scott Bhoorasingh & Bonnick Attorneys-at-law for the Defendant**

**Heard: December 13 & 15, 2021 and January 12, 2022**

***Assessment of Damages – Defamation – malice- aggravated damages – exemplary damages***

**MOTT TULLOCH-REID, J (Ag.)**

## **BACKGROUND**

[1] On February 28, 2017 the Defendant, who was a guest on Sports Grill, a sports programme which was being hosted by Patrick Anderson on Hitz92FM and on <http://radiohitz92fm.com/live.php>, said the following words of the Claimant

*“This gentleman aligned himself with a club called Spartan and within two (2) years Spartan went into absolute oblivion – it never existed anymore. He came to Central Clarendon and took on another club that languished at the bottom of the premier league until they virtually fell apart.*

*Everywhere in Clarendon I turn I hear about this man's unacceptable sexuality, everywhere I turn."*

- [2] The Claimant, through his attorneys at all, requested that an apology be issued and the statement be retracted. The Claimant says none being given, he filed the claim against the Defendant. The Defendant did not respond to the claim and the matter came before me for the damage caused to the Claimant as a consequence of the defamatory words spoken of him by the Defendant to be assessed.
- [3] No defence having been filed, the Defendant has admitted that he is liable for the defamatory words. His evidence that is before the court as contained in his witness statement filed on July 8, 2021 is to show to the court that when he spoke the words he was not motivated by malice. This line of argument is being put forward in an attempt to reduce any damages which the Defendant will be ordered to pay.
- [4] The Claimant claims General Damages in the amount of \$17M, Aggravated Damages of \$1.5M and Exemplary Damages of \$1.5M. The Defendant on the other hand has submitted that no award for Aggravated or Exemplary Damages should be made and that an award of \$2.5M would be sufficient to compensate the Defendant for any loss he suffered as a result of the words spoken about him. Counsel for the Claimant and Defendant have relied on several cases, which I will consider later in the judgment, in support of their respective submissions.

### **The Claimant's case**

- [5] The Claimant in his pleadings and in his witness statement indicated that the words spoken by the Defendant, in their natural and ordinary meaning, were understood to mean that the Claimant

- i. "is a homosexual man;*
- ii. engages in deviant illegal sexual conduct;*

- iii. *is responsible for the alleged demise of the Spartan Athletic Football Club;*
- iv. *is an incompetent football administrator and a hopeless leader who cannot successfully manage or operate a football club;*
- v. *is of such a deviant nature that young men aspiring to play football ought not to be around him.”*

[6] The Claimant's evidence is that the words were spoken maliciously and deliberately by the Defendant with a view to damage his reputation as a prominent businessman and member of the football community, in particular as the owner of Sporting Central Football Academy in the Clarendon Football Association ("CFA"). He believes the statement was made about him because he was contesting an election for presidency of the CFA which resulted in a lot of conflict coming to the fore in February 2016 when he challenged the constitutionality of a Notice for the Annual General Meeting for the CFA which he believed was short-served. It was then that the once friendly relationship he had with the Defendant broke down and some degree of animosity developed between them.

[7] He says there is no truth in the statements made by the Defendant about him and that since the statements were made he has felt unsafe and has had a heightened sense of security consciousness. Mr Lowe says he feels unsafe because Jamaica is generally speaking a homophobic society. He says because Mr Ricketts is now the President of the Jamaica Football Federation, people in football in general do not want anything to do with him. He has been emotionally stressed by the entire situation, he has been unable to visit his elderly parents in Clarendon because of his unwillingness to travel to Clarendon, he has not attended football matches in Clarendon except for those that take place at his own field as he feels a relative sense of safety while at that field. He also says that as a result of the publication, the General Manager who was to run the club took the decision not to continue, he has had several departures of talent from the club which resulted in its

relegation in the 2017-2018 season. He said prior to the publication his club was doing well and was well regarded in the football community as it produced top players.

- [8] In his further Witness Statement filed on January 3, 2020, he said he has handed over the operations of Sporting Central Academy to someone else although he continues to own the club. He made this decision because he continued to be ostracized by the football community and his inability to be hands-on because of his concerns about visiting and interacting in the parish of Clarendon. He says persons have become withdrawn and guarded in their interactions with him and their behaviour have cooled towards him. The fact that he had to give up the hands-on operation of the club is a source of great distress and disappointment to him.
- [9] In his cross-examination, he denies that the interviewer asked the Defendant about the personal conflict which was between him and the Claimant but said instead that the Defendant was asked to comment about the rerunning of the elections for presidency of the CFA. However, Ms Crossbourne took him back to paragraph 7 of his witness statement where he had stated that the Defendant was asked by the host to comment on the alleged conflict that existed between himself and the Claimant concerning the CFA. Mr Lowe responded by saying that the conflict was between him and the incumbent president and when it was put to him that Mr Ricketts was asked about the reason for the conflict between him and the Claimant, he responded that he did not agree. He said the host asked questions about CFA matters and that instead of answering that question, the Defendant presented the matter as a personal one as between the parties and not the conflict that pertained to the constitutionality of a previously run election.
- [10] The Claimant denied that the relationship between the parties broke down when the Defendant had contacted him about reports that had been made to him about him (the Claimant) being a homosexual. The Claimant said that the first time any remarks were made to him about him being a homosexual was when the

Defendant called him one, when he told him he would be running against him for the presidency of the CFA. That is when he said their relationship started to deteriorate.

[11] Mr Richard Hines was then called to the stand as a witness for the Claimant. His Witness Statement filed on January 3, 2020 was allowed to stand as his evidence in chief. His evidence is that he has been friends with the Claimant since 1976 when they met at high school. He knows football to be one of the Claimant's passions. He has direct knowledge of the evidence he is giving because he has travelled to Clarendon with the Claimant and has volunteered his management, logistics and finance skills to Sporting Central Academy because of his friendship with the Claimant. He said that the parties got along quite well until the Claimant decided to challenge the Defendant for the presidency of the CFA. When this happened there was considerable tension which became apparent in the football circles in Clarendon and throughout Jamaica. He did not hear the words spoken by the Defendant on the radio show but a clip was sent to him via WhatsApp and he listened to it. He was shocked and embarrassed for his friend when the Defendant spoke of his "*unacceptable sexuality*". He says he understood the Defendant to be saying that the Claimant was a homosexual who engaged in deviant behaviour and who should not be among the youth and young boys aspiring to become footballers and members of the football club managed by the Claimant. The comments hurt him because he knew they were untrue and they appeared to be malicious because of the current climate and tension in the election.

[12] He said when he travelled with the Claimant to Clarendon after the comments were made, his experience was not the same. The Claimant only went to his club's field, the atmosphere changed considerably and the attitude towards the Claimant was markedly different. This, he says was the case, even though nobody said anything to the Claimant about the statements made on the radio show to the Claimant in his presence. He says he knows that the Claimant wound down his interaction

and involvement in football in Clarendon as a result of the “*unfortunate situation*” and lessened the visits he made to his elderly parents.

Mr Hines was not cross-examined.

### **The Defendant’s evidence**

- [13] Mr Rickett’s evidence is that in or around 2014/2015 when he was president of the CFA, he started to hear information from several sources about Mr Lowe and that he also received a complaint about Mr Lowe. He approached Mr Lowe, who at the time of receiving the complaint, was his friend and informed him of what he had heard. Mr Lowe was offended and said that “*that has nothing to do with football*”. He (Lowe) then reported the Defendant to the Jamaica Football Federation saying that he (Ricketts) was interfering in his personal life. He says he does not hold a grudge against the Claimant but that since he shared with Mr Lowe what he was hearing about him, their relationship had cooled. He said that although the Claimant had challenged the legitimacy of his presidency, when there was rerun of the elections he was “*overwhelmingly successful against him.*”
- [14] He remembers the interview and the words spoken which are the subject of this claim. He regrets the remarks, apologises in his evidence to Mr Lowe, recognises that the comments were inappropriate and caused him pain. He said that he immediately retracted the statements made by him about the Claimant and that he had appeared on the same programme the following week where he again apologised. He indicates that he had not set out to hurt Mr Lowe and was seeking to explain what he understood the reason for the personal conflict between himself and the Claimant to be. He had not intended to be malicious and he was not attempting to damage the Claimant’s reputation. He does not agree that the words he spoke were capable of being understood to mean that the Claimant engaged in deviant, illegal sexual conduct, or that the Claimant is of such a deviant nature that young men aspiring to play football ought not to be around him or that the words imputed criminal conduct on the part of the Claimant.

- [15] Mr Ricketts says that Sporting Central had been doing well in the Premier League prior to Mr Lowe taking control of it. When Mr Lowe took control of the team, it started to do badly and was relegated from the National Premier League. He said that was in 2014-2015 prior to the statements being made by him. He explains the departure of the talent from the Claimant's club due to the poor performance of the club. He said the Claimant had been experiencing reduced popularity because of what was being said about him in the football community and that was long before the interview aired.
- [16] The Defendant says he sees the Claimant frequently in the parish as he operates a business there and that the business was open after the interview had aired. He had not ignored the Claimant's claim but had thought the Supreme Court procedure was similar to that of the Parish Court and had anticipated obtaining a date on which he was to attend Court.
- [17] In cross-examination Mr Ricketts said that he had not seen the report made to the JFF by the Claimant to the effect that he (Ricketts) was interfering in his personal life. He said he was not sure that the report still existed but one was made as it was based on the report that he and the Claimant were summoned to a meeting with the leadership of the JFF. He agreed that the Claimant challenged the constitutionality of the first election and that the JFF said there should be a rerun. The interview was after the first election but before the elections were rerun. He agreed with Mr McDermott that up until the point the statements were made, the interview had had nothing to do with whether Mr Lowe or he was the better administrator. He said that Mr Lowe's unacceptable sexual behaviour could impact whether he was accepted as, presumably, the president of the CFA. He denied saying that the Claimant was gay as he would not know that and was therefore not seeking to malign him. He denies ever using the word homosexual in reference to the Claimant. He tried in the interview to be guarded in the words he used and that is why he said "unacceptable sexual behaviour" because he was trying to protect Mr Lowe's image.

- [18] He did not agree with Mr McDermott that the interview would have been widely listened to at the time because he was, at the time, just the president of CFA and the Chairman of the JFF South Central Federation. He recalled the interviewer telling him to focus on the issues and that the interviewer insisted that he spoke to him about football issues. He agreed that at no time in the interview did he say the statements made by him to the interviewer were false. He said he was almost sure he had apologised on the radio programme but that he did not have any proof to say that he had done so. He said it was not dangerous to repeat allegations he had heard when he said they were allegations. He also indicated in cross-examination that he had given his attorneys the court documents, with which he was served.
- [19] He agreed that he knows sex between men to be illegal in Jamaica and that it is likely that any suggestion that a football administrator is a homosexual would likely cause young men to shun that football administrator. He however disagreed that when he made the comment people would think the Claimant was a homosexual and that he had not tarnished the Claimant's reputation.

### **Submissions and Analysis**

- [20] Section 24 of the **Defamation Act** provides that

*"In determining the amount of damages to be awarded in any defamation proceedings, the court shall ensure that there is an appropriate and rational relationship between the harm sustained by the claimant and the amount of damages awarded."*

- [21] Section 25 provides as follows

*"(1) Evidence is admissible on behalf of the defendant, in mitigation of damages for the publication of defamatory matter, that –*

- (a) the claimant has suffered no harm and is unlikely to suffer harm;*
- (b) the defendant has made an apology to the claimant about the publication of the defamatory matter pursuant to section 14*
- (c) the defendant has published a correction of the defamatory matter*



(d) ...”

[22] I have not set out the other factors in mitigation of damages set out in Section 25 of the **Defamation Act** because they are not relevant to the matter at hand. The Defendant in his evidence has intimated that the Claimant has suffered no harm because since the words were spoken he has opened a business in Clarendon, he sees the Claimant in Clarendon on occasion and the deterioration of his club had happened prior to the words being spoken. He has indicated that he retracted the statement, apologised to the Claimant on the same programme one week later and is willing to apologise again. He has however not brought any proof before to support his oral evidence that the statement was retracted and an apology made. The Claimant in his evidence has said there has been no apology and if the Defendant is to rebut that statement then he is required to bring proof of that apology. I believe that proof of an apology and retraction could be easily obtained if it exists from Hitz92FM since he said he apologised on the radio programme.

[23] Mr McDermott and Ms Crossbourne brought to my attention to case of **Jamaica Observer Limited v Orville Mattis [2011] JMCA Civ 13** wherein Harris JA said at paragraph 25 that the purpose of an award of damages was threefold:

- a. *“To console for personal distress and hurt*
- b. *To provide reparation for harm done to one’s reputation; and*
- c. *To vindicate one’s reputation.”*

[24] In defamation cases, damages are at large. I am however guided by my brother the Honourable Mr Justice L Pusey (Ag) as he then was in the case of **Collin Innis v Kingsley Thomas CL 2003 I-053 heard on April 19 and 20, 2005** wherein at page 14 of his judgment he said that the court would consider the following factors in assessing damages:

1. *“The gravity of the libel*
2. *The standing of the claimant*
3. *The scope of the publication*

4. *The conduct of the defence and the defendant in the course of the litigation and at trial.*"

Counsel for both the Claimant and the Defendant have made their submissions under the same heads as set out by Pusey J. After each head is considered I will consider whether any award is to be made under the head aggravated and exemplary damages.

### **The Gravity of the defamation**

[25] In the **Mattis case** Harris JA quoted from the case **John v MGN Ltd [1997] QB 586** where at page 607 Sir Thomas Bingham MR stated that gravity of the libel is the most significant factor in assessing the appropriate damages for injury to reputation. The more closely the gravity of the libel touches the person's integrity, professional reputation, honour, courage, loyalty and the core attributes of his personality, the more serious it (libel) it is likely to be.

[26] Mr McDermott argues the defamatory statements were indeed quite grave as Jamaica is a homophobic society and persons who are labelled homosexual run the risk of being harmed. The Claimant has lived in fear since the statements were made about him. In addition, homosexuality is illegal in Jamaica and as such the Defendant when he uttered the words about the Claimant's unacceptable sexuality was suggesting that the Claimant was engaging in an unlawful act.

[27] Mr McDermott relies on the cases of **Percival James Patterson v Cliff Hughes and Nationwide News Network [2014] JMSC Civ 167**, **Dr Canute Thompson v Latoya Nugent [2019] JMSC Civ 2017 HCV 01210** decided January 18 and 31, 2019 and **John W Morris v Radio Jamaica Limited v Latoya Johnson [2020] JMSC Civ 170**. In all three cases, the claimants were accused of engaging in illegal activities. In the **Patterson case**, the former Prime Minister was said to have entered the island with monies exceeding USD10,000 and had not declared it as the law requires him to do. In the **Thompson case** the claimant was a Minister of Religion and Government of Jamaica representative who was said to be a sexual predator who used his position to prey on children. In the **John Morris**

**case** the claimant, who was a senior police officer, was said to be engaged in lotto scamming.

- [28] I agree with Mr McDermott that to insinuate that Jamaican man is a homosexual in the Jamaican environment will put a stain on his reputation and could put him in jeopardy of being harmed. I also agree with him that the statements would suggest that Mr Lowe was engaging in an illegal act as buggery is still against the law in Jamaica. The statements were therefore indeed quite grave.

### **The standing of the Claimant**

- [29] Ms Crossbourne argues that reliance should not be placed on the **Patterson case** or the **Thompson case** because the standing of those men in the community are not comparable to that of the Claimant in the case at bar. She also stated that the **John Morris case** was not comparable as the injuries which Morris suffered as a result of the statements made were more significant than those suffered by Mr Lowe. Morris' evidence was that as a result of the statement which was made about him he suffered great embarrassment, lost clients, suffered mental trauma, became withdrawn, was shunned and cursed by persons close to him. He was also unable to relate to his wife and children. Ms Crossbourne argues that Mr Lowe had no mental distress, he was not cursed by people and there is no evidence that he was unable to relate to close family members.

- [30] I agree with Ms Crossbourne that Mr Patterson and Mr Thompson are persons of higher social standing than Mr Lowe. I note however that in the **Patterson case**, the then Prime Minister offered a press release exonerating Mr Patterson. I note that there is no evidence before me that an apology was issued or the statement retracted or any statements made by the Defendant that his comment was false. That was also the case in the **Thompson** matter and to that extent I find the Thompson case comparable to the case before me. However, I am of the view that Dr Thompson held a higher social standing than does Mr Lowe given his reach

as a Minister of Religion, university lecturer and at the time, a representative on behalf of the Government of Jamaica.

### **The scope of the publication**

[31] I should also say that that like Dr Thompson, the defamatory remarks were made on the internet, on Facebook. Like the **Morris case** the statements were broadcast on the radio and on the radio's website. By virtue of its connection to the internet, the scope of the publication was wide so that a large number of persons would have had access to the interview and would have heard the words spoken by the Defendant of the Claimant. Ms Crossbourne, however, states that the sole publication of the words is not comparable to cases where as in the **Patterson case** discussions continued in the days following or in the **Morris case** where the statement was not retracted until days later or the **Thompson case** where there was no retraction at all. I agree with her in this regard also. However, the use of the internet is far-reaching so although there was only one publication of the statement by the Defendant, because one of the medium which was used to broadcast the statement is far-reaching, I have to conclude that the scope of the publication was wide.

### **The conduct of the defence and the defendant in litigation**

[32] Section 14 of the **Defamation Act** provides that

*“In any action for defamation, the defendant, in mitigation of damages, may make, or offer, an apology to the claimant for the defamation –*

*(a) before the commencement of the action;*

*(b) where the action was commenced before there was an opportunity of making or offering the apology, as soon after the commencement of the action as he had an opportunity of doing so.”*

[33] I note that the Defendant in his witness statement offered an apology and in that evidence and while also giving evidence under cross-examination, he indicated that he was willing to apologise again. This was in excess of 4 years subsequent

to the words being uttered. I say that in the context of there being no proof of any apology being given prior to that date. In the **Mattis case** Panton P at paragraphs 16 and 17 of the judgment had this to say

*“Persons who publish libellous statements would do well to publish an appropriate apology in an equally prominent manner so soon as they become aware of their tortuous conduct. They should not await the prompting of the injured party.*

*It takes years to build a good name and reputation. On the other hand, it takes only a few reckless lines in a newspaper to destroy or seriously damage that name or reputation. The damage usually remains for a good while.”*

[34] I also note that while giving his evidence under cross-examination, the Defendant although saying he was willing to apologise, was also saying that he did not make defamatory comments about the Claimant because he never said that Mr Lowe was a homosexual. In fact, he spoke to *unacceptable sexuality* in a way which was seeming to suggest that he meant that Mr Lowe was promiscuous. I am almost certain that in the Jamaican context a man’s promiscuity would not be frowned upon and I found Mr Ricketts to be quite disingenuous when he tried to spin the meaning of the words he said, in that way.

### **Malice and Aggravated Damages**

[35] The authors of **Gatley on Libel and Slander 8<sup>th</sup> edition** have indicated that when damages are at large, the judge of fact

*“can take into account the motives and conduct of the defendant where they aggravate the injury done to the plaintiff. There may be malevolence or spite or the manner of committing the wrong may be such as to injure the plaintiff’s proper feelings of dignity and pride. These are matters which the [judge] can take into account in assessing the appropriate compensation.”*

Ms Crossbourne in arguing against an award for aggravated damages said in paragraph 36 (i) of her further written submissions said

*“This is not a case of a Defendant making the well-planned decision (as in the case of a newspaper publication) to write an article or to give a prepared*

*speech about the Claimant. This is an 'in the moment' radio interview where he is addressing his personal issues with the Claimant."*

[36] I agree that the Defendant was responding in a live interview, but I do not accept that if questions were being asked of him about the conflict between him and the Claimant, would mean that issues concerning the Claimant's *unacceptable sexuality* had to be raised. That to my mind was irrelevant especially since he was not saying that the Claimant was being inappropriate with him. The issue just comes up out of the blue after he speaks to the mismanagement of the Claimant of his football clubs. I would go further to say that given the evidence that was before me I believe the interviewer was more interested in the conflict between the parties as it pertained to the elections and not so much any conflict that they would have between themselves. It would be unusual for a Sports station to be interested in personal conflicts between grown men that have nothing to do with sports.

[37] Professor Gilbert Kodilinye in the 5<sup>th</sup> edition of **Commonwealth Caribbean Tort Law at page 309** defines malice as

*"Any indirect motive other than a sense of duty to publish the material complained of and, in essence, it amounts to making use of the occasion for some improper purpose..."*

Malice can be extrinsic or intrinsic. Intrinsic malice is found in the words themselves. Extrinsic malice is found in external circumstances not connected with the publication itself. If the defendant knew at the time he published the words that they were false or was indifferent to their truth or falsity, then malice is extrinsic. If he merely uttered the words in a careless manner that is not evidence of malice but if there is proof of bad relations between the claimant and the defendant before the making of the statement, that may be proof of extrinsic malice. I am of the view that when he uttered the words about the Claimant, the Defendant was motivated by malice. The words themselves given in that context are to my mind malicious and that coupled with what was going on at the time between the parties with respect to the breakdown of their once friendly

relationship leads me to be of the view that the Defendant when he uttered the words did not do so out of a sense of duty but acted for an improper purpose.

### **Quantum of Damages**

[38] The cases the Claimant relies range from a high of \$15, 929,972.15 (**Patterson case**) to a low of \$10,312,747.87 (**Morris case**) when the CPI for November 2021 that being 114.96 is used.

[39] Ms Crossbourne offers more conservative cases to the Court for consideration. She relies on the **Mattis case**. In that case, the defendant published in its newspaper that the police officer had committed a criminal offence. As a result of the publication, Mattis' girlfriend left him, he had not been promoted at the pace he thought he would be promoted, he was ridiculed by his co-workers and he became withdrawn. The court awarded him \$1M which today updates to \$1.77M.

[40] The Defendant also relies on the case of **E C Karl Blythe v Gleaner Company Limited 2004 HCV 01671** judgment delivered on May 12, 2011 by Roy Anderson J.

[41] In that case the claimant sued the defendant for defamatory words published about the claimant to the extent that the claimant had borrowed monies from the National Housing Development Corporation ("NHDC") but had failed to repay it. The Claimant was a politician and medical doctor. He had also been Minister of Housing and was said to have borrowed the money at the time when he had ministerial responsibility for the NHDC. Dr Blythe's evidence is that the publication caused him to be perceived in a negative light and his reputation was impacted negatively. Justice Roy Anderson in coming to his decision to award \$6M to the claimant took into account the gravity of the libellous imputation as well as the mitigating factors supplied by what he held to be the "*generally co-operative behaviour of the Defendant.*" The sum updates to \$10.531M.

## Conclusion

- [42] The retort of children when unkind words are said to them is often “*Sticks and stones may break my bones but words can never hurt me*”. This statement is untrue. Words hurt. Warren Buffett has said that “*it takes 20 years to build a reputation and five minutes to ruin it.*” Sometimes the reputation once ruined can never be rebuilt. Words once spoken can never be recovered which is why Thumper’s mother in the beloved Disney Classic, Bambi, reminded him “*If you can’t say something nice, don’t say nothing (sic) at all*”, after he had made a disparaging remark about Bambi.
- [43] One of the fundamental rights and freedoms protected by the **Constitution of Jamaica** through the **Charter of Fundamental Rights and Freedoms** is the right to freedom of expression. Freedoms come with responsibility and one of the responsibilities associated with the freedom of expression is the responsibility not to defame the good character of another person. Where there is proof that the defamatory remarks have caused damage to an individual, the individual who has been defamed should be adequately compensated.
- [44] The Defendant’s failure to file a defence is an admission that he is liable for the defamatory remarks. Ms Crossbourne has in her submissions made it clear that the Defendant was not at the Assessment of Damages seeking to say otherwise. He has admitted that all the statements spoken with respect to the “*unacceptable sexuality*” of the Claimant and his management skills are defamatory. The Claimant is, on that basis, therefore entitled to damages. He can support his position by providing proof of his loss. He has indicated to the Court that he has been ostracised by members of the football fraternity, had fears that he would be physically harmed, was unable to be hands on with the club he owned and had suffered hurt feelings. Mr Hines’ evidence supports this position.
- [45] At paragraph 55 of **The Gleaner Company Limited and anor v Abrahams PC** decision, Lord Hoffman said



*“... damages must be sufficient to demonstrate to the public that the plaintiff’s reputation has been vindicated. Particularly if the defendant has not apologised and withdrawn the defamatory allegations, the award must show that they have been publicly proclaimed to have inflicted a serious injury. As Lord Hailsham of St Marylebone LC said in **Broome v Cassel & Co Ltd [1972] AC 1027, 1071**, the plaintiff “must be able to point to a sum awarded by a jury sufficient to convince a bystander of the baselessness of the charge.”*

- [46] The words spoken by the Defendant of the Claimant suggested that he was a homosexual. Homosexuality in Jamaica is frowned upon. In fact, it is against the law and by suggesting that the Claimant was engaging in homosexual acts, the Defendant was saying that the Claimant was committing an illegal act. To say that he mismanaged his clubs so that they ultimately failed meant that he was a bad manager and this would not attract talented footballers to his club. The statements made by the Defendant about the Claimant as made on the popular football programme Hitz92FM and on <http://radiohitz92fm.com/live.php>, undoubtedly caused damage to the Claimant’s reputation as a private citizen, his reputation as a businessman and member of the football society, his honour and to his core values and attributes.
- [47] As it relates to aggravated damages, the authorities suggest that an award for aggravated damages should be made only where the exceptional conduct test is satisfied. The test requires the court to focus on the defendant’s conduct and not the plaintiff’s injury to determine whether the defendant’s conduct would require that an award for damages under this head be made. I have already said that I believe that the Defendant was motivated by malice when he made the statements. I am also of the view that even during the trial of the matter although he agreed he defamed Mr Lowe he was also trying to excuse his conduct and tried to side step the obvious meaning of the words used in relation to Mr Lowe.
- [48] Exemplary damages are only to be made when the compensatory damages awarded are not sufficient to compensate the claimant for his loss and injury. In **Rookes v Barnard [1964] AC 1129, 1228 Lord Devlin said**

*“In a case in which exemplary damages are appropriate, a jury should be directed that if, but only if, the sum which they have in mind to award as compensation (which may, of course, be a sum aggravated by the way in which the defendant has behaved to the plaintiff) is inadequate to punish him for his outrageous conduct, to mark their disapproval of such conduct and to deter him from repeating it, then it can award some larger sum.”*

I do not believe, that given the sum that is being awarded for General Damages, that an additional punitive award should be made. The compensatory award is sufficient to punish Mr Rickett’s behaviour and hopefully remind him always that *it is foolish to belittle a neighbour; a person with good sense remains silent* (Proverbs 11:12 NLT).

**[49]** I now order as follows:

- a. The Defendant is to pay the Claimant, General Damages in the amount of \$8M and Aggravated Damages in the amount of \$1M.
- b. The Defendant is to issue a public apology to the Claimant on Hitz92FM and in one publication of the Sunday Gleaner on or before January 31, 2022. The wording of the apology is to be approved by the Claimant and his attorneys-at-law prior to its publication on Hitz92FM and in the Sunday Gleaner.
- c. No award is being made for interest to be payable on General Damages.
- d. The Defendant is to pay the Claimant costs in the claim. The costs are to be taxed, if not agreed.
- e. The Claimant’s attorneys-at-law are to file and serve the Formal Order.