

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO. 76/2008

**BEFORE: THE HON. MRS. JUSTICE HARRIS, J.A.
THE HON. MR. JUSTICE DUKHARAN, J.A.
THE HON. MISS JUSTICE SMITH J.A. (Ag).**

**BETWEEN: TELEVISION JAMAICA LIMITED APPELLANT/
DEFENDANT**

**AND CONSTABLE CECEIL WRIGHT-ANDERSON RESPONDENT/
CLAIMANT**

**Dave Garcia and Miss Ky-Ann Lee instructed by Myers Fletcher &
Gordon for the Appellant**

**Roderick Gordon and Adley Duncan instructed by Arthur Kitchin for the
Respondent**

2nd December 2008 and June 19, 2009

HARRIS, J.A.

1. This is an appeal from an order of Jones J. made on July 3, 2008 in a libel action brought by the respondent in which the learned judge in exercising his powers under Rule 69.4 of the Civil Procedure Rules, (2002) ruled that certain allegations in the respondent's particulars of claim are capable of bearing the meanings alleged.

2. The appellant is a television station which broadcasts and publishes programmes for general reception throughout Jamaica. The respondent is a police officer who was assigned to the Croft's Hill Police Station at all material times.

3. On March 4, 2005 the appellant broadcast a news report surrounding the death of a 17 year old young man called Christopher McKenzie who was shot and killed at the Croft's Hill Police Station by the police. This report was transmitted by way of video images and audio transmission.

4. On July 4, 2005 the respondent commenced proceedings against the appellant by the issuance of a Claim Form. A transcript of the news report was outlined in paragraph 3 of the Particulars of Claim as follows:-

"3 On or about Friday, the 4th day of March, 2005 at about 7:00 o'clock in the afternoon during the course of a news report, the Defendant falsely and maliciously broadcast and published or caused to be broadcast or published by the said television station the following words and images defamatory of the claimant, to wit:

(Picture and voice of Doraine Samuels) "The shooting death of 17 year old by the police, the residents are crying foul, Ann McFarlane has more."

(Picture and voice of Ann McFarlane) "Tempers are still running high as Croft's Hill residents continue their second day of protest over the shooting death of one of their own. They want justice and answers."

(Placards shown stating: "We won't sit and let Chris death go unpunished"; "We want justice

police brutality"; "Police man brutally murder 17 yro Chris over woman we want justice".)

(Picture and voice of Resident #1) "Why him dead like this and nobody can tell how Chris dead? Chris nuh deserve this. Chris have a future before him, as a nice decent citizen. Why, why a woman police or man police should kill him? I'm a part of the justice system and him nuh deserve this ya death."

(Picture and voice of Resident #2) "It never happen inna Croft's Hill before, soh police now suppose to testify `gainst police and tell me wha happen to dat deh youth dey, you understand me, dem suppose to tell me what happened to dat dey youth dey and we have good police over dey, Mister Tavares, DC Gardener, good police dem, good, Mr. Gardener, good District Constable. Me all a hear sey dem lick him this evening and me regret fi hear say somebody woulda do something like that, for dem man dey a foundation man dem dey, like long time. So you se the man whe do that and kill de youth, me woulda want that de man deh fi face the justice."

(Picture and voice of Ann McFarlane) "Last night demonstrators stoned the Croft's Hill Police Station causing extensive damage to the building. The placard bearing residents lit tyres and debris which littered the main road. Residents say there is more to this story as the truth is not being told about the relationship between the young man and the woman constable."

(Picture and voice of Eric Mckenzie) "I understand that he and this policewoman were friends, so for some reason or the other, it must be the reason why he came down here to see har, yeah, but I hear so, me nuh know."

(Picture and voice of Ann McFarlane) "The police high command has denied this claim. Residents say 17 year old Christopher Mckenzie should be leaving the island on Saturday; his place (sic) ticket showed otherwise. (Ticket shown) According to reports Mckenzie allegedly accosted the policewoman a little before 11:00 Wednesday night. Police say they came to the woman constable's assistance and during a struggle with two other policemen Christopher was shot. He was pronounced dead at hospital and the woman constable treated and released.

In the meantime police superintendent in charge of Clarendon, Terrence Bent, says already there have been meetings held between residents and the police to address the matter. So far, front end loaders have been brought in to clear the debris used to block the road."

(Picture and voice of Supt. Terrence Bent) "It is understandable but we have to assure them that there will be an investigation. There are things they can do to expedite the process and at this point I think they are satisfied to a point. We will have further meetings with them, we are just seeking to have normality restored to the situation, to the town by the clearing of the road and I am confident that the people of Kellits, who are largely law abiding decent people, will assist us in doing that. We are hoping for improved relationship and a clearing of the road."

(Picture and voice of Ann McFarlane) "Superintendent Bent has also asked the residents to co-operate with the police as they carry out their investigations. Ann McFarlane, TVJ News."

5. Paragraph 4 of the claim was particularized as follows:

- "4 The said words referred to and were understood to refer to the Claimant.

PARTICULARS

- (a) The Claimant is and was at all material times a member of the Jamaica Constabulary Force stationed at the Croft's Hill Police Station in the Parish of Clarendon, and as such a servant and/or agent of the Crown, and this was known or ought to have been known by the Defendant.
- (b) While resting in her barrack room at the Croft's Hill Police Station in the Parish of Clarendon on the night of Wednesday, the 2nd day of March, 2005, the Claimant was suddenly and viciously and without provocation attacked and injured by the said CHRISTOPHER McKENZIE, who inflicted machete and teeth wounds to the Claimant, and this was known or ought to have been known by the Defendant.
- (c) The Claimant was unaware of the reason for the said attack, as she had never been acquainted with or knew of the existence of the said CHRISTOPHER McKENZIE prior to the said attack, and this was known or ought to have been known by the Defendant.
- (d) The said CHRISTOPHER McKENZIE was shot and killed after two policemen responded to the Claimant's cries for help and came to the Claimant's defence, and this was known or ought to have been known by the Defendant.
- (e) Residents of the said Croft's Hill area and/or persons with criminal intent staged unlawful public demonstrations ostensibly over the death of the said CHRISTOPHER McKENZIE, stoned the Croft's Hill Police Station causing extensive damage to the building, carried various placards and lit tyres and debris on the

main road, and this was known or ought to have been known by the Defendant.

- (f) The Claimant is a happily married woman and has been so married since the year 2000 and is the mother of two (2) children, and this was known or ought to have been."

6. Paragraph 5 was couched in the following terms:-

"5 The said words in their natural and ordinary meanings meant and were understood to mean that:-

- (a) The Claimant and the said CHRISTOPHER MCKENZIE were friends and/or acquaintances prior to Wednesday, the 2nd day of March, 2005.
- (b) The Claimant was having or had been involved in an illicit and/or adulterous and/or intimate and/or sexual relationship with the said CHRISTOPHER MCKENZIE on and/or prior to Wednesday, the 2nd day of March, 2005.
- (c) The Claimant had committed adultery with the said CHRISTOPHER MCKENZIE, and is of a dissolute and profligate character, and a loose and sexually immoral woman.
- (d) The said CHRISTOPHER MCKENZIE was visiting with or had visited the Claimant at the Croft's Hill Police Station in the Parish of Clarendon on Wednesday, the 2nd day of March, 2005 when he was unlawfully shot and/or murdered by the Claimant and/or two policemen.
- (e) The said CHRISTOPHER MCKENZIE had no reason to attack the Claimant and/or the Police report that the said CHRISTOPHER MCKENZIE had accosted the Claimant is false.
- (f) The Claimant had caused and/or contributed to the murder or unlawful killing of the said

CHRISTOPHER McKENZIE and/or is an accessory to the murder or unlawful killing of the said CHRISTOPHER McKENZIE on Wednesday, the 2nd day of March, 2005 at the Crofts Hill Police Station in the Parish of Clarendon.

- (g) The Claimant had committed the criminal offences of Murder and/or Accessory to Murder and/or Conspiracy to Murder and/or Manslaughter and/or Accessory to Manslaughter and/or Conspiracy to Manslaughter on Wednesday, the 2nd day of March, 2005 at the Crofts Hill Police Station in the Parish of Clarendon.
- (h) The Claimant had committed the aforesaid criminal offences for which she ought to have been charged and tried and, if convicted, sentenced to a term of imprisonment and/or fine.
- (i) The Claimant had acted unlawfully and maliciously and without reasonable or probable cause and/or in breach of the Constabulary Force Act and/or the Police Service Regulations, 1961 by causing and/or contributing to the murder or unlawful killing of the said CHRISTOPHER McKENZIE and/or by being an accessory to the murder or unlawful killing of the said CHRISTOPHER McKENZIE on Wednesday, the 2nd day of March, 2005 at the Croft's Hill Police Station in the Parish of Clarendon.
- (j) The Claimant is dishonest, undisciplined and of a violent character and disposition, and totally unfit and unsuitable to be or to remain a member of the Jamaica Constabulary Force, and she ought to be dismissed therefrom.
- (k) By virtue of the matters aforesaid, the Claimant has brought the Jamaica Constabulary Force into disrepute and/or acted

in a manner prejudicial to the image, good order and discipline of the said Force, and failed to set a proper example to her juniors in rank and to members of the public.

- (l) The Claimant was guilty of criminal, dishonest, disreputable, dishonourable and deplorable conduct and is unfit to congregate with persons who prize honour and virtue above material advantage.
- (m) The Claimant had gravely abused her position of trust and authority over civilians or members of the public and had brought her office into disrepute.
- (n) The Claimant is of a dissolute and profligate character, devoid of moral worth, sinful, iniquitous, vicious, spiteful, ill-tempered, corrupt, sadistic and given to or involved with immorality, and a loose and sexually depraved woman.
- (o) The Claimant is unfit to have custody of young children and has failed to set a proper example to her said children."

7. Paragraph 6 was pleaded as follows:

"6 Further or in the alternative the said words bore and meant or were understood to bear the meanings pleaded in Paragraph 5 by way of innuendo."

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(b)

- "(i) The Claimant repeats Paragraphs 1 to 5 hereinbefore.
- (ii) The placard which read "Police man brutally murder 17 yro Chris over woman we want justice" means that the deceased was killed for reasons associated with a woman, and this was

known or ought to have been known by the Defendant.

- (iii) As is generally known, the word "friends" as was used as aforesaid to describe the relationship between the Claimant and the said deceased, means in Jamaican parlance that an intimate and/or sexual and/or amorous relationship exists between two persons of the opposite sex, and this was known or ought to have been known by the Defendant.
- (iv) The words and images referred to at (ii) and (iii) above and the context within which they were broadcast and published mean that the "woman" referred to in the placard is the Claimant who was "friends" with the deceased; and the allegation aforesaid that . . . "the truth is not being told about the relationship between the young man and the woman constable".. further strengthens the innuendo, and this was known or ought to have been known by the Defendant.
- (v) Members of the Jamaica Constabulary Force are forbidden by law from acting generally, and particularly, towards members of the public in any manner prejudicial to the image, good order and discipline of the said Force, or which brings the said Force into disrepute, and this was known or ought to have been known by the Defendant."

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(c)

- "(i) The Defendant broadcast and published the said words and images complained of recklessly and maliciously.
- (ii) Alternatively, the Defendant broadcast and published the said words and images complained of maliciously, knowing they were

false or recklessly not caring whether they were true or false.

- (iii) The Defendant had no honest belief in the truth of the said words or images.
- (iv) The Defendant has neither withdrawn the words or images complained of, nor has it given or offered any apology or correction or explanation or contradiction in respect to the said broadcast and publication, although by letter dated March 22, 2005, the Claimant's Attorney-at-Law informed the Defendant that the said broadcast and publication contained matter defamatory of the Claimant.
- (v) The Defendant never sought to interview the Claimant in respect to the said attack, or obtain her response to the said words or images complained of prior to or even after the said broadcast and publication.
- (vi) Although the Defendant was informed by the police high command prior to the said broadcast and publication that the Claimant and the deceased were not "friends", the Defendant nevertheless recklessly and maliciously broadcast and published the said false allegation.
- (vii) At all material times the Claimant was never friends with the said CHRISTOPHER McKENZIE or involved in any relationship, casual, social, intimate and/or sexual and/or amorous or otherwise with him as alleged or at all; neither was the Claimant ever acquainted with the said CHRISTOPHER McKENZIE or aware of his existence prior to the said attack as alleged or at all; nor was the Claimant aware of any reason why she was attacked by the said CHRISTOPHER McKENZIE as alleged or at all.
- (viii) The said CHRISTOPHER McKENZIE was not murdered as alleged or at all, but he was shot

and killed by policemen acting in lawful defence of themselves and/or the Claimant.

- (ix) The Claimant will rely on the tone and prominence of the words and images of the said news report and/or of the news report itself."

8. In its defence, the appellant admitted that the broadcast was in the terms of the transcript contained in paragraph 3 of the particulars of claim, save and except for the following:

- "i the placard shown stating: "Police man brutally murder 17 yro Chris over woman we want justice" was incapable of being read during a normal transmission of the broadcast in light of the insignificant amount of time the broadcast focused on this placard. The Defendant will contend that this placard can only be read if the normal speed by which the broadcast was transmitted is significantly reduced; and
- ii there is no picture of Ann McFarlane in the broadcast ."

By consent of the parties a DVD of the broadcast was shown to the learned judge and to this court to highlight the foregoing averments.

9. The appellant also averred that the contents of the broadcast were true as they were with reference to the words and conduct of the demonstrators and were not confirmation of the accuracy of the statements made.

Paragraphs 6 & 8 of the defence states:

- "6. Paragraph 4 of the Particulars of claim is denied, in so far as it alleges that the words were understood to refer to the Claimant. The

Defendant will say that the broadcast did not identify the Claimant by name, nor were the images in the broadcast sufficient to allow members of the public to identify her.

8. In respect of the meanings listed below paragraph 5 of the Particulars of Claim the Defendant contends as follows:-

(a) The Defendant admits sub-paragraph (a) of the alleged meanings but will contend that this meaning is not defamatory of the Claimant

(b) The Defendant denies that the broadcast bore, or was understood to bear or was capable of bearing the meanings listed in sub-paragraphs (b) to (o) inclusive, or any meaning defamatory of the Claimant."

10. On June 15, 2006 the appellant filed an application in which the following orders were sought:

"1. That the question of whether the words complained of are capable of bearing the meaning attributed to them in the statement of case be determined by a Judge sitting in private preliminary to the trial of the action;

2. The costs of this application be determined by the Judge hearing the application."

11. On July 3, 2008 the learned judge ordered that the meanings in paragraph 5 (a)-(b) and (k)-(o) in the Particulars of Claim are capable of bearing the meanings as alleged. He also ordered that the meanings in paragraph 5 (c) -

(j) are to be struck out as they are incapable of bearing the alleged meanings and costs to be costs in the claim.

12. In an action for defamation, the rules make provision for a judge, sitting in chambers, to hear and determine the question as to whether in such an action, the words forming the subject of the complaint are capable of bearing or conveying a defamatory meaning. Rule 69.4 (1) & (2) of the Civil Procedure Rules, 2002 states:-

- “(1). At any time after the service of the particulars of claim, either party may apply to a judge sitting in private for an order determining whether or not the words complained of are capable of bearing a meaning or meanings attributed to them in the statements of case.
- (2). If it appears to the judge on the hearing of an application under paragraph (1) that none of the words complained of are capable of bearing the meaning or meanings attributed to them in the statements of case, the judge may dismiss the claim or make such other order or give such judgment in the proceedings as may be just.”

13. There can be no dispute that in a defamation claim, the question as to whether words complained of are capable of bearing a defamatory meaning, or whether a defamatory meaning could be assigned to them is invariably an issue for determination by the court. This brings into play the role of the judge and the jury.

14. It is a well established principle that where the meaning of words are challenged, the question as to whether they are capable of a defamatory meaning is a matter of law which must be determined by the judge. He or she is required to decide the parameters within which the words are capable of conveying a particular meaning, or the meaning or meanings as averred in the particulars of claim. The role of the jury is different, in that they are required to make a decision on the actual meaning of the words complained of within the scope of any possible defamatory meaning of which the words are capable of conveying.

15 In **Sim v. Stretch** [1936] 2 All ER 1237, Lord Atkins, in distinguishing the functions of judge and jury, at page 1240 stated:

"It is well settled that the judge must decide whether the words are capable of a defamatory meaning. That is a question of law: is there evidence of a tort? If they are capable, then the jury is to decide whether they are in fact defamatory."

16. Lord Morris of Borth-y-Gest, in delivering the advice of the Privy Council, in **Jones v. Skelton** [1963] 3 All ER 952 at page 958 distinguished the respective roles in this way:-

"It is well settled that the question whether words which are complained of are capable of conveying a defamatory meaning is a question of law and is therefore one calling for decision by the court. If the words are so capable then it is a question for the jury to decide whether

the words do in fact convey a defamatory meaning.”

17. In **Mapp v. News Group Newspaper Ltd** [1998] Q. B. 520 at 523, Hirst L.J. outlined the distinction in the following manner:

“It is for the Judge to rule, when asked to do so, whether the words are capable of bearing a particular meaning or meanings alleged in the statement of claim; in other words, to lay down the limits of the range of the possible defamatory meanings of which the words are capable. It is for the jury to determine the actual meaning of the words within that permissible range.”

18. The following are grounds (a) and (b) of the grounds of appeal:

- a. The learned judge erred in fact and in law in finding that the words set out in paragraph 5 (b) and (k) – (o) and set out above are capable of bearing the defamatory meanings alleged arising from the broadcast dated March 4, 2005, as these words can only be conjured up from a strained interpretation of the appellant’s broadcast and are not meanings that an ordinary viewer would be able to discern after watching the news broadcast once.
- b. The learned judge erred in fact in finding that the words aired in the broadcast dated March 4, 2005 were capable of referring to the Claimant despite the fact that the claimant was never named in the broadcast, nor did the broadcast state that the claimant was a married woman nor was their (sic) a picture of the claimant by which she could be identified.”

19. Mr. Garcia submitted that a judge is required to delimit the possible meanings of the words complained of by applying the standard which an ordinary person would believe that the words would suggest within the context of the particular publication, and as a consequence, a respondent ought not to be permitted to rely on every possible interpretation which he believes the words should bear. It was further submitted by him that in determining whether words complained of are capable of conveying meanings attributed to them, the publication must be considered as a whole.

20. He argued that a court, in examining the meanings of the words complained of, should give consideration to the medium through which alleged libellous material was disseminated. In this case, he argued, the broadcast was by way of a news report on national television which lasted approximately three minutes and it is obvious that the broadcast was of a relative transient nature which most persons would have viewed only once.

21. He further argued that the focus of the news report was in respect of the days of demonstration by angry protesters, in the Croft's Hill community, who believed that the young man had been killed unjustifiably, one of whom stated that the deceased had known the respondent. A minimal amount of time of the report was spent on the issue of whether the respondent knew the deceased, he argued. It was further contended by him that the respondent was never named in the broadcast, nor was there any picture by which an ordinary viewer could

have identified her with the report. In support of his submissions he cited **Mapp v. News Group Newspapers Ltd.** [1998] Q.B 520; **Lewis v. Daily Telegraph Ltd.**; [1964] AC 234; [1963] 2 All ER 151 **Jones v. Skelton** [1963] 3 All ER 952. **Skuse v. Granada Television Limited** [1996] EMLR 278; **Bonnick v. Morris & Others** (2002) 61 WIR 358; **Carlton Communications Plc v. News Group Newspapers Ltd.** [2001] All ER (D) 103; **The Capital and Counties Bank Ltd v. George Henty & Sons** (1882) 7 App. Cas. 741; Gately on Libel and Slander 10th Edition by Patrick Milmo Q.C. & W.H. Rogers.

22. Mr. Gordon argued that for the purposes of an application under Rule 69.4, it is unnecessary to show that the claimant was named in the broadcast, or that she was a married woman, or that her photograph had not been shown. It was further submitted by him that the real question was whether the words complained of bore the defamatory meanings alleged and the question as to whether the words complained of are capable of referring to the claimant does not properly arise for consideration. He also argued that the average Jamaican, in ascribing the most dangerous meaning to the words in question, could have reasonably inferred the meanings pleaded in the particulars of claim and further, the natural and ordinary meaning includes an implied or indirect meaning. The meanings pleaded, he argued, are not the product of forced or unreasonable interpretation and a viewer of the broadcast would be guided by general knowledge and would not be fettered by rules of legal construction. In support of his submissions he cited the following cases: **Sim v. Stretch** [1936] 2 All ER

1237; **Lewis v. Daily Telegraph Ltd.** [1964] AC 234; **Jones v. Skelton** [1963] 3 All ER 952; **Howard Charvis v. Radio Jamaica Ltd.**, unreported, Suit No. HCV 0989 of 2003, delivered 28th October 2004; **Farah and Ors. v. British Airways, The Home Office** [1999] All ER (D) 831; **Helga Stoeckert v. Margie Geddes**, Privy Council Appeal No. 56 of 2003, judgment delivered 14th December 2004 and **McPhilemy v. Times Newspapers Ltd. and others** [1999] 3 All ER 775.

23. The pleaded defamatory meanings in issue are as follows:

- “(b) The Claimant was having or had been involved in an illicit and/or adulterous and/or intimate and/or sexual relationship with the said CHRISTOPHER MCKENZIE on and/or prior to Wednesday, the 2nd day of March, 2005
- (k) By virtue of the matters aforesaid, the Claimant has brought the Jamaica Constabulary Force into disrepute and/or acted in a manner prejudicial to the image, good order and discipline of the said Force, and failed to set a proper example to her juniors in rank and to members of the public.
- (l) The Claimant was guilty of criminal, dishonest, disreputable, dishonourable and deplorable conduct and is unfit to congregate with persons who prize honour and virtue above material advantage.
- (m) The Claimant had gravely abused her position of trust and authority over civilians or members of the public and had brought her office into disrepute.
- (n) The Claimant is of a dissolute and profligate character, devoid of moral worth, sinful,

iniquitous, vicious, spiteful, ill-tempered, corrupt, sadistic and given to or involved with immorality, and a loose and sexually depraved woman.

- (o) The Claimant is unfit to have custody of young children and has failed to set a proper example to her said children."

24. The critical question is whether the words used in the broadcast as outlined in paragraph 3 of the particulars of claim are capable of bearing or conveying a defamatory meaning as concluded by the learned judge. Were those words in their natural and ordinary meaning, without the support of extrinsic evidence, capable of imputing a defamatory meaning? If the defamatory meaning pleaded is found not to be the most injurious meaning the words are capable of bearing, do they convey a less injurious meaning?

25. Guidance as to the approach which ought to be adopted by a court when adjudicating on the question as to whether words are capable of bearing a defamatory meaning, is afforded by a number of authorities, chief of which is the often cited case of **Lewis v. Daily Telegraph Ltd.** [1964] AC 234 where at pages 258 – 260, Lord Reid said:-

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

He continued by saying:

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

26. In **Jones v Skelton** (supra) Lord Morris of Borth-y-Gest in delivering the advice of the Privy Council stated the approach in this way, at page 958:

“In deciding whether words are capable of conveying a defamatory meaning the court will reject those meanings which can only emerge as the product of some strained or forced or utterly unreasonable interpretation. In **Capital and Counties Bank v. Henty** (supra) Lord Shelborne said at page 745:

‘The test according to the authorities, is, whether under the circumstances in which the writing was published, reasonable men to whom the publication was made, would be likely to understand it in a libellous sense.’

The ordinary and natural meaning of words may be either the literal meaning or it may be an implied or inferred or an indirect meaning: any meaning that

does not require the support of extrinsic facts passing beyond general knowledge but is a meaning which is capable of being detected in the language used can be a part of the ordinary and natural meaning of words (see **Lewis v. Daily Telegraph, Ltd.** (supra). The ordinary and natural meaning may therefore include any implication or inference which a reasonable reader, guided not by any special but only by general knowledge and not fettered by any strict legal rules of construction, would draw from the words. The test of reasonableness guides and directs the court in its function of deciding whether it is open to a jury in any particular case to hold that reasonable persons would understand the words complained of in a defamatory sense.”

27. In **Mapp v. News Group Newspapers Ltd** (supra) Lord Hirst referring to **Lewis v Daily Telegraph and Jones v Skelton** as laying down the accepted test, at page 526 said:

“In my judgment, the proper role of the judge, when adjudicating a question under Ord. 82, r. 3A, [which is essentially similar to Rule 69 of the C.P.R.] is to evaluate the words complained of and to delimit the range of meanings of which the words are reasonably capable, exercising his own judgment in the light of the principles laid down in the above authorities and without any Ord. 18, r. 19 overtones. If he decides that any pleaded meaning falls outside the permissible range, it is his duty to rule accordingly. It will, as is common ground, still be open to the plaintiff at the trial to rely on any lesser defamatory meanings within the permissible range but not on any meanings outside it. The whole purpose of the new rule is to enable the court in appropriate cases to fix in advance the ground rules on permissible meanings which are of such cardinal importance in defamation actions, not only for the purpose of assessing the degree of injury to the plaintiff’s reputation, but also for the purpose of evaluating any defences raised, in particular, justification or fair comment.”

28. In assessing the meanings of the words complained of, the court should give the words the ordinary and natural meaning which such words would transmit to an ordinary reasonable viewer, observing the broadcast once. The contents of the entire broadcast should be examined, but at the same time it should be borne in mind that the reasonable viewer is neither guileless nor naïve. Although not inordinately suspicious, he would read between the lines and where more than one meaning is at his disposal, he would not opt to assign a derogatory meaning in preference to a non defamatory meaning of the words forming the subject matter of the complaint.

29. In **Bonnick v. Morris & Ors** [2002] 61 WIR 358 Lord Nicholls of Birkenhead, delivering the advice of the Privy Council at page 362 said:

"In short, the court should give the article the natural and ordinary meaning it would have conveyed to the ordinary reasonable reader of the *Sunday Gleaner*, reading the article once. The ordinary, reasonable reader is not naïve; he can read between the lines. But he is not unduly suspicious. He is not avid for scandal. He would not select one bad meaning where other, non-defamatory meanings are available. The court must read the article as a whole, and eschew over-elaborate analysis and, also, too literal an approach. The intention of the publisher is not relevant."

30. In **Mapp v. News Group Newspapers Ltd.** (*supra*) the test as to who is an ordinary reasonable person was propounded by Hirst L.J. at page 525 when he said:

"...it is, I think, 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."

31. The court's concern is not merely what meaning must be given to the words complained of, but what conclusion should be reasonably drawn from them. The natural and ordinary meaning includes inferences and conclusions which the ordinary man may deduce from the words. See **Slim v. Daily Telegraph Ltd.** [1968] 2 QB 157 at 172-175.

32. It is a well known statement of the law that a statement is defamatory if it would tend to lower a claimant in the estimation of right thinking members of society. Where the use of words are challenged, as being defamatory, the issue centers on what meaning the words can reasonably convey. The enquiry therefore should be focused on whether the words are capable of possessing a libellous meaning. Mere suspicion is insufficient. "It would be unreasonable to infer guilt from a direct statement of suspicions. This is to draw an inference from an inference", per Lord Hodson in **Lewis v Daily Telegraph Ltd.** (supra). The court's interest is as to what message would an ordinary viewer, who is neither ordinary suspicious nor gullible, receive from the broadcast. In addressing this concern, while restricting its considerations to what a defendant has actually stated or written, the court should exercise great care and ought not

to embark on an extensive analysis of the material issue. See **Slim v. Daily Telegraph Ltd.** (supra). Likewise, it should not be extensively liberal in its approach to the issue. See **Lewis v. Daily Telegraph.** (supra).

33. In the case under review, the programme was broadcast on only one occasion. There were no allegations in the particulars of claim that the words complained of were communicated to anyone who knew the respondent. However, inferentially, it could be said that the broadcast was published to person or persons who knew her. What impression an ordinary man, who is not usually suspicious or naïve and “not avid for scandal”, having viewed the broadcast once, would have formed of the words of which the respondent complains? Could he have been influenced by what he had seen and heard on the broadcast so as to be inclined to form the view that the respondent was a criminal, a murderer, a disreputable policewoman, an immoral person and an unfit mother?

34. Looking at the broadcast in its totality, it appears to me that it revolves around a protest emanating from what the demonstrators deemed to have been an unfair killing of the deceased by the police. In my opinion, the viewer, after watching the broadcast, would first say, “a policewoman was attacked by a young man while she was resting in a room at the Croft’s Hill Police Station. The young man was shot and killed by the police. This has resulted in two days of protest by citizens who complained that the young man was unjustifiably killed

by the police. The police said that he was killed during a struggle with two other policemen who had gone to assist the police woman." In my judgment, this does not tend to show that the viewer could have attributed to the respondent the defamatory meanings as outlined in paragraph 5 (b) and (k) to (o) of the particulars of claim.

35. The viewer would then proceed to consider the statement made by the man who was present among the demonstrators, who said:

"I understand that he [the deceased] and the policewoman were friends, for some reason or the other, it must be the reason why he came down here to see her, yeah, but I hear so, me nuh know."

Could this statement be sufficient to show that the respondent was involved in an adulterous relationship with the young man? I think not. To find otherwise would be to attach a strained interpretation to the statement. The particulars of claim provided the only material on which the learned judge relied. I must add here that the DVD of the broadcast which was made available for viewing by the learned judge and by this court was not for the purpose of furnishing any evidentiary material.

36. It was erroneously concluded by the learned judge that the words were capable of conveying a defamatory meaning that the respondent and the young man were having an adulterous relationship. In my opinion, the maker of the statement saying that he understood that the respondent and the young man

were friends, does not necessarily tend to show that they were involved in an intimate relationship. It is clear that the statement does not originate from his knowledge that a close relationship existed between the young man and the respondent. Taking into account the full text of the broadcast, the reason advanced by him for the young man's presence at the police station would have been built on suspicion and accordingly could not have left a reasonable viewer believing that an intimate relationship between the respondent and the deceased existed. The viewer would have dismissed the report regarding such a relationship as speculative.

37. It does not appear to me that the words, as expressed in paragraph 5 (b) and (k) to (o) of the particulars of claim would have moved a jury to find that they reflected on the respondent's character so as to have tended to lower her in the estimation of a reasonable viewer. I find it somewhat perplexing to accept that the contents of the broadcast as pleaded, could in any way have impugned the integrity of the respondent. In my judgment, the words complained of are incapable of bearing or conveying a defamatory meaning.

Ground c

"The learned judge erred in law in ordering that costs be costs in the claim. This application was brought by the Appellant/Applicant in the court below because of the prolixity of the Claimant's case and in particular, because of the claimant's inclusion in its statement of case of meanings which cannot relate to the words complained of, even by some strained interpretation and in that

event the claimant should be liable for the costs of such an application, as in this case a number of the meanings pleaded by the claimant have been struck out by Jones J, in the court below.”

38. It was submitted by Mr. Garcia that the appeal should be allowed with the costs of the appeal and costs below to the appellant (or alternatively in part) as no facts were averred or evidence adduced to support the conclusion that the words in question could reasonably be said to have referred to the respondent and the broadcast did not contain a description which could be regarded as sufficient for a viewer to have reasonably concluded that the broadcast was in reference to her. He further argued that the prolixity of the statement of case in respect of the alleged meanings renders the respondent liable to pay the costs of the application in the court below.

39. It was Mr. Gordon’s submission that the application brought in the court below by the appellant was for the purpose of obtaining a ruling that the words complained of were incapable of bearing the alleged meanings, and not in respect of any question as to the prolixity of the pleading.

40. It is necessary to state that it is without doubt that the Claim Form is prolix. However, the question of its prolixity was never raised as an issue before the learned judge. This notwithstanding, it would have been open to him, in the exercise of his discretion, to have taken the matter of the prolixity of the Claim Form into account when considering the question of costs.

41. Rule 64. 6 (1) prescribes that where it is a decision of the court to make an order for costs, the unsuccessful party must be ordered to pay the costs. The fact that I have concluded that the words of which the respondent complained are incapable of conveying a defamatory meaning, the appellant has succeeded in its appeal. It has succeeded on all but one of the questions which the court below had been requested to determine. As a consequence, it is entitled to the costs of the court below and the costs of the appeal.

42. I would allow the appeal in part with costs to the appellant to be agreed or taxed.

DUKHARAN, J.A.

I agree.

SMITH, J.A. (Ag.)

I agree.

ORDER

HARRIS, J.A.

1. The appeal is allowed in part
2. Paragraphs 5 (b) and (k) to (o) of the particulars of claim are struck out.
3. Costs of the appeal and of the court below to the appellant to be agreed or taxed.