[2026] JMSC Civ. 08

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. 2016HCV02177

BETWEEN	**MICHAEL CAUSWELL SNR.**	**1ST CLAIMANT**
AND	**MICHAEL CAUSWELL JNR.**	**2ND CLAIMANT**
AND	**DWIGHT CLACKEN**	**1ST DEFENDANT**
AND	**LMH PUBLISHING LIMITED**	**2ND DEFENDANT**
	(Matter discontinued against 2nd Defendant only)	

IN OPEN COURT

Mr. M. Maurice Manning, K.C. and Ms. Allyandra Thompson instructed by the Nunes Scholefield and DeLeon appeared for the Claimants

Mr. Dwight Clacken, the Defendant, appeared in person

Heard: March 3rd, 4th, 6th, 7th, 10th, 11th, May 14th 2025, April 30th, June 26th, 2025 and July 2nd, 31st,2025, April 17th, 2026

Civil Procedure and Practice – Defamation – Whether the publication contained defamatory material against the Claimant – Defence of Justification – Defence of fair comment – Defence of Qualified privilege – Assessment of Damages – General Damages – Aggravated Damages – Exemplary Damages – The Defamation Act 2013

HUTCHINSON SHELLY, J

INTRODUCTION

[1] The Claimants, Mr. Michael Causwell Snr. and Mr. Michael Causwell Jnr., instituted proceedings against the 1st Defendant, Mr. Dwight Clacken, and the 2nd Defendant, LMH Publishing Limited, seeking damages, including exemplary and aggravated damages, for libel arising from a non-fiction book entitled ***No Justice in Jamaica***, authored by the 1st Defendant. The Claimants allege that the book contains numerous defamatory statements concerning them and that its publication and distribution, both locally and internationally, caused serious injury to their reputations, resulting in substantial distress and embarrassment.

[2] The Claimants also seek an injunction restraining the Defendants, whether by themselves or through their agents, from publishing or distributing the book, in whole or in part, in any format, including print or electronic form, both locally and internationally.

BACKGROUND TO THE CLAIM

[3] The 1st Claimant has been engaged in the automotive industry for over 50 years. He formerly owned and operated Causwell Auto Company Ltd at 15 Arnold Road and operated a rust-proofing business with his brother. He and his brother Richard entered into a rust proofing business with the 1st Defendant, their cousin, who was the owner and operator of Equipment Management Limited ("EML"). Thereafter, rust-proofing became the principal business of EML. The allotment of the company shares was two thirds to the brothers and a third held by the 1st Defendant.

[4] The 1st Defendant is the author of the published book ***No Justice in Jamaica***, which recounts his business dealings with the Claimants through EML, his interaction with the Jamaican justice system and the impact of those experiences on his life and business.

[5] The 2nd Defendant, a publishing and distribution company, was responsible for the publication and distribution of ***No Justice in Jamaica***. The action was discontinued against them on the 29th of July 2017 following their apology.

The allegations against the 1st Defendant

[6] At paragraph 6 of the Particulars of Claim, the Claimants allege that certain statements authored and published by the 1st Defendant in his book, ***No Justice in Jamaica***, are defamatory of them:

At page 70: *"To add insult Michael started suggesting that we omit "GCT" on car services as others in competition were doing so. I objected; this exposed me as Managing Director to criminal liability."*

At page 71: *"On the first attempt to pay Kappa by instalments Michael suggested that we simply not pay them" (a creditor) …….. "Months later, an attempt was made by our parts manager to have Michael endorse a cheque to pay Kappa another instalment after more cars were sold. Again he objected and, without notifying Michael, I paid this final instalment" ...*

"Sometime later a group of New Zealanders from Robinson Motors apparently heard of us through Kappa – which was obviously happy that they were paid in full as we had verbally agreed, and had no inkling of Michael's plan to stiff them……"

At page 73: *"Soon the New Zealanders started calling me for payments because Michael was not paying over to them for the cars sold."*

At page 75: *"I became extremely concerned when it appeared that curious efforts were being made to clear these vehicles…….*

At one stage while attempting to sort out the accounts, Robinsons informed us that prices on the invoices were not the real prices but were lowered at Michael's request. On Michael's instructions, they had been shipping the cars to EML with invoices written for reduced values. These values were provided by Michael.

So in order to settle with them the invoice figures that should be used to tabulate the real costs were not the ones used for paying duties and clearing customs. This resulted in the parts manager hastily searching for and destroying some invoices to avoid being charged with a criminal offence."

At page 79: *"As Managing Director of EML, I had a job to do. I had to see the Company on the straight path. I had to preserve my reputation, protect my employees' reputations, and importantly, I had to lead by example. The whispers that emanated from among the staff about Michael's behavior were embarrassing……*

At page 80: *"One day Michael called me asking to have EML take over or guarantee responsibility of a bond or loan of **US$130,000** for a friend in New York whom we all knew…….*

*It was later that I discovered that this **US$130,000** was actually paid into Michael's account at Caribbean Trust to pay off one of his loans that was "called" by the lender. The beneficiary of the **US$130,000** therefore seemed to have been Michael and not his friend."*

At page 83: *"Meanwhile Basil Cunningham admitted in a meeting of the directors in July 2001 that Michael had been in financial trouble and that after my objections, he diverted some $18 million to Michael and his company Econocar Rentals …. I gathered from him that he made temporary adjustments and hinted that this was used only to permit the books for*

Michael as a poor performer to look better when seeking loans….

The reversal was never done, though, and at a later date Michael attempted to claim this manipulation was a legitimate transaction……

At page 97: *"After we had the 2002 financials examined by a Chartered Accountant, they turned out to be unaudited and tampered with. In countries where justice prevails, this is called "fraud."*

At page 101: *"At least $18 Million false payables were manipulated in favour of Michael and his company."*

At page 110: *"Meanwhile our efforts to prevent the plundering of assets outside of the ordinary course of business continued."*

At page 118: *"I assumed that renewal of the injunction would just be a formality as had been routine in the past….*

Instead, a most bizarre thing happened. In this Supreme Court hearing specifically to continue protecting these funds – the same funds that were exposed by Justice Anderson and protected subsequently by other Supreme Court Judges - suddenly became exposed, this time by Justice Marsh…

In any country where justice is readily available this would never happen, not without a subsequent investigation……

What really happened then? … I did believe someone had an urgent need for this ruling at that time; an urgent need for a large amount of money for the personal use of at least one of the partners….

Justice Marsh's action was ridiculous if not dishonest and I am quite sure that the partners knew this.

At page 114: *"The hearing also exposed the fact that Michael's son deliberately altered the 2001 comparison figures in the 2001 Financial Statement."*

At page 147: *"And why were some of the books that were definitely not the company books, presented aggressively as if they were genuinely those of the company."*

[7] The Claimants allege that the 1st Defendant acted with malice in publishing the defamatory statements and this conduct persisted notwithstanding written notice from their attorneys by letter dated the April 22nd, 2016, outlining the defamatory content prior to the book's launch and distribution.

[8] They further allege that the 1st Defendant published, launched and distributed the defamatory words and meanings falsely and maliciously, knowing them to be untrue.

DEFENCE

[9] In his Defence filed on July 20th, 2015, the 1st Defendant admits authorship and publication of the book. He denies that the impugned statements are defamatory and describes them as true, fair comment, made in good faith and without malice. He also asserts that the account concerns matters of public interest and is covered by qualified privilege.

[10] In addressing the statement at page 70 of the book, the 1st Defendant asserts that he informed the 1st Claimant of ongoing inquiries concerning the sale of used motor vehicles and the application of GCT. To which the 1st Claimant indicated that GCT previously imposed on other companies had been waived and the relevant legislation had not yet been gazetted. The 1st Defendant states that he thereafter

requested that the 1st Claimant remit the GCT component of vehicle sales by cheque.

[11] In respect of the complaint about page 71 of the book, the 1st Defendant said that Kappa sold used motor vehicles to EML for resale and the agreed post-sale payment arrangements were approved by both him and Richard Causwell. He further asserts that the directors subsequently decided to withdraw from the used car business and declined an offer from Robinson Motors to collaborate.

[12] The 1st Defendant contends that the contents of page 73 disclose that he had been informed by the New Zealand suppliers that their efforts to obtain payment or an accounting from the 1st Claimant had been unsuccessful. He formed the view that that EML had become liable for the debt, as the 1st Claimant acted as their agent in the transactions, albeit without formal authorization and the vehicles were imported under their licence. He alleges that the 1st Claimant refused to remit payment on the basis, the suppliers were indebted to him. He said that correspondence was exchanged about these sums between EML (himself) and the New Zealanders between January and September 1998.

[13] The 1st Defendant asserts that page 75 of the book merely addresses the reduction of the costs of the vehicles on the invoices at the 1st Claimant's request which he says was deliberately done to attract different duties at Customs. He asserted that the shipment and consignment of cars to EML occurred without his knowledge or approval. He agreed that he had informed Robinson Motors that EML had exited the used car business but subsequently discovered that the 1st Claimant was transacting business with them as EML's agent.

[14] In response to the complaint about the statement at page 79 of the book, the 1st Defendant denied any malice, asserting that the words complained of constituted fair comment.

[15] In addressing what was complained of as fraudulent conduct on the part of the 1st Claimant at page 80, the 1st Defendant maintained that EML had guaranteed a

loan for the 1st Claimant, which it largely had to repay due to non-payment, and he later discovered that the 1st Claimant had received the loan amount.

[16] The 1st Defendant contends that the statement at page 83 of the book is substantially true. He asserted that **Eighteen Million Dollars ($18,000,000.00)** was transferred from EML to Econocar Rentals Limited ("ERL") by Basil Cunningham, EML's auditor and accountant, who was later found by the Public Accountancy Board "PAB" to be grossly negligent, resulting in a six-month suspension and a fine. He explained that the 1st Claimant subsequently claimed that the transferred funds represented management fees owed by EML to ERL.

[17] The 1st Defendant denied that the statement at page 97 was false and asserted that EML's accounts had been tampered with as this was confirmed by a Chartered Accountant from the PAB who examined the financial records.

[18] In addressing pages 110 and 118, the 1st Defendant explained that he had made repeated court appearances and sought injunctive relief against EML to safeguard the company's assets. This included an appeal to the Privy Council following the discharge of an injunction barring the use of funds from the sale of a company asset.

[19] The 1st Defendant rejected the complaint by the 2nd Claimant about the contents of page 114 and insisted that the company's financial statements had been tampered by the 2nd Claimant, who had responsibility for the financial records, and had altered the comparative figures for 2001 in the 2002 financial statements.

[20] In respect of the statement at page 147, the 1st Defendant contended that the impugned words constituted criticism of the Jamaican judicial system and did not defame or refer to the 1st Claimant. He also stated that during the trial in ***Re Suite E505 2001 Equipment Limited Jamaica***, books were produced and identified as those of EML, some of which he, as Managing Director, did not recognize, as EML never utilized such records.

[21] He relied on the defences of truth, fair comment, qualified privilege, and statutory privilege. He described his book as addressing matters of public interest, including the impact of Jamaican companies on the economy, which underpins the Claimants' complaints.

[22] He maintained that he was entitled to express his opinions, to criticize the judicial system and to comment on perceived improprieties in litigation as well as the findings of the PAB against the Auditor.

[23] The 1st Defendant asserted that the impugned words were privileged and insisted that he had a social and moral duty to place the information before the public.

[24] He denied acting with malice or being motivated by any improper or indirect purpose, knowledge of falsity, or reckless disregard for the truth. He asserted that the grounds relied upon by the Claimants are wholly insufficient to ground a claim for aggravated damages as there is no evidence that his actions were reckless or motivated by malice.

REPLY TO DEFENCE

[25] The Claimants filed a Reply to the 1st Defendant's Defence on January 18th 2017, in which they denied that the 1st Defendant was entitled to rely on these defences**.**

CLAIMANTS' EVIDENCE

Summary of the Evidence of Michael Causwell Snr

[26] Mr. Michael Causwell Snr. relied on his witness statement filed on July 12th, 2021, which stood as his evidence-in-chief and was amplified under CPR Rule 29.9. He testified that he was a director of EML, formed by the 1st Defendant and his wife, while also operating Econocar Rental (ERL) and other businesses. Due to declining profitability in EML's rust-proofing business, he merged his automotive glass operations with EML and managed its used-car business without remuneration.

[27] He stated that EML had a trusted relationship with Kappa Limited, a used car dealer and that the 1st Defendant, as Managing Director, was responsible for payments and statutory obligations in respect of transactions conducted. Vehicles for sale were stored and serviced at ERL without compensation. At a certain point in their business relationship, the 1st Defendant made the unsupported claim of losses in the used-car business and recommended that EML exit the sector. Consequently, Mr. Causwell pursued an independent arrangement to import vehicles under which EML retained its licence; while he managed storage, servicing, sales, and profit-sharing, with agreed fees payable to EML.

[28] He testified that with the full knowledge of the Directors of EML, the auditor recorded a provision of **Eighteen Million Dollars ($18,000,000.00)** owed to ERL for services rendered in terms of storage and repairs of vehicles brought in for sale by EML, though no payment was ever made. Pursuant to the independent arrangement to import vehicles using EML's licence, the 1st Claimant entered into arrangements with the Robinsons, also known as the New Zealanders, for the importation of vehicles but this relationship became strained as the 1st Defendant falsely informed them that he had withheld **Four Million Dollars ($4,000,000.00)** owed to them. He denied that this occurred. He also denied that he had deceived EML into guaranteeing a loan of **USD $130,000.00** for him by pretending that it was for his friend Anthony Barrett.

[29] Mr. Causwell stated that the breakdown in trust between he and his cousin led to the failure of their business relationship, the collapse of EML, and subsequent litigation arising from the 1st Defendant's accusations. He testified that the 1st Defendant's book contained false and defamatory allegations which portrayed him as dishonest and corrupt, it was widely published and caused him anger, embarrassment, and distress. He noted that while LMH Publishing Limited apologized publicly, the 1st Defendant did not.

[30] In amplification, he explained the respective roles played by the directors' and staff. He also gave details of the location of the respective business offices and the

location that he would usually be found which was different from that from which the 1st Defendant and Richard Causwell operated. He denied falsifying invoices or altering figures to evade duties and stated that any adjustments made on the invoices were made with the New Zealanders' knowledge and for negotiation purposes.

Cross-examination of Michael Causwell Snr

[31] Under cross-examination, the 1st Claimant denied any irregular dealings with Kappa, he asserted that all vehicle imports were lawful, cleared without penalties and that the used-car business did not suffer losses, as confirmed by the auditor.

[32] He acknowledged that Kappa sales involved instalment payments, with ERL bearing costs for servicing, storage, transport, and sales, without commission or reimbursement. He denied receiving improper benefits or payments, stating he was owed funds rather than enriched.

[33] He testified that Kappa recommended him to the New Zealanders based on trust, and he continued to transact business dealings using EML's licence with the 1st Defendant's permission. He denied reneging on payments or refusing to sign cheques. He explained that sale proceeds were applied to duties, expenses, and future shipments, and that the alleged **Four Million Dollars ($4,000,000.00)** shortfall arose from incorrect spreadsheets which were then sent to the New Zealanders by the 1st Defendant and his wife without his knowledge or input.

[34] He stated that EML collected sale proceeds, paid taxes, and passed the balance to him for subsequent shipments, but interference by the 1st Defendant and his wife caused the arrangement to fail. He maintained that the amending of invoices to lower figures was standard negotiation practice as the original prices quoted were high. He maintained that this did not affect customs duties or GCT as these were assessed independently by Customs using their Blue Book.

[35] He admitted that he never received written confirmation from the New Zealanders that accounts were current but explained that the 1st Defendant had instructed the New Zealanders that all correspondence should be forwarded to him. He denied receiving Anthony Barrett's loan funds or misappropriating company monies. He confirmed that the PAB found Basil Cunningham grossly negligent but asserted that he was not guilty of any wrongdoing.

[36] He stated that he possessed limited knowledge of accounting and audit matters were handled by others, including the 2001 and 2002 financial statements and KPMG's requests. He was shown Financial Statements for 2001 and 2002 and confirmed that the statements existed. He directed the 1st Defendant to pose his questions on these documents to his son as the person who could best explain the contents of same.

Summary of the Evidence of Michael Causwell Jnr

[37] Mr. Michael Causwell Jnr, relied on his witness statement filed on July 12th, 2021. He averred that in 2006, the 1st Defendant and his wife accused Basil Cunningham of professional negligence, despite the fact that the information used in the audit of EML had been provided by the 1st Defendant.

[38] He stated that during the PAB hearing into the complaint against the Auditor, he provided audited Financial Statements to the Board at their request. He explained that there was a specific request for the 2002 Financial Statement and he made the decision to redact the portions of the Financial Statement which showed EML's financial position in 2001, as he had formed the view that it was not required. In September 2007, the PAB found that the allegation of professional misconduct was not made out against Basil Cunningham. The 2nd Claimant averred that the 1st Defendant falsely alleged in his book that he altered the Financial Statements to mislead the Board, thereby causing him embarrassment, reputational harm and distress.

[39] In amplification of his witness statement, the 2nd Claimant insisted that he did not alter the 2001 Financial Statements or the 2001 comparison figures in the 2002 Financial Statement, as alleged on page 114 of the 1st Defendant's book. He testified that he joined the company in April 2002 and only provided financial information to KPMG. He explained that there was an issue with the Financial Statement of 2001 as it remained unsigned by two directors until 2006; as such, it was treated as a draft for KPMG's purposes. He denied blocking or tampering with any figures for the PAB proceedings and insisted that the Board already had the signed audited statements. He also denied presenting any unrelated financial documents as belonging to EML before the Court.

Cross-examination of Michael Causwell Jnr

[40] Under cross-examination, the witness explained that the Financial Statements of 2002 were prepared by the new auditors, Lee Clarke Chang in 2003. They described it as an accounting report because the comparative figures for 2001 were derived from unsigned draft audited accounts, which had not been approved by two directors. As a result, the auditors were unable to certify the 2001 figures, and the 2002 document could not be issued as a fully audited Financial Statement.

[41] He denied the suggestion that the PAB did not have the Financial Statements of 2001 and that this omission prompted the request by the Board for same. He also insisted that he did not know which books were being referred to at page 147 of the 1st Defendant's book.

[42] He agreed that the PAB investigated Mr Cunningham based on a complaint by the Clackens, at which point, the audited 2001 Financial Statements remained unsigned. He denied knowing that the PAB requested further information due to Basil Cunningham's lack of cooperation.

[43] He denied any improper conduct and insisted that he had redacted the portions independently. He conceded that Mr. Basil Cunningham was found guilty of gross negligence by the PAB.

[44] On re-examination, he explained the difference between an audited Financial Statement and an Accountant's Report, noting that the Accountant Report of 2002 was prepared because the 2001 audited Financial Statement was unavailable and closing balances were required.

Summary of the Evidence of Milton Hewling

[45] Milton Hewling, deponed that he is a retired banker known to the Claimants and the 1st Defendant. He relied on his witness statement filed on February 11th, 2022. Although unfamiliar with EML's internal transactions, he testified that the 1st Claimant's business, Auto Auction Limited, conducted vehicle sales, with cleaning, servicing, and repairs, and that the vehicles were generally sold above the reserve price, contradicting the 1st Defendant's claims of unprofitability. He said that he was able to say this as he often acted as an auctioneer for the vehicle sales.

[46] He recalled intervening in a dispute between the parties regarding the sum of **Four Million Dollars ($4,000,000.00)** which was allegedly owed to Robinson Motors. He said that on reviewing the 1st Claimant's and 1st Defendant's records, he found that no monies were owed once expenses provided by the 1st Claimant were factored in. He said that the accounts utilized had been prepared by Mrs Clacken. On completion of his reconciliation, the corrected accounts were presented to all the directors to include the 1st Defendant and were accepted. He was not aware of any separate dispute between the Robinsons and EML. He expressed surprise that the 1st Defendant persisted in repeating these false allegations and maintained that both Claimants were men of integrity.

Cross-examination of Milton Hewling

[47] Under cross-examination, Mr. Hewling stated that he had no knowledge of the cost of vehicles prior to EML's dealings with the Robinsons. He confirmed that vehicles were auctioned with reserve prices set by EML but he was uncertain who owned the vehicles on arrival and whether they were imported for Michael Causwell Snr.

[48] When questioned about alleged malpractices by Michael Causwell Snr in dealings with Robinson Motors, Mr. Hewling denied knowledge of any such wrongdoing. He maintained that he found no evidence of malpractice in his review. He could not recall if double invoicing occurred. He explained that he was able to reconcile the accounts by using invoices from the 1st Claimant and a spreadsheet provided by the 1st Defendant and his wife. He noted that there were certain omissions on the spreadsheet as it related to Michael Causwell's actions, such as servicing which was an expense. He did not contact Robinson Motors directly but later learned that they had prepaid duties, GCT, and shipping costs.

Summary of the Evidence of Michael Wilson

[49] During the course of the Claimant's case, an application was made to call a witness from the Jamaica Customs Agency (JCA) to assist the Court on the process that existed between 1997 and 1998 in clearing a vehicle imported into the country. The Court heard from Mr Clacken on this application. He raised no objection and agreed that the evidence would be helpful. It was as a result of this agreed position that a witness summons was issued for the relevant officer from the JCA and this turned out to be Mr Michael Wilson.

[50] Mr Wilson provided a witness statement which was filed on 20th June 2025. In that statement, he indicated that he is a Customs Supervisor and has been employed to the Agency for 34 years. In 1997 and 1998, he served as an Invoice Inspector at the Entry Processing Unit. His duties, while in the unit entailed conducting a documentary review of import entries also known as C78. This review involved the examination of customs import documents namely the C78 import entry, bill of lading, commercial invoices, import permits and licenses.

[51] During the years 1995 to 1998, an Importer had to obtain an import entry from the Trade Board before importing a motor vehicle. This permit was to be presented to Customs along with other documents. These included the commercial invoice or any other document that provided proof of the price paid for the vehicle.

[52] He informed the Court that in that period, the general rule governing Customs Valuation of imported goods was referred to as the Brussels Definition of Value (BVD). The valuation method was built around the focus on the normal market price; that is the price the item would fetch on the open market. Once the value was determined, this formed the basis on which the duties were assessed. He explained that a deviation in this value was accepted when the declared value was higher than that determined by the BVD; but downward deviations were only accepted up to 10% below the BVD.

[53] He highlighted that during this period, a commercial invoice was a critical document and an Importer was required to submit same. However, Customs did not rely exclusively on the invoice in order to determine the value but reserved the right to verify the purchase price stated on a commercial invoice and re-assess the value of imported goods. He outlined that a Bill of Sight also known as a C24B is an official customs form which was used along with an invoice to clear a used vehicle. A Customs Broker, acting for an Importer, would have to complete same. Once completed, the Bill of Sight, Invoice, Import Permit, Bill of Lading and Export deregistration certificate would be presented to the Customs Valuation Officer at the Customs Special Unit for the research value to be conducted. The Bill of Sight would have vehicle details to include the make, model, physical condition, year, colour, engine capacity, mileage, fittings and other features which would affect the established value for Customs purposes.

[54] Mr Wilson stated that during the relevant period, there were several instances in which a commercial invoice was not presented to Customs. In the absence of same, the Bill of Sight would be the sole document used by Customs as evidence of a fair market value. In conducting the assessment, the Officer once presented with the documents would conduct a verification exercise. The year and model would be noted and the VIN number on the Bill of Sight checked against other documents presented. The year and model were significant to the value and guidance was also obtained from imported motor vehicle guidebooks such as the Glass's Guide. The Glass's Guide was the leading British motor trades guide used

by the Valuation branch. The recommended value would be extracted and converted to the local currency and any percentage discount applied by Customs to determine a vehicle's value.

[55] For vehicles originating from Japan, a different approach was adopted and Customs discounted the recommended value in Glass's Guide by 10-25%. A physical inspection could also be done to assist with determining the value. On completion of the verification, the value of the vehicle would be inserted on the Bill of Sight by the Officer and reviewed by a Supervisor. Both would then sign the Bill of Sight which would be handed to the Customs Broker to generate the C78, final import entry.

[56] Upon submission of the C78 to the Customs Special Unit, an Invoice Inspector would verify the documents for consistency. If an import permit is needed, this Inspector would ensure that this was reflected on the C78. The Invoice Inspector would also verify the accuracy of the tariff code on the entry. The entry would then be endorsed by the Invoice Inspector and the Supervisor for the Commissioner of Customs and Excise. Once verification was complete, the Importer or Broker would make the payment to the Customs Cashier, then proceed to the port to effect clearance.

[57] Mr Wilson made reference to eight (8) import entries bearing the name and signature of Michael Causwell as Importer in the name EML. In respect of import **MW1, MW2, MW4, MW5, MW6** and **MW7,** East Co Inc. in Japan is named as the Consignor. For the import entries, **MW3** and **MW8,** Caribbean Imported Automobiles in New Zealand was identified as the Consignor. He also provided the entry numbers assigned to each vehicle imported. Mr Wilson informed the Court that the Bill of Sight and the Import Entry are the only documents stored in the JCA archives for the respective entry numbers.

[58] Mr Wilson testified that after 1998, Jamaica accepted the World Trade Organization Valuation Agreement which primarily bases the Customs value on

the transaction value which is the price paid for goods. Under this agreement, the invoice continues to be a critical document as evidence of the purported price paid for the imported goods or transaction value. Customs still however has a discretion to verify this figure and re-assess the value of the imported goods.

[59] His evidence was amplified and he indicated that he was unable to say if an invoice had been presented with **MW1** for the calculation of duty. He also stated that in relation to **MW1** to **MW8**, the Glass Guide method had been applied in the calculation of duties by Customs.

Cross-examination of Michael Wilson

[60] He was asked if in commercial imports, the Importer should have an invoice and responded that *'in Customs we expect the importer to declare evidence of the value and this includes invoices'*. He explained that from his experience, he would have knowledge of the requirements for import licences and permits from the Trade Board and indicated that where invoices are available, they are usually submitted. He could not however say if they were required by the Trade Board. He was asked what he would compare the C78 to in order to determine consistency if there is no invoice and sought to clarify that this would be where there is an invoice.

[61] In addressing circumstances where the invoice is absent and the BVD is used, he explained that where the invoice is not available, Customs would be careful not to use the term 'transaction value' as they would be applying the valuation rules to assess what is referred to as a fair market price. Transaction value speaks to actual price paid, so in circumstances where there was no invoice, they could not be verifying that.

[62] Mr Clacken asked him, if he was given an invoice and the invoice price or value was higher than the BVD, which value would have been accepted by Customs. He responded that the valuation method applied as BVD is to determine a fair market value to determine duties. If the transaction value is higher than the BVD,

paragraph 7 of his affidavit makes it clear that a deviation is adopted and the higher transaction value used. In comparison, if the figure on the invoice is lower, as stated at paragraph 7, a downwards deviation is only accepted up to 10% of the BVD.

[63] Mr Wilson was pressed on those instances in which no commercial invoice was presented, and the basis upon which Customs determined the value in such circumstances. He replied that in the absence of this, they would apply the BVD to assess what would be a fair market value and that would be indicated on the Bill of Sight and form the basis for the calculation of duties and taxes. It was suggested to him that without the invoice, the customs regulations are bypassed. Mr. Wilson disagreed with that suggestion. He maintained that there is no bypass as the system is layered and where one method is not available, Customs would fall back to the next. He explained that at Customs, the absence of a commercial invoice does not, in and of itself, render the transaction invalid. The BVD serves to determine the fair market value for the assessment of duties, and accordingly, he would not describe it as a means of bypassing the proper process.

[64] He was asked if the entries exhibited by him were cleared without an invoice. He indicated that in relation to **MW1** to **MW8,** none of them had an invoice attached. He then told the Court that they were cleared and based on his observation of **MW1,** it says Bill of Sight. He explained to the Court that in instances where the Bill of Sight is used in lieu of the invoice, it is the Bill of Sight that is used to determine the value. In relation to the exhibits, he indicated that the fees on **MW1** were 30% for Customs Import Duty,15% for GCT and $100.00 for stamp duty. In respect of the import entry **MW2,** he stated that the first 2 fees were reflected on the import entry, but there was no stamp duty. He stated further that the stamp duties are accounted for on the respective Bill of Sight as stamps to the value of $100.00 indicates that this was paid.

[65] Mr Wilson was questioned whether the reduction of value caused a reduction in duties and GCT. He responded that if it is on a reduction in base value, then his

answer would be yes it would do so. He added that if it is that the value as declared is adopted for calculation, then any variation in that value would also be adopted for the calculation of duties and GCT. He told the Court that all the import entries bore permit numbers, but **MW4** through to **MW8** had two. He was asked whether any of these eight (8) units had been confiscated by Customs at any stage and stated that based on the documents provided, he saw no evidence to suggest this.

[66] Mr. Wilson rejected Mr. Clacken's contention that eight (8) vehicles could not have been imported without invoices, stating that while no invoices were attached, this did not amount to a system failure but required reliance on the next valuation layer. He denied that this permitted importation without invoices and explained that he was not personally involved in clearing the vehicles between 1995 and 1998, neither was he able to consult those who were, as they had since retired.

[67] Mr Wilson explained that a Bill of Sight (C24B) is completed after physical inspection, and where the vehicle year is not visible, it is recorded as "year not seen" and verified by alternative means, as occurred with Exhibits **MW2** to **MW8**.

[68] He explained that where the vehicle year is not ascertainable on inspection, Customs relies on the Japanese export registration (deregistration) certificate, a mandatory document for all vehicles exported from Japan. That certificate contains specific particulars from which the year is verified, and the Valuation Officer records the information on the Bill of Sight and reflects it on the C78 import entry.

[69] In explaining the presence of two (2) permit numbers on some of the entries, Mr Wilson stated that when a vehicle is being imported, the Importer is required to obtain a permit prior to the vehicle landing in Jamaica. This permit is not transferable. In circumstances where an initial importer has ordered a vehicle and obtained a permit but subsequently decides not to proceed and instead passes the transaction to another Importer, the original licence must be withdrawn and a new licence issued in favour of the current Importer.

[70] The newly issued licence would have a date of issue which would, in all likelihood post-date the arrival of the vehicle. Under Section 210 of the Customs Act, this would constitute a breach. However, in order to mitigate against such a breach, both licence numbers would be submitted by the Customs Broker as they complete the form that would put the Invoice Inspector in a position to determine that a valid import permit existed when the vehicle landed even if it is different from the one being used to effect clearance.

DEFENDANT'S EVIDENCE

Summary of the Evidence of Dwight Clacken

[71] Mr. Dwight Clacken was sworn, and his witness statement dated October 8th, 2020, was admitted as his evidence-in-chief. The statement largely reiterated his Defence. He denied that the statements complained of were defamatory or bore the alleged meanings. He maintained that the statements were true or his opinions. They also constituted fair comment made in good faith on matters of public interest. He averred that the book was published honestly, without malice and was covered by qualified or statutory privilege.

Cross-examination of Dwight Clacken

[72] Mr. Clacken was extensively cross-examined by King's Counsel on a number of issues. He was asked about the previous litigation mentioned in his book and the outcome of these. He responded that while he was not saying that the Claimants manipulated the system, it certainly worked in their favour. He agreed that he had formed the view that the justice system was replete with fraud, corruption, kickbacks and bribery. He also insisted that persons in the justice system manipulated it in favour of the Claimants. He said that his matters kept being placed before particular Judges by a process of dishonest manipulation and where it was placed before 'honest' Judges, documents went missing or some other issue would arise which prevented the matter from being heard. He contended that his

experience was sickening and there were times he could not tell the difference between the Claimants' Attorneys and the Judge.

[73] He was asked about the attempts by KPMG to conduct a valuation of EML's assets and acknowledged that in his book, he had raised the spectre that there had been interference in the work of the auditor, Mr Cole. He agreed that he had speculated that the interference may have come from within KPMG itself. He was asked about his comments at page 118 of his book in which he suggested that there was some questionable conduct on the part of Justices' Anderson and Marsh in making rulings which he said favoured the Claimants. He stated that this could have been the result of corruption, ineptness and incompetence in the system. Mr Clacken maintained that his attorneys were pressured into settlement negotiations with the Claimants, possibly by the Bench, even though this was contrary to his instructions. He questioned the actions of persons in the Registry and asserted that they appear to have engaged in a campaign against him in terms of documents being missing, delays in scheduling his matters and placing his cases before a Judge who had previously recused himself. He acknowledged his distrust of the Attorney General Chambers in terms of their follow-up on the PAB ruling in respect of Basil Cunningham.

[74] He insisted that the 2nd Claimant had tampered with the records produced in the Financial Statement for EML and rejected the suggestion that this was not true. He was asked if he understood that by using the words doctored and tampered with in his book to describe how the 2nd Claimant had treated the records, someone reading it would believe that false information was presented by Michael Causwell Jnr. Mr Clacken explained that he was of the view that the 2nd Claimant was moving information around, taking it out and blocking it.

[75] He was asked about the book launch and acknowledged that a number of persons were in attendance. He denied that it was as high as 80 and said it was approximately 40 or 50. He agreed that excerpts of the book were read but maintained that the reading was not done by him. He also acknowledged that his

book had been on sale locally as well as by hard copy on Amazon and on Amazon Kindle.

[76] Mr Clacken was also asked probing questions on a number of documents which included:

1. Letter to Robinson's Motors written by him dated April 29th, 1998 – Exhibit 2 (Supplemental Agreed Bundle- pages 5 to 6)
2. Letter to Robinson's Motors written by him dated February 2nd, 1998 – Exhibit 1 (page 33)

He acknowledged that he had sent the letters and this had been done without the 1st Claimant's knowledge.

[77] He insisted that he was unaware of any agreement with the 1st Claimant to continue to import motor vehicles and maintained that there had in fact been an agreement to permanently exit the used-car market prior to the Kappa deal. He confirmed that vehicles imported from the Robinsons were brought in under EML's dealer licence between approximately August 1997 and April 1998. He maintained that he had opposed all such imports from the outset, describing the initial shipments as a surprise. He agreed that some vehicles were sold by Auto Auction Ltd, while EML's back office which was controlled by his wife, recorded sales and GCT payments. He acknowledged that the letters written to the Robinsons in February and April 1998 accurately reflected the arrangements for the shipments during that period, including Michael Causwell Snr's obligation to remit Jamaican taxes and pay EML a **Ten Thousand Dollars ($10,000.00)** fee per vehicle and no copy was provided to the 1st Claimant.

[78] The 1st Defendant stated that the correspondence prepared for the Robinson's was truthful to the best of his knowledge and covered the relevant shipment period, despite multiple shipments occurring simultaneously. He acknowledged signing these letters on EML's letterhead and confirming the terms of the arrangements. He could not however recall the precise details of the dates or the fax number to

which the Robinsons were directed to send their responses due to the passage of time. He insisted that the letters were intended to govern the record-keeping and financial arrangements for the Robinsons' shipments, including instructions that invoices be issued for full CIF amounts. He also admitted instructing the Robinsons that future correspondence be directed to him. He added that he wrote to confirm these arrangements as he had been requested to do so by the EML auditor.

[79] Mr Clacken was shown a number of documents to include pages 3 to 4 of **Exhibit 2- Amended Invoices** prepared by the 1st Claimant, with markdowns on the listed prices. He was also shown **MW1** to **MW8,** the Bills of Sight and Import Entries which were placed into evidence through Mr Wilson.

[80] Mr Clacken acknowledged that the vehicles listed in the import exhibits included all of the following:

a. **MW2,** a Nissan Sunny described on the invoice as Stock 14;
b. **MW3,** a Honda Integra, which was described on the invoice as Stock 10;
c. **MW5, a** Nissan Sunny which was described on the invoice as Stock 13;
d. **MW4,** a Toyota Corolla which was described as Stock 43;
e. **MW6,** a Nissan Sunny which was described as Stock 39;
f. **MW7,** a Toyota Mark II which was described as Stock 41; and
g. **MW8** a Toyota Sprinter described as Stock 12

He agreed that the import exhibits from **MW2** through to **MW8** bore the same chassis numbers on both sets of documents. In each instance, he agreed that the customs-assessed value exceeded or equalled the values declared on the invoices and that full duties and taxes were collected. When confronted with the fact that this conflicted with his assertion that Michael Causwell Sr. had cheated Customs in terms of duties and GCT, he admitted that based on the evidence presented,

Customs had not been deprived of any duties or fees and that the allegation of cheating was baseless.

[81] He testified that sale proceeds from vehicles supplied by the Robinsons were paid to EML, less GCT and other statutory taxes, and acknowledged that his wife formed part of the team responsible for processing those payments. He said that he was unaware of any deductions beyond GCT and customs duties and sought clarification as to any suggestion to the contrary.

[82] Mr Clacken accepted that in her preparation of the accounts, his wife would not have been aware of certain deductions relating to the imported vehicles. He stated that she would not have known of wharfage fees, except where such fees were paid in advance by the Robinsons. He also agreed that Mrs. Clacken and her team would not have been aware of brokerage fees or of transportation and storage costs incurred outside of EML. He stated that only expenses handled directly by EML would have been within her knowledge.

[83] In further cross-examination, he conceded that Mrs. Clacken was not a trained Accountant but maintained that she had experience as a Programmer and Analyst and therefore possessed some understanding of accounting concepts. When pressed on her accounting qualifications, he said that her knowledge arose from aspects of accounting encountered in computer programming. He conceded that such exposure involved only a limited degree of accounting.

[84] Mr Clacken stated that in the course of her duties, Mrs. Clacken was aware of gross sale proceeds, customs duties, GCT and all invoices issued. He asserted that all payments, including the **Ten Thousand Dollars ($10,000.00)** payable to EML, would have been recorded by her. He agreed that she had prepared the spreadsheet that was sent to the Robinsons alleging that Mr. Causwell Snr owed over **Four Million Dollars ($4,000,000.00)** and admitted that this had not been shown to Mr. Causwell Snr prior to its transmission. He stated that he did not verify the figures with Mr. Causwell Snr but insisted that Mrs. Clacken did the verification.

He was unable to recall whether the spreadsheet predated the correspondence of February 2nd,1998. He also could not recall whether it was subsequently reconciled by Mr. Milton Hewling, though he was aware of the reconciliation's outcome.He was asked whether he did any verification before informing the Robinsons that Mr Causwell Snr appropriated their funds and accepted that he did not undertake that task.

[85] Mr Clacken was taken to pages 76–77 of the book **(Exhibit 3**) and accepted that it stated that he told the Robinsons that approximately **Five Million Dollars ($5,000,000.00)** had been stolen by Mr. Causwell Snr. He maintained that he had accurately provided the Robinsons with the sales extracts. He admitted, however, that he did not disclose to them the reconciliation process that was later undertaken.

[86] He accepted that the book made no reference to any deductions that would have reduced or eliminated the sum alleged to be due to the Robinsons and stated that only that the final balance was recorded. He acknowledged that the book did not state that Mr. Causwell Snr received any payment for his services in the used-car business.

[87] He also conceded that the '**Eighteen Million Dollars ($18,000,000.00)** in false payables for the 1st Claimant endorsed by the Auditor on EMLs books' (as described in his book) was never actually transferred to Michael Causwell Snr or his company.

[88] Mr Clacken stated that the **Eighteen Million Dollars ($18,000,000.00)** provision was intended to be reversed with the Auditor but was not amended. He denied that he had been aware of any accounting deficiencies on the part of Mr Cunningham before the PAB hearing and expressed suspicion that the books produced at a previous trial were fabricated. He asserted that they bore no resemblance to EMLs books and he questioned their origins and insisted that EML's records were normally kept at its offices.

[89] He stated that he could not confirm whether the books kept by Basil Cunningham related to EML, having only briefly seen them in court. He rejected claims that his statement about GCT omissions on car services were fabricated. He sought to rely on the contents of minutes from a meeting and the PAB hearing, however none of these documents had been admitted into evidence. He insisted that the **One Hundred and Thirty Thousand US Dollars (US$130,000.00)** loan to Anthony Barrett was actually deposited to an account at Caribbean Trust which belonged to the 1st Claimant and had been applied to settle Mr. Causwell Snr's debt to Caribbean Trust. When asked for proof of this assertion, he said he had been reliably informed of this by the Bank Manager.

[90] He rejected the suggestion that there was no truth to the allegations stated in pages 79 - 80 and maintained that in spite of the existence of documentary evidence showing payments of the loan and interest by Mr Barrett and the sale of property by him to do so, Mr. Causwell Snr had obtained and disguised the loan.

[91] Mr Clacken confirmed receiving cheques from DunnCox on behalf of EML, including **Four Thousand US Dollars (USD 4,000.00), Fifteen Thousand US Dollars (US$15,000.00)** and **Sixteen Thousand Seven Hundred and Ninety-Five US Dollars and Two Cents (US$16,795.02**), and identified corresponding entries in a statement of account addressed to Mr. and Mrs. Barrett. He agreed that he could not say that these payments represented a personal liability of Michael Causwell Snr.

[92] He was asked whether EML had provided to Mrs Causwell a schedule of the loan amounts in terms of the guaranteed amounts and expressed Mr Barrett's liabilities. He responded that this was not correct, it had to do with the interest component. He was shown documents with a loan schedule and letter with the signature of Mr Barrett acknowledging the loan and thanking him and Michael Causwell Snr. for their understanding. He insisted that the payments by Mr Barrett were in respect of the interest and not the loan and maintained his position that Michael Causwell Snr

received **One Hundred and Thirty Thousand US Dollars (US$130,000.00)** disguised as a loan to Mr. Barrett.

[93] Mr. Clacken admitted receiving a letter from the Claimants' attorneys before the publication of his book warning that his book contained potentially defamatory statements. He acknowledged that the matters raised in that letter form the basis of the present proceedings. He further accepted that he has not offered any apology or amends and maintained that the statements in the book are true, save for a corrected typographical error in respect of the year 2001 financial statement which should have said 2002. While agreeing that the names "Clacken" and "Causwell" are distinctive, he disputed that readers would readily associate them. He confirmed that the book remains available for sale on Amazon.

SUBMISSIONS BY THE PARTIES

[94] At the end of the trial, the parties were asked to file supplemental submissions which they did. The Court commends Counsel and the 1st Defendant for their submissions and the wealth of authorities which provided valuable assistance in deciding the issues. They were thoroughly examined and considered in the compiling of the judgment. However, in light of the length of the submissions, the number of cases/authorities and in the interest of time, I did not consider it necessary to outline all the submissions and authorities relied on. I do however make reference to them in the determination of my findings.

ISSUES

[95] The issues which arise for the Court's determination are summarized as follows:

i. Whether the words published in the book "**No Justice in Jamaica**" were defamatory;
ii. Whether the words referred to the Claimants;
iii. Whether the words have been published to at least one (1) person other than the Claimants;

iv. Whether the 1st Defendant can rely on the defences of Truth or Fair Comment?

v. Whether the 1st Defendant can rely on the defence of Qualified Privilege or has this been negated by Malice?

vi. The quantum of damages payable to the Claimants, if any

Issue 1 - Whether the words published in the book "No Justice in Jamaica" about the Claimants were defamatory?

[96] An appropriate starting point for this issue is an examination of the contentions by both Counsel and the Defendant *pro se*. The crux of the Claimants' contention is that the words were defamatory and where the publication is false and brings the character or reputation into disrepute, that individual will be entitled to maintain a claim for defamation. On the other hand, the essence of the 1st Defendant's contention is that the words/statements contained in his book are substantially true in substance and in fact.

[97] Learned King's Counsel Mr. Manning, in comprehensive written submissions on behalf of the Claimants, posited that a man commits the tort of defamation when he publishes to a third person, words containing untrue imputation against the reputation of another. He contended that the words complained of were intended to and did lower the Claimants in the eyes of right-thinking, reasonable members of society. He submitted that the 1st Defendant's assertions have brought the Claimants' reputations into disrepute and have caused them embarrassment and distress.

[98] To buttress this submission, Mr. Manning K.C. directed the Court's attention to **Silkin v Beaverbrook Newspapers** [1958] 1 W.L.R. 743**, P&S Used Car Traders Limited v CVM Television Limited, Superintendent Cornwall "Bigga" Ford and Attorney General of Jamaica** [2018] JMSC Civ. 114 and **Percival Syblis v Delores Haughton** [2012] JMSC Civ. 178.

[99] In the Particulars of Claim and submissions on their behalf, Mr. Manning K.C. submitted that both the 1st and 2nd Claimants allege that the words used in the 1st Defendant's book, whether in their natural and ordinary meaning, or by way of innuendo, imply that as it relates to the 1st Claimant, he:

a. Committed or intended to commit fraud on EML.
b. Committed or/or expressed an intention to commit fraud on the Revenue Department of the Government;
c. Intended to or expressed an intention to defraud creditors of EML including the Kappa Group and the New Zealanders;
d. Procured the manipulation of the books of account of EML by the accountant, Basil Cunningham;
e. Falsified invoices and other accounting documents pertaining to EML's business;
f. Has connections with Judges and other parties within the Justice System which he conspired with to frustrate litigation or obtain favourable orders;
g. Is an individual lacking any probity or moral integrity; an
h. Is a dishonest businessman who cannot be trusted.

[100] He asserted that in relation to the 2nd Claimant, the words suggest whether by their natural and ordinary meaning or by way of innuendo that:

a. He falsified financial statements and other accounting documents pertaining to EML's business;
b. He sought to pervert the course of justice and mislead the PAB in its official investigations.
c. He is an individual who lacks probity and moral integrity.
d. He is a dishonest businessman who cannot be trusted.

[101] The 1st Defendant in contrast denies that the words are defamatory for the reasons outlined in his Defence and evidence.

Discussion

[102] In conducting an examination of whether the Claimants' complaint has been made out, it is plain that the required approach is an inquiry into the meaning of the words, bearing in mind the context in which the words were used and the persons to whom the communications were made. In carrying out this exercise, the Court is also mindful that reasonableness must be used as the yardstick for arriving at a conclusion.

[103] In respect of the 1st Claimant, the relevant words for the Court's consideration are extracted from pages 70, 71, 73, 75, 79, 80, 83, 101,110, 118 and147 (the details are outlined at paragraph 6 above). In respect of the 2nd Claimant, the Court considered the words at pages 97 and 114.

[104] Mr. Clacken argued that every statement in his book is supported by evidence, exhibits and testimony. He contended that the contents of the book are substantially true or are honest opinion backed by solid evidence. He maintained that the 1st Claimant had misused the car dealership license, breached Customs regulations and processes and misused the funds obtained from a property sold. With respect to the 2nd Claimant, Mr. Clacken contended that he had admitted to altering the 2002 financials.

[105] Mr. Clacken relied on two authorities, the first was **Beverly Senior v Commissioner of Customs and Excise** [2016] JMSC Civ. 31 which addressed the power of the Commissioner to reject a declared value by an Importer. The Court of Appeal found that Section 19 of the Customs Act empowers the Commissioner to exercise his discretion in that manner. The second authority was **Attorney General of Jamaica v Danhai Williams** [1997] UKPC 22, while this decision touched on customs practices, to include a search warrant issued under Section 203 of the Customs Act, the decision largely dealt with the procedure surrounding the origins of this warrant.

[106] In commenting on the cases relied on by the 1st Defendant in support of his Defence, King's Counsel submitted that the 1st Defendant is misguided and the cases are wholly inappropriate. In relation to **Beverley Sinclair Senior v The Commissioner of Customs & Excise and The Attorney General of Jamaica** *supra*, they contend that it concerns the unlawful alteration of customs assessments, a circumstance not arising on the facts of the present case, where duties were assessed and paid in accordance with established procedures. They further argue that **Attorney General v Danai Williams** *supra i*s distinguishable, as it addresses constitutional issues relating to warrants and technical defects, which are not engaged here.

[107] In respect of these decisions, it appears that the 1st Defendant had cited them to rebut the procedural irregularities which he contends the 1st Claimant had engaged in. A careful review of these authorities reveal however, that they are distinguished in terms of the facts and issues which arose for consideration from the claim at bar. Accordingly, the principles enunciated in these decisions did not prove helpful in Mr. Clacken's cause.

[108] Mr. Clacken also relied on Ministry Paper #13 which dealt with the Motor Vehicle Import Policy dated April 21st, 1995. The paper contains information governing the relevant factors for importation of vehicles, such as age and physical condition, categories of importers, the need for an import permit, criteria for used car dealerships, the procedure for obtaining an import permit and duty concessions. While the issue of the importation process adopted by the 1st Claimant was heavily traversed on the question of defamation, this document did not assist the Court's determination of the issue, as the policy itself was never questioned and the factors which determined the value and the need for a permit appears to be largely agreed between the parties.

[109] The tort of defamation is governed by the Defamation Act as amended in 2013. The law of defamation is concerned with protecting reputations. A defamatory statement is one that is '*calculated to injure the reputation of another, by exposing*

them to hatred, contempt or ridicule' (Parke B in **Parmiter v Coupland** (1840) 6 M & W 105) and which tends to '*lower the claimant in the estimation of right-thinking members of society*.' (Lord Atkins in **Sims v Stretch** [1936] 2 All ER 1237 (HL). The essence of the tort is the communication of a disparaging statement about the claimant to a third party.

[110] The Court of Appeal decision of **CVM and Another v Troupe (Michael) and Another** [2025] JMCA Civ. 40 in which **Sims v Stretch** *supra* was examined, provides useful guidance wherein McDonald - Bishop P, discussed the issue at paragraph 38 as follows:

> *"The approach to determining, both at first instance, and on appeal, whether the words have met that threshold was outlined by Morrison P in* ***Jamaica Observer Limited v Joseph Matalon*** *[2019] JMCA Civ. 38 ('JOL v Matalon') at paras. [55] and [56], where he stated:*
>
> *"[55] … [I]n Jeynes v News Magazines Ltd & Another [fn 69: [2008] EWCA Civ 130] … the leading modern authorities are conveniently summarised as follows: '14. The legal principles relevant to meaning have been summarized many times and are not in dispute ... They are derived from a number of cases including, notably, Skuse v Granada Television Limited [1996] EMLR 278, per Sir Thomas Bingham MR at 285-7. They may be summarized in this way: (1) The governing principle is reasonableness. (2) The hypothetical reasonable reader is not naïve but he is not unduly suspicious. He can read between the lines. He can read in an implication more readily than a lawyer and may indulge in a certain amount of loose thinking but he must be treated as being a man who is not avid for scandal and someone who does not, and should not, select one bad meaning where other non-defamatory meanings are available. (3) Over-elaborate analysis is best avoided. (4) The intention of the publisher is irrelevant. (5) The article must be read as a whole, and any 'bane and antidote' taken together. (6) The hypothetical reader is taken to be representative of those who would read the publication in question. (7) In delimiting the range of permissible defamatory meanings, the court should rule out any meaning which, 'can only emerge as the produce of some strained, or forced, or utterly unreasonable interpretation…' (see Eady J in Gillick v Brook Advisory Centres approved by this court [2001] EWCA Civ 1263 at paragraph 7 and Gatley on Libel and Slander (10th edition), paragraph 30.6). (8) It follows that 'it is not enough to say that by some person or another the words might be understood in a 69 [2008] EWCA Civ 130*

> *defamatory sense.' Neville v Fine Arts Company [1897] AC 68 per Lord Halsbury LC at 73. 15. Those are the principles applicable to the determination of meaning at a trial and thus in a jury trial by the jury. …'*
>
> *[56] To this summary, I would only add two points. First, as Lord Halsbury LC observed in the leading older case of Lord William Nevill v The Fine Art and General Insurance Company, Limited [fn 70: [1897] AC 68, 72], 'it is necessary to take into consideration, not only the actual words used, but the context of the words, and the persons to whom the communications were made'. And second, as Lord Nicholls reminded us in Bonnick v Morris & Others [fn 71: [2002] UKPC 31, para. 9], a decision on appeal from this court, '[a]n appellate court should not disturb the trial judge's conclusion unless satisfied [that] he was wrong'." (Bolding as in original)*

[111] Having reviewed this decision, Madam President continued:

> *[39] In summary,* ***the required approach is an inquiry into the meaning of the words, bearing in mind the context in which the words were used and the persons to whom the communications were made, using reasonableness as the yardstick for arriving at a conclusion. It is evident from the above that there is no consideration of the truth or falsity of the alleged defamatory words. Therefore, whether the words themselves were an accurate representation of the status and existence of the police investigations was an irrelevant consideration, because in law the words complained of are generally presumed to be false.***
>
> ***[40] The case law demonstrates that the presumption of falsity should be applied as a general rule, except when determining the applicability of Reynolds privilege*** *(see the judgment of the England and Wales Court of Appeal in Jameel and others v Wall Street Journal Europe SPRL [2005] EWCA Civ 74 at para. 60 – the judgment was ultimately overturned on appeal to the House of Lords, but not regarding the presumption of falsity).*
>
> *[41] The principle that the words complained of are generally to be presumed to be false is described by the learned editors of the text Gatley on Libel and Slander, 12th Edition ('Gatley'), at para. 11.4 as a "presumption of falsity" which is "firmly entrenched" in the law of defamation. The editors, at para. 1.7 of the text, cite para. [88] of the Australian case of Ainsworth v Burden [2005] NSWCA 174, which explains the impact of the presumption on the question of whether words are defamatory. They explain that "[t]he objective truth or falsity of the matter complained of is irrelevant to its defamatory nature. "(emphasis supplied)*

[112] In order to succeed in a claim for defamation, a Claimant must satisfy the court that:

a. the words/statements are defamatory;

b. the words/statements referred to the Claimant; and

c. the words/statements were published.

[113] The term "defamatory matter" is defined as any matter published by a person that may be, or is alleged to be, defamatory of another person. Section 2 of the Defamation Act states that; -

> "2. *"matter" includes –*
>
> *(a) an article, report, advertisement or other thing communicated by means of a newspaper, magazine or other periodical;*
>
> *(b) a programme, report, advertisement or other thing communicated by means of television, radio, the Internet or any other form of electronic communication;*
>
> *(c) a letter, note or other writing;*
>
> *(d) a picture or visual image;*
>
> *(e) a word, gesture or oral utterance; and*
>
> *(f) any other method of communicating information."*

[114] The Act defines the term "publisher" as follows: -

> *"publisher" means a person who has published a matter that is, may be, or is alleged to be defamatory of another person and "publish" and "publication", in relation to a statement, subject to the provisions of this Act, have the meaning they have for the purposes of the law relating to the tort of defamation."*

[115] In ***Roy Anderson v Dwight Clacken*** *[2023] JMSC Civ. 42*, Nembhard J examined the role of the Courts in defamation cases. The Learned Judge reviewed the authority of ***Ramsahoye v Peter Taylor & Co Ltd****. [1964] LRBG 329* and emphasised the dicta of Camacho CJ in ***Woolford v Bishop*** *[1940] LRGB 93*, wherein he stated:

> *"On this aspect of the case,* ***the single duty which devolves on this court in its dual role is to determine whether the words are capable of a defamatory meaning and given such capability, whether the words are in fact libellous of the [claimant]****. If the court decides the first question in favour of the [claimant], the court must then determine whether an ordinary, intelligent and unbiased person reading the words would understand them as terms of disparagement, and an allegation of dishonest and dishonourable conduct. The court will not be astute to find subtle interpretations for plain words of obvious and invidious import." (emphasis supplied)*

[116] The test to be applied in determining whether the words are defamatory is the meaning that these words would convey to the ordinary man**. Lord Reid in Lewis v Daily Telegraph Ltd [1964] A.C. 234, 258 (HL)** explained it clearly when he stated:

> *"There is no doubt that in actions for libel the question is what the words would convey to the ordinary man: it is not one of construction in the legal sense. The ordinary man does not live in an ivory tower and he is not inhibited by knowledge of the rules of construction. So he can and does read between the lines in light of his general knowledge and experience in 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 the knowledge."*

[117] In the later decision of ***Morgan v Odhams Press Ltd*** *[1971] 2 All ER 1156*., Lord Reid stated as follows:

> *"If we are to follow Lewis' case and take the ordinary man as our guide, then we must accept a certain amount of loose thinking. The ordinary reader does not formulate reasons in his own mind; he gets a general impression and one can expect him to look again before coming to a conclusion and acting on it. But formulated reasons are very often an afterthought."*

[118] Having made this pronouncement, Lord Reid continued:

> ***"…****I think it sufficient to put the test in this way. Ordinary men and women have different temperaments and outlooks. Some are unusually suspicious and some are unusually naïve.* ***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."*** *(emphasis supplied)*

[119] The issue to be determined is whether the words used in extracts from the book "**No Justice in Jamaica** "are capable of bearing the defamatory meanings the Claimants allege. The question of whether those words/statements are capable of being defamatory turns on an analysis of the meaning conveyed by the words used. It is well established that it is the duty of the Judge to rule in his or her opinion what is the natural and ordinary meaning of the words. The Court is required to consider the statements from the perspective of how an ordinary, reasonable man hearing them, would interpret them. Thus, the test is what is the meaning the words would convey to the ordinary reasonable man to whom it is published.

[120] If the Court decides that the words are capable of a defamatory meaning, it must take the additional step to determine whether an ordinary, intelligent and unbiased person would understand them as words of disparagement which impute allegations of dishonest and dishonourable conduct.

[121] Applying the legal principles extracted from the case law to the case at bar, I find that an ordinary reasonable member of society would interpret the statements at pages 70, 71, 73 and 75 as imputing not only dishonest but fraudulent conduct on the part of the 1st Claimant in seeking to defraud the Government coffers as well as their partners in the car dealership hemisphere.

[122] At Page 80, the words suggest that the 1st Claimant sought to deceive the company of which he was a partner in having a third party obtain a loan which was actually for his benefit. The words published at page 83, while suggesting questionable conduct on the part of Mr. Cunningham go further to state that the 1st Claimant sought to benefit from it and in doing so, sought to defraud EML. Page 101 is a continuation of this accusation which implies that the 1st Claimant engaged in fraud with the Auditor and possibly others against EML. The assertions at pages 110 and 118 are also suggestive of dishonest conduct on the part of the Claimants in 'plundering' the assets of the company and the funds held by EML to the detriment of the 1st Defendant and his spouse. Page 118 goes further and suggest that so extensive was this dishonest conduct that persons associated with the Judiciary

were engaged in generating this result. The statements at page 147 suggests that both the 1st and 2nd Claimants manipulated EML's accounting records and deliberately presented false documents as the records of EML.

[123] In respect of the 2nd Claimant, at page 97, the 1st Defendant openly accused him of fraud in terms of his handling of EML's financial records for 2002. The statement at page 114 is in a similar vein as the assertion that he deliberately altered the 2001 comparison figures in the 2002 Financial Statement implies that he also engaged in dishonest conduct in his handling of records for EML.

[124] I am satisfied on a balance of probabilities that the words used at these pages would paint the Claimants as dishonest persons lacking probity, moral integrity, and trustworthiness, who actively participated in criminal conduct in the eyes of the ordinary reasonable reader. It would also lower their standing in the eyes of right-thinking persons and are defamatory in nature.

Issue 2 - Whether the words referred to the Claimant?

[125] The next issue to be determined is whether the defamatory statements referred to the Claimants. Mr. Manning K.C. submitted that the Claimants are well-known businessmen and that the book contains sufficient information to allow an ordinary reasonable reader to identify them. He further argued that the evidence showed that several individuals understood that the 1st Defendant's false accusations were directed at the Claimants. King's Counsel relied on **Percival James Patterson v Cliff Hughes and Nationwide News Network Ltd** [2014] JMSC Civ. 167 to argue that the hypothetical reasonable reader is neither naïve nor overly suspicious, can read between the lines and grasp implications, but is not eager for scandal and will not choose a defamatory meaning where a non-defamatory one is available.

[126] During his evidence, the 1st Claimant indicated the following, *"persons know that the statements in the book refer to me as the Defendant used my name and my brother's name and many individuals are aware of our business relationship and my involvement in EML.I have also had to address questions from family members*

and friends regarding the information contained in the said book. Having to address these allegations and knowing that persons have read this book has caused me to feel embarrassed and dejected."

[127] The Defendant has not denied that his book makes specific reference to the Claimants.

[128] On a careful examination of the evidence before the Court, there is no dispute that the words referred to the Claimants. The 1st Defendant refers to the 1st Claimant as "**my cousin and business partner**" at EML and by his name "**Michael**" and in the case of the 2nd Claimant, he is identified as "**Michael's son**." Based on the evidence, any ordinary reasonable reader would infer that the 1st Defendant's "partner" at EML, to whom he repeatedly refers, and "his son" are one and the same as Michael Causwell Snr. and Michael Causwell Jnr.

[129] I agree with King's Counsel's submission that the ordinary reasonable reader of the book **"No Justice in Jamaica"** would know that the assertions made by the 1st Defendant referred to the Claimants as he referred to them by name and title on several occasions. The book discloses sufficient personal information about the Claimants which would eliminate the need for speculation or conjecture.

Issue 3 - Whether the words have been published to at least one (1) person other than the Claimant

[130] The Claimants must prove that there has been a publication of the statements and that such statements have caused harm to their reputations, that is to say, the statements were injurious. Based on the evidence, there is no dispute that there was a publication of the alleged defamatory statements which was widely published by Mr. Clacken and the 2nd Defendant, LMH Publishing Limited. The evidence shows that there was a book launch which by the 1st Defendant's own admission had about 40 or 50 persons in attendance and extracts from the book were read. The book was also published on Amazon in paperback and Kindle format and up to the date of the trial, it is still available for purchase on Amazon.

[131] The book was also available for purchase in several bookstores in Jamaica pursuant to a Consignment Agreement which the 1st Defendant had with LMH Publishing Limited, his publisher at the material time. The 1st Defendant's evidence on publication, given during cross-examination, establishes all of this as follows:

> Q: The book was available at bookstores in Kingston.
>
> A: That was by Mike Henry and the company. I don't recall an Agreement but whatever he wanted done was done. Somebody had to pay for Devon House and that sort of thing.
>
> **Witness shown Exhibit 1 pages 143-144 (Consignment Agreement)**
>
> Q: Do you see your signature on that document?
>
> A: Signature is mine, but I don't recall the date this was done. This would be valid.
>
> Q: And this is your agreement for the distribution of 300 copies of your book?
>
> A: I can't recall. Well, it says 300 so yes.
>
> Q: And apart from this agreement you had with LMH Publishing you also had the book on the internet.
>
> A: Yes, with Amazon.
>
> Q: And you also have it available as a Kindle book?
>
> A: Yes. On Amazon."

[132] In light of the foregoing, I am satisfied that the impugned words in the book, "**No Justice in Jamaica**" were widely published to at least one (1) person other than Mr. Michael Causwell Snr. and Mr. Michael Causwell Jnr.

Issue 4 - Whether the 1st Defendant can rely on the defences of Truth or Fair Comment

The defence of Truth

[133] In addressing the Court on this defence, King's Counsel submitted that the starting point is to consider that the defamatory words are presumed false and the burden rests on the 1st Defendant to prove their truth. He submitted further that the 1st Defendant has failed to discharge this burden. He commended the decision ***Jamaica Observer Limited and Paget deFreitas v Gladstone Wright*** *[2014]*

JMCA Civ. 18 to the Court, in which the Court of Appeal set out the relevant principles governing the defence of truth at paragraph 82 of the Judgment as follows:

> *"[82] It seems to me that the following principles emerge from this brief summary of some of the relevant authorities:*
>
> *(i) Where a number of distinct charges are made against him, the decision as to which to sue on is the claimant's. In such a case, the defendant cannot justify the libel contained in the charge or charges in respect of which he has been sued by proving the truth of any of the others.*
>
> *(ii) But for the purposes of a plea of justification (truth), the jury is nevertheless entitled to have regard to the entire article in which the words complained of appear, as the entire context may have a bearing on the meaning to be attributed to the words complained of*
>
> *(iii) Whether a defamatory statement is separate and distinct from other defamatory statements in the publication is a question of fact and degree in each case. If in fact the several defamatory allegations have a common sting, it may be possible for the defendant to justify the libel by reference to the common sting.*
>
> *(iv)) Section 7 affords the defendant a defence only where there are two or more distinct charges contained in the words of which the claimant complains. In such a case, the defendant may successfully rely on the section even if the truth of every charge is not proved, provided that the words not proved to be true do not materially injure the claimant's reputation, having regard to the truth of the remaining charges."*

[134] Mr. Manning K.C. posited that the book contains multiple distinct allegations of impropriety, misappropriation, fraud, and collusion, each requiring separate proof, as there is no single common sting. He argued that the 1st Defendant was therefore

required to justify every allegation made. He contended that the 1st Defendant led no evidence to support these claims, instead he relied on conjecture and unsupported suppositions rather than proven facts.

[135] In addressing the defamatory statement appearing on page 71 of the 1st Defendant's book which reads:

> *"On the first attempt to pay Kappa by instalments Michael suggested that we simply not pay them" (a creditor) ... "Months later, an attempt was made by our parts manager to have Michael endorse a cheque to pay Kappa another instalment after more cars were sold. Again he objected and, without notifying Michael, I paid this final instalment."*

Mr. Manning K.C. submitted that the 1st Defendant's reliance on this assertion is illogical as the evidence shows that the 1st Defendant and Richard Causwell, were both based at EML's office at 15–17 Arnold Road and managed the company's affairs with the 1st Defendant being responsible for cheque preparation, while the 1st Claimant was not stationed there. He contended that the 1st Defendant's admissions that it was customary for the 1st Claimant to be located at any one of the several properties due to his multiple businesses undermined the strength of his assertion as the practice was that cheques prepared would be signed by the 1st Defendant and Richard Causwell for this reason. He asserted that the 1st Claimant denied the allegation, and the 1st Defendant produced no independent or objective evidence to support any alleged refusal.

[136] On this issue, the 1st Defendant insisted that his statement was true. In written submissions, he sought to introduce additional information which did not form a part of his witness statement and could not properly form a part of the Court's consideration. He maintained however that Kappa was a one-off rescue attempt to assist an Importer on the part of the 1st Claimant to which he did not object and agreed on payments being made. He maintained that the 1st Claimant then sought to take advantage of Kappa by refusing to pay them and he had to bypass the 1st Claimant using his and Richard's signature.

[137] In respect of the statutory position on this defence, **Section 20 (3)** of the Defamation Act states as follows:

> *"20. - (3) In proceedings for defamation, a defence of truth shall succeed if*
>
> *(a) the defendant proves that the imputations contained in the matter that is the subject of the proceedings were true, or not materially different from the truth; or*
>
> *(b) where the proceedings are based on all or any of the matter contained in a publication, the defendant proves that the publication taken as a whole was in substance true, or was in substance not materially different from the truth, if the words not proven to be true do not materially injure the claimant's reputation having regard to the truth of the remaining imputations.*

[138] At common law, statements complained of are presumed to be defamatory in the Claimant's favour. That presumption is rebutted where the Defendant proves, on a balance of probabilities, that the statements are true, in which case the claim fails.

[139] The legal principles which govern this defence were explored by the Court in **CVM v Michael Troupe** *supra* and the circumstances in which it would become relevant were explained as follows:

> ***'As a matter of law, the accuracy or truthfulness of the words complained of would only become relevant if it had been established that the words complained of were defamatory, and a defendant sought to avail himself of the defence of justification. In Lonrho PLC and others v Fayed and others (No 5) [1993] 1 WLR 1489, Stuart-Smith LJ pithily recognised the interplay between the presumption of falsity and the defence of justification in this way (at page 1502 of the report): "...[N]o one has a right to a reputation which is unmerited. Accordingly, one can only suffer an injury to reputation if what is said is false. In defamation the falsity of the libel or slander is presumed; but justification is a complete defence."*** *(emphasis added)*

[140] In my examination of the complaint about the words at page 71, I note that the 1st Defendant made reference to a Manager who unsuccessfully sought to get the 1st Claimant's signature which he refused to provide. Though he was provided with the opportunity to present his witnesses, even after the trial had commenced, Mr Clacken elected to proceed on his own account. Given his acceptance during the

trial that the signature of the two (2) Directors was sufficient to endorse a cheque and his own admission that he became a part of the 'rescue attempt' out of 'compassion' for Kappa, I find that it was imperative that some support be provided for the veracity of this assertion. In the absence of any other evidence apart from Mr Clacken's contentions, I am inclined to agree with King's Counsel's submission that the 1st Defendant has not met the threshold required for this Defence.

[141] In respect of the statement at page 75 of the 1st Defendant's book which reads:

> *"I became extremely concerned when it appeared that curious efforts were being made to clear these vehicles... So in order to settle with them the invoice figures that should be used to tabulate the real costs were not the ones used for paying duties and clearing customs. This resulted in the parts manager hastily searching for and destroying some invoices to avoid being charged with a criminal offence."*

King's Counsel submitted that the allegation published by the 1st Defendant goes beyond impropriety and imputes criminal conduct to the 1st Claimant, suggesting an attempt to defraud Customs by falsifying documents, providing false information, or concealing required details to evade duties or taxes on imported vehicles. He argued that such conduct attracts strict penalties under Jamaica's Customs Act, including those prescribed by section 209 which addresses the imposition of penalties for the making of false declarations.

[142] For ease of reference, the Court considers it necessary to set out the provisions of section 209 of the Customs Act. It is set out as follows:

> *209.--(1) A person commits an offence if-*
>
> *(a) in any matter relating to the customs, or under the control or management of the Commissioner, he-*
>
> *(i)makes or subscribes or causes to be made or subscribed, any false declaration; or*
>
> *(ii) makes or signs or causes to be made or signed, any declaration, certificate or other instrument, required to be verified by signature, which is false in a material particular;*

(b) he makes or signs any declaration made for the consideration of the Commissioner, on any application presented to him, which is false in a material particular;

(c) where required by the customs laws to answer questions put to him by an officer acting in the execution of his duty –

(i) he refuses to answer such questions; or

(ii) he gives any answer which is false;

(d) he counterfeits or falsifies –

(i) any document required by the customs laws or by or under the directions of the Commissioner; and

(ii) any instrument used in the transaction of any business or matter relating to the customs;

(e) he wilfully uses any such document which is counterfeited or falsified;

(f) he alters any document or instrument after it has been officially issued;

(g) he counterfeits the seal, signature, initials or other mark of or used by, any officer for any purpose in the conduct of business relating to the customs or under the control or management of the Commissioner; or

(h) on any document or instrument required for the purposes of the customs laws, he counterfeits or imitates the seal, signature, initials or other mark of or used by any other person, whether with or without the consent of that other person.

(2) A person who commits an offence under subsection (1) shall be liable to a penalty not exceeding five hundred thousand dollars or treble the value of the goods to which the offence relates, whichever is the greater.

[143] King's Counsel asserted that the 1st Defendant acknowledged the criminal implications of his allegation, stating that it led to the destruction of invoices to avoid criminal charges. He contended that the defence of truth is unsupported because the 1st Claimant consistently maintained that the amended invoices were part of legitimate price negotiations and not an attempt to defraud Customs. He

denied any intention to defraud Customs and explained that invoices are not binding on Customs, a position confirmed by the Customs' Representative.

[144] King's Counsel submitted that in the evidence-in-chief and cross-examination of Mr. Michael Wilson, the evidence showed that Customs' robust valuation system made fraud impossible, as the values used to assess duties were equal to or higher than those on the amended invoices. The Court took note that this was grudgingly accepted by the 1st Defendant under cross-examination when he was presented with the Import Entries, **MW1** – **MW8**, which showed that duties and GCT were paid on the transactions.

[145] In detailed written submissions on this point, the 1st Defendant contended that the account at this page referred to two separate incidents, the first concerned vehicles which arrived for the 1st Claimant without a license. This shipment was never cleared by EML. The 2nd concerned business done with the Robinson's from New Zealand. He insisted that his description of Michael Causwell Snr's conduct was true and maintained that by having dual invoices, that was in itself unusual and was done with an intention to defraud the Government of the revenue owed on the transaction.

[146] He argued that **MW5** provided proof of under-invoicing as the sum on the Bill of Sight was lower than the original invoice and Jamaica was deprived of GCT and Custom duties. He asserted that there was improper use of the BVD when invoices existed and this was a breach. He insisted that his intervention had been done to safeguard the interest of the Robinsons and highlighted that EML never profited from these transactions as the 1st Claimant never paid the **Ten Thousand Dollars ($10,000.00)** per transaction which was owed to the company.

[147] In my analysis of the evidence on this statement, I believed the evidence of the 1st Claimant that the amending of the figures on the invoices was a basic tool of negotiation. It was evident that he and not Mr Clacken was involved in the importation of vehicles by EML at this stage and as such, he was better placed to

speak of the prevailing practices. The question then that has to be decided is whether Mr Clacken was able to prove the truth of the statements he made at this page. In arriving at a decision on this, the Court was greatly assisted by the evidence of Mr Michael Wilson, an independent witness from the JCA who could speak to the practices at the JCA.

[148] While Mr Wilson emphasized the importance of the invoice, he confirmed the evidence of the 1st Claimant that an assessment could be conducted by Customs without it. He made it clear that even though these transactions were done without invoices, as noted on the Bills of Sight, the BVD would have been utilized and a valuation arrived at on which duties and GCT were assessed and ultimately paid by EML. While the valuation assigned on **MW5** was lower than the original amount and the same as the amended figure, the Court cannot speculate that the amended invoice must have influenced this and thereby deprived the Government of these funds. This is particularly important, given the evidence of Mr Wilson that none of the eight (8) transactions were done using invoices. With the exception of this transaction and **MW3** where the value assigned by Customs was lower than both the original and amended values, **for MW1, MW2, MW4, MW6, MW7** and **MW8**, all the values assessed by Customs were higher than both the original and amended figure.

[149] I accept the evidence of Mr Wilson as credible and deem him a witness of truth. I observed that his evidence regarding the eight (8) import entries and Bills of Sight remained consistent in both evidence-in-chief and cross-examination and was supported by the documentary evidence provided by him.

[150] I agree with Mr. Manning's K.C. submission that the 1st Defendant has not complied with the statutory requirement to provide evidence to prove that his assertions that the 1st Claimant falsified invoices to reduce the duties and GCT is true. In light of the foregoing, the defence of truth in respect of this allegation must fail.

[151] In respect of page 80 of the book which reads:

> *"One day Michael called me asking to have EML take over or guarantee responsibility of a bond or loan of US$ 130,000 for a friend in New York whom we all knew.... It was later that I discovered that this US$130,000.00 was actually paid into Michael's account at Caribbean Trust to pay off one of his loans that was "called" by the lender. The beneficiary of the US$130,000.00 therefore seemed to have been Michael and not his friend."*

King's Counsel submitted that this statement was baseless and a false accusation which was not supported by any evidence. He submitted that the malicious intention of the 1st Defendant in maligning the 1st Claimant is very clear as he did not seek to review any documentation to assess the truthfulness of his statement.

[152] Mr Clacken maintained that the loan had been received by the 1st Claimant and not his friend, Mr. Anthony Barrett and EML had to repay most of it.

[153] On a careful review of the oral and documentary evidence, it was noted that documents which had come into the 1st Defendant's possession or were otherwise available to him as Managing Director of EML, showed the identity of the actual 'borrower'. In cross-examination, he admitted that he received cheques on behalf of EML from Messrs. DunnCox, Orrett & Ashenheim. He also admitted that monies were paid over to EML on behalf of Mr. Anthony Barrett, as part proceeds of sale of Mr. Barrett's property to settle his indebtedness. There was also a statement of account which Mr Clacken acknowledged was in respect of the Barrett loan, even while asserting it only addressed interest payments. It is evident from these concessions that he would have been aware that the very Anthony Barrett, who the 1st Claimant said had received the loan, was making payments to EML in respect of it. He even accepted that his signature appeared on a document from the law firm in respect of the loan, acknowledging receipt of same.

[154] In addressing the question as to the source of his later knowledge that it was the 1st Claimant who had actually received the loan, the explanation provided by Mr Clacken was to attribute the information to an unnamed Bank Manager who never

attended to give this evidence. Given the requirement that it was the 1st Defendant who had to prove that this assertion was true, the evidence provided by him fell woefully short of the mark in this regard. I find that that despite knowing the truth, the 1st Defendant deliberately published the false allegation.

[155] In addressing the contents at page 101 of the 1st Defendant's book which reads:

> *"At least $18 Million of false payables were manipulated in favour of Michael or his company." ...*

[156] Mr. Manning K.C. submitted that the 1st Claimant in his evidence-in-chief denied receiving **Eighteen Million Dollars ($18,000,000.00)** whether personally or through his company. He submitted that the 1st Defendant's narrative on the circumstances in which the **Eighteen Million Dollars ($18,000,000.00)** was carried on EML's books was false and misleading and geared towards influencing the public to believe that the 1st Claimant was dishonest in his dealings with EML. Counsel directed the Court's attention to the judgment of Sykes J (as he then was) in ***Dwight Clacken and Lynne Clacken v Michael Causwell, Richard Causwell and Equipment Maintenance Ltd*** in order to understand the context in which the agreement was made to enter the **Eighteen Million Dollars ($18,000,000.00)** on EML's books. In the course of his Judgment, Sykes J (as he then was) opined as follows:

> *"It turned out after prolonged cross examination by Mr. Vassell that there appeared to be a 'loan t to ECR by EML. This l loan l was supposed to be 'reversed' at some point and it was not. It seems that this was the loan being spoken of in the cross examination. How does one enter a book transaction of $18m which was to be reversed? From the evidence this transaction was supposed to have taken place years before 2001. This way of keeping records was an objective fact known to Mr. Clacken before the May 29 order. The point is not whether or not there was a loan but rather, the almost loose way in which this transaction was recorded and then to be reversed. This is part of the matrix of fact known to Mr. Clacken'.*

[157] Mr Clacken countered by insisting that the sum of **Eighteen Million Dollars ($18,000,000.00)** was in fact transferred to the 1st Claimant's company. He also

highlighted the fact that the Auditor who had made the entry was placed before the PAB and an adverse finding was made against him in terms of his accounting practices.

[158] In assessing the evidence, it is apparent that the **Eighteen Million Dollars ($18,000,000.00)** accounting entry was agreed upon and authorized by all EML partners, including the 1st Defendant, before the business relationship deteriorated and was not made at the direction of the 1st Claimant as suggested. Although the 1st Defendant submitted that the sum was transferred to the 1st Claimant, no evidence was provided in support of this assertion. The 1st Defendant's description of this agreed entry as "manipulation" is therefore unjustified and the Court finds that it was deliberately framed to discredit the 1st Claimant by omitting the surrounding facts.

[159] In submissions in respect of page 114 of the book which reads:

> *"The hearing also exposed the fact that Michael's son deliberately altered the 2001 comparison figures in the 2001(sic) financial statement."*

[160] Mr. Manning K.C. argued that the authority of ***Stocker v Stocker*** [2019] UKSC 17 is relevant to the discussion as it establishes that when words have multiple possible meanings, including both defamatory and non-defamatory interpretations, the Court is not required to adopt the non-defamatory meaning. The context in which the words are used is crucial, as the key question is what the ordinary reasonable reader would understand the words to mean.

[161] Mr Manning K.C. submitted that although "*alter*" may mean a slight change, an ordinary reasonable reader, considering the word in the context of the book "**No Justice in Jamaica"** which portrays themes of fraud, corruption, and dishonest business practices would not understand it as an innocuous adjustment or mere redaction. Rather, the reader would likely conclude that the Financial Statement was materially and significantly changed.

[162] During his evidence-in-chief, the 2nd Claimant explained that he redacted the 2001 information from the Statements of 2002 because the PAB requested only the audited Financial Statements of 2002, and he considered the 2001 information unnecessary.

[163] Mr. Manning K.C. submitted that the Court is not confined to a narrow dictionary definition of "alter," as a word's meaning must be determined in its context. He argued that given the serious allegations advanced, the 1st Defendant deliberately used language calculated to provoke a particular interpretation by readers, rather than the more neutral term "block out" which he later employed in cross-examination. That choice of wording was prejudicial to the 2nd Claimant and the 1st Defendant cannot avoid responsibility for its consequences.

[164] Mr Clacken sought to refute this position by asking the Court to consider the fact that the 2001 financials had initially been said not to exist and then were deliberately blocked out by the 2nd Claimant as a comparative figure in the 2002 financials. He asserted that the records were deliberately tampered with by the 2nd Defendant.

[165] In analyzing the contending positions on this point, the Court is mindful of the fact that the 2nd Claimant accepted that he had covered/redacted the figures for 2001, his explanation for doing so was however unchallenged by the 1st Defendant. While the use of the word, 'alter' does not necessarily imply criminal or dishonest conduct, the Court accepts that an ordinary reasonable reader, encountering the word "alter" in the context of the book, would be likely to conclude that the 2nd Claimant deliberately falsified the Financial Statement for an improper purpose. Having regard to the nature of the allegation and the evidence adduced by the 1st Defendant, the Court finds that he has failed to make out the defence of truth in respect of this statement.

[166] Mr Manning K.C. also addressed the Court in respect of page 118 of the 1st Defendant's book which reads:

> *"I assumed that renewal of the injunction would just be a formality as had been routine in the past... Instead, a most bizarre thing happened. In this Supreme Court hearing specifically to continue protecting these funds - the same funds that were exposed by Justice Anderson...Justice Marsh's action was ridiculous if not dishonest and I am quite sure that the partner's knew this'*

[167] In submissions in this regard, Mr. Manning K.C. said that to determine that there was no collusion, fraud, bribery, corruption, or other improper dealings between the 1st Claimant and any officers of the Court, including Judges, this Court need only refer to the judgment of Nembhard J in ***Roy K. Anderson v Dwight Clacken supra***, where the Learned Judge, having found the words used in relation to Anderson J to be defamatory, concluded as follows:

> *"That the words used in the impugned statements which are made on page 100 of the subject book, when given their natural and ordinary meaning and in the context of the subject book in its entirety, including its title as well as the graphics displayed on its cover, mean that Mr. Anderson, in his capacity as a judicial officer:*
>
> *i. was involved with the Attorneys-at-Law in conspiring to adjourn the hearing of the matter against the wishes of the Clackens;*
> *ii. struck this conspiracy to further an improper personal agenda common to the lawyers and himself;*
> *iii. intervened in counsel's conduct of their respective cases, without invitation and did so because he was connected to the litigation;*
> *iv. had a personal and improper motive for inserting himself into the conduct of the case by counsel;*
> *v. interfered in the matter with the specific intention of influencing the outcome and/or perverting the course of justice. ',*

[168] Mr. Manning K.C. submitted that at page 37 of her judgment, the Learned Judge held that the 1st Defendant's comments concerning Justice Roy Anderson (Retd.) were not grounded in a truthful representation of the facts and were motivated by malice. Those findings have not been appealed by the 1st Defendant. He submitted further that the same reasoning applies to the 1st Defendant's scathing narrative of the Jamaican justice system and his allegations implicating the Claimants in the alleged "*corruption*" he claims to have suffered. King's Counsel contended that there is no truth to these assertions, which were plainly intended to undermine and

damage the Claimants after the 1st Defendant failed to achieve a desirable or favourable result through litigation.

[169] Mr Clacken did not seek to assert that the statements contained at this extract were true but argued that they constituted '*Fair Comment'* on the proceedings and were a criticism of the Judicial System. He also argued that the words were published on an occasion of privilege.

[170] In my review of this extract from the book, I found it instructive that the 1st Defendant did not seek to assert the truthfulness of these charges but chose to take cover under the shadow of the other Defences referred to above. In the absence of any evidence to prove these speculations as to the involvement of any Judicial officer in criminality with the Claimants, it goes without saying that he would have failed to discharge the burden of proving the defence of truth. The impugned statements were serious and outlined specific allegations of dishonesty, fraud, and improper conduct, yet the 1st Defendant adduced no cogent, credible, or objective evidence capable of substantiating them.

[171] To the contrary, the evidence before the Court demonstrates that the allegations were false or, at best, founded on conjecture and suspicion rather than fact. In defamation law, mere belief, repetition of unverified assertions, or reliance on speculation is insufficient to justify defamatory publications.

[172] Before leaving the matter, the Court also considered the words published at page 97 of Exhibit 3 in respect of the 2nd Claimant, the relevant extract states as follows:

> "*After we had the 2002 financials examined by a Chartered Accountant, they turned out to be unaudited and tampered with. In countries where justice prevails, this is called "fraud."*

[173] In submissions filed on this issue, the 1st Defendant sought to rely on material from the PAB hearing involving Mr. Cunningham. Consistent with my indication during the course of the trial, that material which had not been disclosed, agreed or exhibited would not be considered, I have not taken any of the events which Mr.

Clacken asserted happened before the PAB into account. Mr. Clacken further submitted that the 2nd Claimant admitted to blocking out the comparative figure for 2001 in the 2002 Financial Statement, a fact which he should have known was wrong, having worked in the field of finance. Therefore, what he did was fraudulent and the defence of truth would be available to him in this regard.

[174] In evaluating this submission, the words impugned and the evidence on it, the Court observes that there was a misdescription of the Financial Statements by the 1st Defendant, as the cover letter which makes reference to it states that it was an audited account. Additionally, while Mr. Clacken makes reference to the findings of a Chartered Accountant, no such findings were presented during the trial. His reliance on the 2nd Claimant's admission is not sufficient to say that his statement was true as there is an explanation in respect of the action taken, which though unusual, would still need to be shown as having been done with a dishonest intent or as part of a deliberate scheme to mislead the PAB or any other body. Accordingly, it is my finding that the 1st Defendant has failed to establish the truth of this allegation and cannot rely on the defence of truth.

The defence of fair comment

Fair Comment

[175] Mr Manning K.C. argued that for the 1st Defendant to rely on fair comment, it must be proven that his comments and opinions expressed are honestly held and are based on facts. He submitted that in their evidence, the Claimants have rebutted the 1st Defendant's allegations and have shown what was the true state of affairs at the material time. To buttress his submission, Mr. Manning K.C. relied on the Court of Appeal decision *of* **Jamaica Observer Limited v Joseph Matalon** [2019] JMCA Civ. 38 where the Court commented on the application of the defence of fair comment as follows:

> *"It is a defence to an action for defamation that the words complained of are fair comment on a matter of public interest. The defence gives legal*

> *recognition to 'the right of the citizen honestly to express his genuine opinion on a subject of public interest, however wrong or exaggerated or prejudiced that opinion may be': a man is not only entitled to hold his own opinion but, provided that it is his honest opinion based upon the facts and related to a matter of public concern, he is entitled to express it to others even though it reflects unfavourably upon some other person. Fair comment is a defence that protects defamatory criticism or expressions of opinion; it does not protect defamatory statements of fact. ',*

[176] Mr. Manning K.C submitted that it was the intention of the 1st Defendant to create dissension between the 1st Claimant and his suppliers and exclude him from discussions, as reflected in the February 2nd, 1998 letter.

[177] He submitted further that this was not a case of corruption, misappropriation or wrongfully withheld funds by the 1st Claimant, as the 1st Defendant would have the public believe. Rather it is a case of inaccurate accounting on the part of the 1st Defendant and Lynne Clacken and an unwillingness by the 1st Defendant to verify the accuracy or completeness of the information within his possession. He contended that any adverse reaction from the Robinsons resulted directly from inaccurate information provided by the 1st Defendant and Lynne Clacken, which had lasting negative effects on the 1st Claimant's business and led to his exclusion from further communications.

[178] Mr. Manning K.C. posited that the Defendant cannot rely on the defence of fair comment as his opinions were not honestly held, neither are they based on accurate and complete facts.

[179] The 1st Defendant submitted that the words complained of by the Claimants were fair comment and on a matter of public interest. He contended that the comments were based on facts which are true or protected by privilege. He said that the facts on which his comments are made are stated separately from the comments and the ordinary reasonable reader can see the grounds upon which the unfavourable inferences are based. He that the comments are truly warranted by facts stated in his book.

[180] **Section 21(1)** of the Act states as follows:

> *"21. – (1) In an action for defamation in respect of words, including or consisting of expression of opinion, a defence of fair comment shall not fail only because the defendant has failed to prove the truth of every relevant assertion of fact relied on by him as a foundation for the opinion, provided that such of the assertions as are proved to be true are relevant and afford a foundation for the opinion."*

[181] In **CVM v Troupe (Michael)** *supra,* McDonald-Bishop P addressed the applicability of this defence as follows:

> *[63]* ***It is well established that the defence of fair comment only applies to comments or opinions, and not to purely factual statements, assertions or imputations****. The modern common law requirements for establishing the defence were set out by Lord Nicholls, sitting in the Court of Final Appeal of Hong Kong, in Tse Wai Chun v Cheng [2001] EMLR 777, and later refined by the United Kingdom Supreme Court in Joseph v Spiller. The second requirement for the defence, as stated by the court, is that:*
>
> > *"…****the comment must be recognisable as comment, as distinct from an imputation of fact. If the imputation is one of fact, a ground of defence must be sought elsewhere, for example, justification or privilege". (See para. 3 of Joseph v Spiller, and the judgment of Lord Nicholls of Birkenhead in Reynolds at 615).***
>
> *[64]* ***The law, therefore, is that a defendant's failure to establish that the words in question are a comment will be fatal to the defence****. This means that for TVJ to succeed in its appeal against the learned judge's rejection of the defence, it needed to challenge her conclusion that Clunis 1 was a factual statement. TVJ has not done so. (emphasis supplied)*

[182] Her Ladyship provided additional guidance on the distinction between a fair comment and a statement of fact at paragraph 71 of this Judgment, where she stated:

> *An examination of the case law on this subject demonstrates that the courts have expressed difficulty in drawing a defining line between what amounts to a*

comment and a statement of fact (see, for example, Joseph v Spiller at para. 5). However, it appears that the following propositions reflect the court's usual approach to the question:

> *(a) Although "comment" is often equated with "opinion", this is an oversimplification.* ***A comment is "something which is or can reasonably be inferred to be a deduction, inference, conclusion, criticism, remark, observation etc"*** *(see Branson v Bower No 1 at para. [12]).*
>
> *(b) A "pure statement of evaluative opinion which represents the writer's view on something which cannot be meaningfully verified", or a statement which, in context, can be viewed as an evaluative opinion, are comments for the purpose of the defence (see para. 12.8 of Gatley).*
>
> *(c)* ***Another test is whether "the words appear to a reasonable reader to be conclusionary" or represent an inference from facts stated or referred to*** *(see Gatley at para. 12.6, citing the case of Mitchell v Sprott (2002) 1 NZLR 766 (CA) at [19]).*
>
> *(d)* ***A statement which does not indicate with reasonable clarity that it purports to be a comment and not a statement of fact cannot be protected by a plea of fair comment. This means that the comment must not be so mixed up with the facts that the reader cannot distinguish between what is a comment and what is not. If the comment is so mixed up, then it cannot attract the defence of fair comment*** *(see Davis v Shepstone (1886) 11 App Cas 187 PC at 190 and Hunt v The Star Newspaper Company Limited [1908] 2 KB 309 at 319 – 320).*
>
> *(e) When determining whether a publication amounts to a statement of fact or comment, the court is usually confined to the context of the particular publication in respect of which the action is brought. It is not legitimate to look outside the publication and the matters to which the purported*

comment is based to ascertain its recognisability as a comment (see para. 12.2 of Gatley and Telnikoff v Matusevitch at 984 – 965).

(f) ***Because defamation is concerned with the meaning ascribed to the words by the ordinary, reasonable man, the court must also examine the words complained of from that vantage point. The ultimate question is how the words would strike the ordinary, reasonable reader*** *(see London Artists v Littler*). (emphasis supplied).

[183] Crucially, for a Defendant to successfully invoke this defence, they must establish the following:

i. that the statement is a comment or opinion and not an assertion of fact;
ii. the comment must not be so mixed up with the facts that the reader; cannot distinguish between what is a comment and what is not;
iii. that the comment is 'honestly' made; and
iv. that the comment is not actuated by malice.

[184] The defence of fair comment does not require a Defendant to prove that his comment is true. What is required is proof of the truth of the underlying facts or statements on which the comment was based. Proof of the truth of the defamatory words is not required in these circumstances as the 1st Defendant did not plead the defence of justification.

[185] The dicta of Lord Denning in **London Artists Ltd v Litter** [1969] 2 QB 375 at 391 is also noteworthy wherein he opined as follows:

> ***...In order to be fair, the commentator must get the basic facts right. The basic facts are those which go to the pith and substance of the matter: see Cunningham-Howie v Dimbley*** *[1951] 1KB 360, 364. They are the facts on which the inferences are drawn – as distinct from the comments or inferences themselves. The commentator need not set out in his original article all the basic facts: see Kemsley v Foot [1952] AC 345, but he must get them right and be ready to prove them to be true." (emphasis added)*

[186] In the case at bar, the question that needs to be determined is whether the statements made by the 1st Defendant have any foundation in fact and constitute a comment on this fact.

[187] It has already been observed that the 1st Defendant failed to provide any evidence to support his assertions that the **Eighteen Million Dollars ($18,000,000.00)** entry on EML's books was intended to make the 1st Claimant appear more creditworthy or that this money was paid to him. He has also failed to prove that there was any factual basis or proper foundation for his contention that the loan of **One Hundred and Thirty Thousand US Dollars ($130,000.00**) had in fact been taken by the 1st Claimant. While he had suspicions as to the procedure adopted by the 1st Claimant in dealing with the Robinsons, he had received information from Milton Hewling which showed that the accounts on which he relied were incomplete but rejected that advice in favour of his wife's computations; despite the fact that she was not an Accountant.

[188] In respect of the words used at pages 110, 118 and 147 which touched and concerned the Court proceedings, the 1st Defendant was candid that he was merely seeking to '*comment*' on the Justice System. Unfortunately, this is not sufficient to make out the defence as the law requires that there at least be a factual basis undergirding the comments. By the 1st Defendant's own admission, he was engaged in speculation and/or conjecture based on events and rulings which were adverse to him. The authors of **Gatley on Libel and Slander** 10th Edition, at paragraph 12.1 make it clear that fair comment "*does not extend to misstatements of facts however bona fide.*" In light of the foregoing findings, it is evident that the 1st Defendant has failed to show that the words complained of were comments on underlying facts or expressive of a view which was honestly held. Accordingly, the defence of fair comment is not open to him.

[189] Although it did not form the topic of submissions by either side, I also considered whether the words at paragraphs 97 and 114 could be covered under the defence of fair comment, given the 2nd Claimant's admissions of covering the 2001 figures

on the 2002 Financial Statement. While it may be said that there was some truth in the underlying facts, given the 2nd Claimant's evidence, the law makes it clear that *'the comment must not be so mixed up with the facts that the reader cannot distinguish between what is a comment and what is not. If the comment is so mixed up, then it cannot attract the defence of fair comment.'*

[190] The assertions made on these pages fall squarely within the very realm which the law prohibits as while the 2nd Claimant redacted a document, there was no factual basis established to say it was pursuant to an improper purpose or dishonest motive. In these circumstances, fair comment could not assist the 1st Defendant in defending against this complaint.

Whether the Defendant can rely on the Defence of Qualified privilege or has it been negated by malice?

[191] In the course of his submissions that **Exhibit 3** fell within the ambit of Qualified Privilege, Mr Clacken cited the decision of **Horrocks v Lowe [1975] AC 135.** In that matter, the Defendant was a Councillor, who made remarks during a Council meeting about the Claimant which were defamatory and untrue. The Defendant claimed qualified privilege, arguing he had a duty to communicate to the Council and they had a duty to receive it. The Claimant argued that while the words were spoken on a privileged occasion, the Defendant had acted with malice which would negate the privilege. The House of Lord upheld the defence of qualified privilege on the basis that malice was not proven as the Defendant genuinely believed in the truth of what he said. Lord Diplock clarified that malice only arises if the Defendant did not honestly believe the statement or was motivated by an improper dominant motive (e.g. spite).

[192] Mr Clacken argued that his comments in the book reflected duty and accountability on his part in bringing the failings of the Justice System and corruption within his own organization to the public and were never influenced by malice.

[193] Mr. Manning K.C. submitted that this case does not attract qualified privilege for three reasons. First, by publishing the book "**No Justice in Jamaica**" the 1st Defendant was actuated by malice and a desire to injure and/or lower the Claimants in the eyes of their business associates and the public at large. This is evident as the 1st Defendant took active steps to have the book distributed throughout Jamaica and overseas after being notified in writing of its defamatory material by the Claimant's Attorneys-at-Law by letter dated the 22nd of April 2016.

[194] Secondly, the book was published in 2016 after a series of court losses in 2010, including a ruling which followed a lengthy trial in which the 1st Defendant and his wife were unsuccessful in their effort to set aside a consent order, on grounds of frustration and/or common or mutual mistake. King's Counsel further submitted that the 1st Defendant was also dissatisfied with the outcome of the contempt proceedings before Williams J, who found no contempt on the part of the 1st Claimant and Richard Causwell. He argued that driven by his belief that the Courts would not act justly, the 1st Defendant chose to publish his version of events in a book containing falsehoods and half-truths about the Claimants.

[195] Thirdly, the 1st Defendant made allegations against public officials, government entities and the Claimants without assessing or seeking to ascertain whether the said comments were accurate.

[196] Mr. Manning K.C. submitted that the 1st Defendant had no moral, legal, or other duty to publish confidential information about a private company's internal affairs, and the public had no corresponding interest in receiving it, apart from its potential to provoke salacious gossip.

[197] Mr. Manning K.C. contended that the 1st Defendant knew the defamatory statements would have a wide impact and that by mixing them with partial truths or rhetorical questions, it would lead readers to believe and spread them. King's Counsel argued that the 1st Defendant's own words in his book and defence reflect this awareness and show that his intent was not to convey factual information but

to present the material in a sensational and scandalous way that readers would accept as true and readily disseminate.

[198] With respect to ***Reynolds v Times Newspapers Ltd*** [1999] 4 All ER 609 and ***Bonnick v Morris*** [2002] UKPC 31, King's Counsel submitted that the 1st Defendant has failed to meet the standard of responsible journalism required to sustain a defence of qualified privilege, having made serious allegations without verification, balance, or affording the Claimants an opportunity to respond. He contended that the 1st Defendant's statements were clear and unambiguous, admitting of no alternative innocent meaning. In addressing ***Horrocks v Lowe*** *supra*, King's Counsel argued that the evidence establishes express malice, thereby defeating any claim to qualified privilege, particularly in light of the 1st Defendant's persistence in advancing allegations which had previously been judicially discredited. Accordingly, they invite the Court to grant the reliefs sought, including damages, injunctive relief, and costs.

[199] **Section 23(1)(2)** and **(3)** of the Defamation Act reads: -

> *"23.- (1) Unless the publication is proved to be made with malice, subject to the provisions of this section, the publication in a news medium of any report or other matter mentioned in the First Schedule 49 shall be privileged.*
>
> *(2) In an action for defamation in respect of the publication of any report or matter mentioned in Part II of the First Schedule, the provisions of this section shall not be a defence if it is proved that the defendant has been requested by the claimant to publish in the news medium in which the original publication was made a reasonable letter or statement by way of explanation or contradiction, and has refused or neglected to do so, or has done so in a manner that is not adequate or not reasonable having regard to all the circumstances.*
>
> *(3) This section is not construed as –*
>
> *(a) protecting the publication of any matter the publication of which is prohibited by law, or of nay matter which is not of public*

> *concern and the publication of which is not for the public benefit; or*
>
> *(b) limiting or abridging any privilege subsisting before the date of commencement of this Act (otherwise than by virtue of any enactment repealed by section 37 of this Act)."*

[200] Qualified privilege applies where the Defendant believes the statement to be true and either has reasonable grounds for that belief or did not act recklessly. If the matter is of legitimate public interest, the Defendant is protected, provided there was no malice, the report was fair and accurate, and the subject matter was of public interest.

[201] The First Schedule mentioned at Section 23 deals with matters which are in the public domain and which the public has a right to know.

[202] The traditional position in relation to qualified privilege was stated by Lord Atkinson in ***Adam v* Ward** [1917] AC 309 at page 334, as follows:

> *"A privileged occasion is, in reference to qualified privilege, an occasion where* ***the person who makes the communication has an interest or a duty, legal, social or moral, to make it to the person to whom it is made, and the person to whom it is so made has a corresponding interest or duty to receive it.*** *This reciprocity is essential." (emphasis added)*

[203] In the recent case of ***Wayne Reid and Jentech Consultants Limited v Curtis Reid*** [2020] JMCA Civ. 26, Morrison P (Ag.) commented on the defence of qualified privilege as follows:

> *"[73] First, as regards the nature of the defence, we were referred to the following extract from Gatley on Libel and Slander (Gatley') (11th edition, paragraph 14.6):*
>
> *"Duty and interest. 'The occasions [of qualified] privilege can never be catalogued and rendered exact' but the tendency of the courts has been to regard most privileged occasions under the common law as very broadly classifiable into two categories: first, where the maker of the statement has a duty (whether legal, social or moral) to make the statement and the recipient has a corresponding interest to receive it; or, secondly, where the*

> *maker of the statement is acting in pursuance of an interest of his and the recipient has such a corresponding interest or duty in relation to the statement, or where he is acting in a matter in which he has a common interest with the recipient. 'It may be accepted as a well-established rule that some duty or interest must exist in the party to whom the communication is made as well as in the party making it. The duty or interest may be common to both parties, but this is not essential. It is enough if there is a duty or interest on one side, and a duty or interest, or interest or duty (whether common or corresponding or not) on the other',*

[204] On a careful assessment of the circumstances in the case, the evidence indicates that the 1st Defendant had received information from Mr Hewling which should have called into question his belief that the 1st Claimant was stealing from the Robinsons. Additionally, he deliberately refrained from seeking the input of the 1st Claimant in the preparation of the spreadsheets by his wife and he never informed him of the concerns held before notifying the Robinson's of his suspicions. He had been provided with documentary evidence in the course of the loan guarantee to show the identity of the 'borrower' and as such knew that his assertion that the 1st Claimant had received the loan were false.

[205] He engaged in speculations as to the conduct and complicity of Judicial Officers and the Court staff and suggested that they were part of an effort to advance the interest of the Claimants. He blamed his losses on a corrupt Jamaican justice system, even though he unsuccessfully pursued this matter to the Privy Council. He insisted that the 1st Claimant defrauded the Government of revenue but when confronted with documents to the contrary he had to accept that these sums were paid.

[206] These situations, which are just some of the statements complained of provide cogent evidence that the 1st Defendant was not motivated by a duty to inform the public but was in fact driven by malice and a need to *'vent his spleen'*. The publication asserted without proof that the Claimants were dishonest, fraudulent, corrupt and unethical, assertions which he would have known were untrue and which he could not have honestly believed.

[207] I am satisfied that the Claimants have successfully established malice on the part of the 1st Defendant in publishing this book. He made no independent, proper, systematic or meaningful checks to assess whether the information he was seeking to publish was truthful. He opted instead to proffer his opinions and conjectures in his book as though they were facts, without any regard to the damage which the words would have on the Claimants' reputations.

[208] His refusal to refrain from publication, retract the statements, offer an apology, or correct the record, coupled with his continued publication of the book supports the inference that the publication was driven not by a genuine belief in the truth of the allegations, but by hostility and a desire to injure the Claimants' reputation. The publication of the 1st Defendant's book, **No Justice in Jamaica** is therefore not protected by privilege. I do not find that it was in the public's interest to be told about the private business affairs of EML or suspected but unproven corruption in the justice system. It is for these reasons that I find that the defence of qualified privilege must fail.

The quantum of damages payable to the Claimants

[209] In an effort to assist the Court with what would be an appropriate award, Mr Manning K.C. placed reliance on three cases:

a. **Ainsley Lowe v Michael Ricketts** [2022] JMSC Civ.1

b. **Richard Creary v The Gleaner Company (Media) Limited** [2025] JMSC Civ. 2

c. **Roy K. Anderson v Dwight Clacken** [2023] JMSC Civ. 42

[210] **In Ainsley Lowe v Michael Ricketts**, Justice Mott Tulloch Reid considered whether there was a basis for aggravated damages to be awarded to a businessman who was defamed by the Defendant during a radio sports programme on Hitz92FM. The words complained of were:

> *"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. - 2 Everywhere in Clarendon I turn I hear about this man's unacceptable sexuality, everywhere I turn. '*

[211] A formal apology was requested but there was no evidence that one was given, although the Defendant stated that he regretted the remarks, apologized to the Claimant, and acknowledged that his remarks had been inappropriate and caused harm. The Learned Judge found that the circumstances warranted an award of both general and aggravated damages. She observed that "*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*. "

[212] In assessing damages, the Learned Judge noted that the Defendant, despite admitting defamation, attempted during trial to justify his conduct and evade the clear meaning of the words used. The Claimant was awarded **Eight Million Dollars ($8,000,000.00)** in general damages and **One Million Dollars** (**$1,000,000.00)** in aggravated damages. This is updated to **Nine Million Six Hundred and Eighty-Nine Thousand Seven Hundred and Ninety-Five Dollars and Ninety-One Cents ($9,689,795.91)** and **One Million Two Hundred and Eleven Thousand Two Hundred and Twenty-Four Dollars and Forty-Eight Cents** (**$1,211,224.48)** respectively.

[213] In the case of **Richard Creary v The Gleaner Company (Media) Limited** *supra*, the Defendant published an article which was based on a report from the Integrity Commission about an investigation into "*allegations of impropriety and/or irregularity, conflict of interest, corruption, nepotism, cronyism and favouritism at Petrojam Limited".* The Defendant republished a misstatement from the Integrity Commission's report without verifying its accuracy, and the Court found that this haste fell short of responsible journalism. The Integrity Commission issued an

apology thirteen days after publication, but the Defendant did not, choosing instead to publish the claimant's version of events with less prominence.

[214] Mr. Manning K.C. submitted that despite there being little evidence of reputational harm or damage, save "oral evidence of anxiety speaking in front of reporters from the Gleaner, embarrassment and receiving countless call since the publication of the article", the Learned Judge awarded general damages in the sum of **Ten Million Dollars ($10,000,000.00)**, which updates to **Ten Million and Eleven Thousand Two Hundred and Forty-Five Dollars and Forty-Three Cents ($10,011,245.43)**. In arriving at this award, the Learned Judge considered "the authorities, the circumstances and evidence in this case, the position and standing of the claimant; the nature, mode and extent of the publication, the statement issued by the claimant correcting the story, the treatment of that statement by the defendant, the absence of an apology, the conduct of the defendant before, during and after the commencement of the action as well as the plaintiffs injured feelings, distress, embarrassment and humiliation" which she accepted, he must have suffered.

[215] In ***Roy K. Anderson v Dwight Clacken*** *supra*, the Claimant, a retired Judge who was accused of corruption in the book '**No Justice in Jamaica'** was awarded the sum of **Eighty Million Dollars** (**$80,000,000.00)** for general damages which now updates to **Eighty-Nine Million and Twenty-Five Thousand Dollars ($89,025,000.00)** despite the absence of proof of financial loss or reputational harm as a consequence of the defamatory material.

[216] Mr. Manning K.C. submitted that while the awards in ***Ainsley Lowe*** and ***Richard Creary*** may be appropriate for the 2nd Claimant, they are inadequate for the 1st Claimant given the extensive harm suffered, and would need to be significantly increased to reflect the severity of the 1st Defendant's misrepresentations and reputational damage for the following reasons:

a. The 1st Defendant's conduct was egregious, as he persisted in his defamatory allegations despite independent customs evidence and clear documentary proof disproving them. Even when confronted with records, including evidence relating to the Anthony Barrett's transactions and his own acknowledgment of payments, he refused to retract his false claims and continued to rely on unfounded suspicions.
b. Unlike in ***Ainsley Lowe***, the 1st Defendant showed no remorse and persisted with the allegations throughout the trial. While an apology is not an admission of liability, its absence reflects a lack of contrition, especially when contrasted with the publisher's apology, and the Defendant even stated he would publish the statements again.

[217] In his initial submissions on damages, Mr. Manning K.C. submitted that given the serious and repeated allegations of fraud, corruption and deception made against the 1st Claimant as well as the severe reputational damage, an award of **Forty Million Dollars ($40,000,000.00)** is appropriate. He further submitted that **Ten Million Dollars ($10,000,000.00)** is reasonable for the 2nd Claimant, given the 1st Defendant's statements about him.

[218] In further submissions filed in response to the Defendant's Skeleton Arguments on November 3rd, 2025, King's Counsel contended that the sums initially claimed are inadequate to compensate for the harm suffered. He placed particular reliance on the guidance provided in the authority of **The Gleaner Company Limited and another v Abrahams** [2003] UKPC 5 and submitted that defamation awards must reflect the particular gravity and circumstances of the publication. King's Counsel submitted that the1st Defendant has persistently maintained serious allegations of illegality, corruption, and fraud against the Claimants notwithstanding prior judicial findings that such allegations were unsubstantiated and has exhibited no remorse or retraction. King's Counsel argued that the 1st Defendant's continued reliance on unproven matters, including material not adduced at trial, ought to be rejected and the ongoing publication of the impugned material online be found to aggravate the damage suffered.

[219] King's Counsel contended that any award, particularly in respect of the 1st Claimant, ought not to fall below that given to the Claimant in ***Roy K. Anderson v Dwight Clacken*** (supra), despite the absence of proven reputational damage and the comparatively limited scope of the defamatory allegations. He submitted that the 1st Defendant in the present case has made multiple and far-reaching allegations impugning the 1st Claimant's integrity in both his business and personal dealings, thereby warranting a substantially higher award.

[220] King's Counsel further submitted that consistency in awards is desirable, while emphasizing the need for damages to serve both a compensatory and deterrent function, particularly in light of the 1st Defendant's continued publication of defamatory material. Accordingly, updated awards of **One Hundred and Fifteen Million Dollars ($115,000,000.00)** for the 1st Claimant and **Fifteen Million Dollars ($15,000,000.00)** for the 2nd Claimant are appropriate.

[221] Mr. Manning K.C. argued that aggravated damages are warranted because the 1st Defendant continued to sell the book both locally and internationally, has written a sequel to the book, and has continuously refused to retract false statements despite the existence of independent contradictory evidence. He contended that the publication was deliberately crafted to cause reputational harm and this justifies aggravated damages of **Two Million Dollars ($2,000,000.00)** for the 1st Claimant and **One Million Dollars ($1,000,000.00)** for the 2nd Claimant.

[222] Mr. Manning K.C. urged this Court to issue an injunction restraining the continued publication of the offending material as the 1st Defendant has shown little remorse for the inaccurate statements published in the book and is likely to continue publication in the absence of an order of the Court. He has also asked this Court to make an order directing the 1st Defendant to remove the offending publication from all advertising and retail platforms and bookstores, whether they be physical or electronic.

[223] The 1st Defendant opposed any award of damages and maintained that such an award was unwarranted as the Claimants were not defamed.

[224] An appropriate starting point for a discussion of quantum of damages payable to the Claimants is **section 24 of the Defamation Act** which 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."*

This is known as the rational relationship test which, simply put, requires that sufficient nexus exists between the injury or damage suffered and the sum awarded.

[225] The legal principle governing an award of damages for the tort of defamation was conveniently summarized by Bowen LJ in **Ratcliffe v Evans** [1892] 2 QB 524 at 528. His Lordship opined that:

> *"The law presumes that some damage will flow in the ordinary course of things from the mere invasion of his absolute right to reputation, and he is entitled to such general damages as the court may properly award, although he neither pleads nor proves any actual damage".*

[226] In **Jameel and Others v Wall Street Journal Europe Sprl** [2006] UKHL 44, Baroness Hale also laid out pertinent considerations for an award of damages for the tort of defamation as follows:

> *"The tort of defamation exists to protect, not the person or the pocket, but the reputation of the person defamed. Indeed, as Tony Weir points out in A Casebook on Tort (10th edition, 2004, at p 519), it is so tender to a person's reputation that it allows him to claim substantial damages without having to show that the statement was false, or that it did him any harm, or that the defendant was at fault in making it."*

[227] The Court of Appeal expressed a similar position as seen in the remarks of Harris JA at paragraph 25 of **Jamaica Observer Limited v Orville Mattis** [2011] JMCA

Civ. 13. In her decision, the Learned Judge emphasised 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."*

Aggravated Damages

[228] It is a well-established principle that aggravated damages are extra compensatory damages awarded to a Claimant to address the heightened emotional distress, humiliation or injury to dignity caused by a Defendant's conduct. Unlike punitive damages, these are awarded specifically to compensate the victim for the additional injury caused to his feelings by the Defendant's conduct rather than punishing the wrongdoer.

[229] In assessing whether this matter is an appropriate one for the award of aggravated damages, I considered the evidence which showed that the 1st Defendant knowingly persisted in making unfounded assertions, engaged in conjecture and repeated inaccuracies in relation to the Claimants' conduct and business affairs which tarnished their reputations and caused them to feel embarrassed. Throughout the trial, the Court noted that he refused to shift his position, even when confronted with documents produced by the JCA, an independent party and still maintained that the publication was true. He was again afforded the opportunity to apologize and refused to do so. Mr Clacken also acknowledged that the book was still available for sale and can still be found on Amazon and Amazon Kindle.

[230] The evidence of the Claimants was also considered in terms of the impact that these statements had on them. The 1st Claimant averred that "*having to address these allegations and knowing that persons have this book has caused me to feel embarrassed and dejected*." The 2nd Claimant also outlined, in the pleadings that he suffered considerable distress and embarrassment as a result of what was written.

Exemplary damages

[231] In respect of the exemplary damages sought is trite law that exemplary damages are reserved for exceptional cases where the Defendant's conduct is oppressive, arbitrary, or unconstitutional, or where the wrongdoing was calculated to yield a benefit to the Defendant or when a Defendant acts with malice, oppression, fraud or gross negligence and ordinary compensatory and aggravated damages would be inadequate to punish and deter future conduct.

[232] The landmark case of ***Broome v Cassell & Co*** [1972] AC 1027 provides useful guidance on the question of whether exemplary damages should be awarded in the claim at bar. In that case, which was a libel action, an award of exemplary damages was made where the publisher knowingly published defamatory material. This award was upheld on appeal, thereby affirming that punitive damages can be awarded in serious defamation cases.

DISCUSSION

[233] In assessing the quantum of general damages payable in **Ainsley Lowe v Michael Ricketts** *(supra)*, the Court placed weight on the Defendant's conduct following publication, including expressions of regret and steps taken to mitigate harm.

[234] In the claim at bar, the 1st Defendant has maintained the truth of his allegations, refused to retract them, persisted in their publication and indicated a willingness to republish. Unlike **Ainsley Lowe**, there has been no contrition or corrective action. This sustained and defiant conduct aggravates the defamatory harm and undermines any mitigating considerations.

[235] In that matter, the defamatory words were broadcast on radio without naming the Claimant and the 1st Defendant offered an apology. In the present case, the defamatory statements were published in a book distributed locally and internationally, in a permanent form, with the Claimants expressly named and readily identifiable. The 1st Defendant has offered no apology and has shown no

remorse. The publication was therefore more extensive and injurious, clearly warranting a higher award.

[236] Accordingly, while both cases concern defamatory publications, the 1st Defendant's continued assertion and republication of unproven allegations materially distinguishes it from **Ainsley Lowe** and supports a finding that there should be a higher award of general damages as well as aggravated damages.

[237] In **Richard Creary v The Gleaner Company Limited** *(supra)*, the Court examined allegations that were defamatory but lacked proof of pecuniary loss or direct reputational impact. It was nonetheless recognized that serious false statements, even without specific quantifiable harm could warrant substantial general damages to vindicate the Claimant's reputation. While no apology was offered, the Defendant sought the Claimant's account. In contrast, in the case at bar, the 1st Defendant neither verified his allegations nor sought the Claimants' response.

[238] In the present case, the defamatory statements similarly allege serious misconduct, including fraud, corruption, and improper dealings. As in **Creary**, the 1st Defendant has failed to substantiate these allegations with credible evidence, relying instead on conjecture and unverified sources.

[239] Both **Creary** and **Lowe** demonstrate that where defamatory statements are deliberate, unfounded, and harmful to reputation, the Court will uphold the claim and consider substantial compensation appropriate, emphasizing the protection of the Claimant's integrity and public standing.

[240] In **Roy K. Anderson v Dwight Clacken** *(supra***)**, the Court found that the Defendant's allegations against the Retired Judge were false, unsubstantiated, and actuated by malice. Similarly in the present claim, the defamatory statements relating to fraud, corruption, and misconduct are unproven.

[241] Having reviewed the cited authorities, I note that while the nature of the reputational injury is broadly comparable, material distinctions arise in the mode and extent of publication and in the Defendants' conduct.

[242] On a careful review of the submissions, additional submissions and authorities, I am satisfied that the evidence justifies a higher award for general damages than that granted in **Lowe** and **Creary**. In considering whether the award should be in the sum requested in the further submissions, I note that the aggravating features relied on are the same as those which had already existed at the time of the trial and there had been no order to remove the book from circulation which the 1st Defendant could be said to have breached. Having carefully considered whether the sum should be more closely aligned with the award given in ***Roy Anderson*** or greater, I am satisfied that while there was no reputational damage shown for the Claimant in that matter, the attack on him was not only personal but also an attack on the Judiciary and called into question his actions and operations within the Judicial Services. Although he had retired, he had still been actively serving in a number of roles both locally and abroad, one of which was as a Lecturer at the Law School and the smears made against him could conceivably have negatively impacted him in these roles as well.

[243] While it is accepted that the Claimants were adversely impacted within the business community, I find that the level of exposure was not as significant for them and the justice of the situation can be met with an award greater than that which was initially requested but below that awarded in the **Anderson** matter. Accordingly, I assess general damages at **Fifty Million Dollars ($50,000,000.00)** for the 1st Claimant and **Twelve Million Dollars ($12,000,000.00)** for the 2nd Claimant, aggravated damages at **Two Million Dollars ($2,000,000.00)** and **One Million Dollars ($1,000,000.00)** respectively.

[244] The Court is also satisfied that this is an appropriate case for an award of exemplary damages. The 1st Defendant knowingly published grave allegations of fraud, corruption, and criminality without verification, persisted in those allegations

despite clear and independent documentary evidence disproving them, refused to retract or apologize, and continued to disseminate the defamatory material locally and internationally in permanent form. The publication was deliberate, sustained, and calculated to cause maximum reputational harm, and was motivated by hostility arising from an unsatisfactory litigation outcome.

[245] Additionally, the 1st Defendant stood to gain, and did in fact gain, financially from his wrongful conduct. The defamatory statements were published in a commercially marketed book, offered for sale locally and internationally, from which the 1st Defendant derived profit. The publication was not accidental or fleeting, but a deliberate and calculated act undertaken in the course of a malice driven profit-making venture. In these circumstances, compensatory and aggravated damages alone would be insufficient, as they would risk allowing the Defendant to retain the benefit of his wrongdoing. An award of exemplary damages is therefore warranted to strip him of any profit obtained from the defamatory publication and to mark the Court's disapproval of conduct calculated to advance private gain at the expense of the Claimants' reputations. Accordingly, exemplary damages are awarded to the 1st and 2nd Claimants in the amount of **Two Million Five Hundred Thousand Dollars ($2,500,000.00)** and **One Million Five Hundred Thousand Dollars ($1,500,000.00)** respectively.

ORDERS/DISPOSITION

[246] Accordingly, these are my orders:

1. Judgment is entered for the 1st and 2nd Claimants, Michael Causwell Snr. and Michael Causwell Jnr;
2. General Damages are assessed and awarded to the 1st and 2nd Claimants, Michael Causwell Snr. And Michael Causwell Jnr, against the 1st Defendant, Dwight Clacken, in the sum of **Fifty Million Dollars ($50,000,000.00)**, and **Twelve Million Dollars ($12,000,000.00)**

respectively, with interest thereon at the rate of three percent (3%) per annum, from 26 May 2016 to 17 April 2026;

3. Aggravated Damages are awarded in the sum of **Two Million Dollars ($2,000,000.00)** to the 1st Claimant and **One Million Dollars ($1,000,000.00)** to the 2nd Claimant;

4. Exemplary Damages are awarded in the sum of **Two Million Five Hundred Thousand Dollars ($2,500,000.00)** to the 1st Claimant and **One Million Five Hundred Thousand Dollars ($1,500,000.00)** to the 2nd Claimant;

5. An injunction is granted to restrain the 1st Defendant whether by himself, his servants and/or agents from continued publication of the offending material as contained in the book, **No Justice in Jamaica**.

6. The 1st Defendant is hereby ordered to remove the offending material as contained in the book, **No Justice in Jamaica** from all advertising and retail platforms and bookstores, both physical and electronic.

7. Costs are awarded to the 1st and 2nd Claimants, Michael Causwell Snr. and Michael Causwell Jnr. against the 1st Defendant, Dwight Clacken and are to be taxed if not agreed; and

8. The Claimant's Attorneys-at-Law are to prepare, file and serve these Orders.