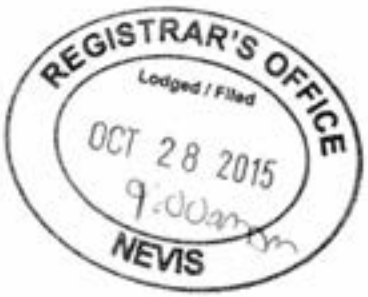
EASTERN CARIBBEAN SUPREME COURT
FEDERATION OF ST. CHRISTOPHER AND NEVIS
NEVIS CIRCUIT

IN THE HIGH COURT OF JUSTICE
(CIVIL)



SUIT NO: NEVHCV2012/0084

BETWEEN:

Michael Perkins

and

Claimant

Nevis Pages Ltd.

Defendant

Appearances:

Mr. Theodore Hobson Q.C with Ms. Farida Hobson for the Claimant

Dr. Henry Browne Q.C with Mr. John Cato for the Defendant.

2015: July 6
2015: October 28

JUDGMENT

[1] **WILLIAMS, J.:** This matter is brought before the Court by a Statement of Claim filed on the 6th July 2012 wherein the Claimant instituted against the Defendant a claim for Damages for Defamation published on a website owned by the Defendant under a section known as "put in your 2 cents".

[2] The Claimant resides at Craddock Road, Charlestown, Nevis and is a Civil Engineer and a former Minister of Communication and Works in the Nevis Island Administration between September 2001 to July 2006 and was also a member of the Federal House of Assembly between the period June 2000 to January 2010.

[3] The Defendant is the owner of a website and the publisher of Nevis Pages with a section known as "put in your 2 cents".

[4] The Claimant pleads that the Defendant falsely and maliciously printed and published a statement or posting by a contributor referred to as "NRP Baby" in the section on the website known as "put in your 2 cents."

[5] According to the Claimant the posting or statement recorded the following words of and concerning the Claimant under its heading "**Honest Perkins needs a jail not a court win,** and then declaring".

"After Mr. Perkins made his "Honest mistakes" with the $1million dollars of the Taiwanese money missing from the Performing Arts Centre, the horrible road from Cotton Ground to New Castle that Perkins did over twice and incurred costs of $20 million dollars, and still need to be done over again, and the Vance Amory Airport that was done poorly and incurred costs overrun that the NRP led Government had inherited from CCM mismanagement of funds. I always wondered how Perkins was able to live since CCM lost, and has not had a steady job, hmmm, I guess I know now! Bring on the Commission of Inquiry and make CCM account for their mismanagement of Nevis people money!!"

[6] The words complained of are said by the Claimant to mean and were understood to mean;

a) That the Claimant should be jailed for stealing money from the Nevis taxpayers not only in relation with the road construction between New Castle and Cotton

Ground, but also money contributed by the Taiwanese Government for the Performing Arts Centre, and also fraud in relation to the Vance Amory Airport.

b) That the decision of the Trial Judge Mr. Justice Redhead was wrong and that the Claimant was the guilty party and not the Defendant Leeward Media Group, the Defendant in that matter.

c) That he has been living on stolen money since the CCM Administration of which he was a Minister lost the Election in 2006.

d) That the Claimant was also involved in the poor construction of the Airport terminal and the suggestion that he must have benefitted from it, and also had a hand in the alleged missing US$1,000,000.00 from the Taiwanese Government for the Performing Arts Theatre.

[7] The Claimant alleges that he has been gravely injured in his character and reputation, and has been brought into public scandal, odium and contempt and has suffered damages. The Claimant further contends that the Defendants published the words complained of knowing that they were malicious on its very face.

[8] The particulars of Aggravated Damages and spite and malice are set out in paragraphs **16** and **17** of the Claimant's Statement of Claim.

[9] The Claimant therefore claims;

a) Compensatory Damages for Libel inclusive of Aggravated Damages.

b) An Injunction to restrain the Defendant whether by itself, its servant or agent or otherwise from further publishing or cause to be published the words complained of or other Libellous statement of the Claimant.

The Defence

[10] The Defendant represented by Mr. Kirthley Gregory Hardtman specifically denies that they falsely and maliciously printed a statement or posting which is complained of by the Claimant.

The Defendant states that on the 4th May 2012. The words complained of by the Claimant were brought to the attention of the Defendant, and that the said words were edited to remove references to the name "Perkins".

The Defendant Claims that it had no role in the printing, publishing and posting of the offending material.

[11] The Defendant further avers that the Claimant has not alleged that the words complained of were used in a defamatory sense other than their ordinary meaning and therefore has not complied with the **Rules of the Supreme Court Part 69 (2) (b).**

[12] The Defendant claims that to be found liable in Defamation, the words complained of must be;

a) Published by the Defendant

b) The material published was of and concerned the Claimant.

c) The material published was likely to lower the Claimant's reputation in the eyes of right thinking members of the community.

[13] The Defendants state that the offending article must be understood by an ordinary reasonable reader, and even if the words were found to be defamatory the Defendant cannot be held liable as the Defendant was not the publisher of the offending posting.

[14] **The Issues**

1. Whether the offending words were published by the Defendant in the Jurisdiction of Saint Kitts and Nevis.

2. Whether the offending words were communicated to a person other than the Claimant or the Defendant.
3. Whether the Defendant is the publisher/author of the offending words?
4. Whether the words complained of are defamatory of the Claimant and have brought the Claimant's character and reputation into public scandal, odium and contempt.
5. What Damages if any should be awarded?

The meaning of the words- The Evidence

[15] The Claimant's Statement of Claim alleges that the words in its natural and ordinary meaning were defamatory and these alleged meanings were stated in paragraph 11 of the Statement of Claim.

[16] In the Claimant's testimony at the Trial he said that on Friday 4th May 2012 at about 7:30am, while at home, he was contacted by Alexis Jeffers who suggested that he check the Nevis Pages website under its blogging section called "put in your 2 cents". Mr. Jeffers indicated to him that he thought that what he read there was damaging to his character and reputation.

[17] Mr. Alexis Jeffers who was the sole witness for the Claimant stated in his witness statement that he was presently the Minister of Communications, Works, Public Utilities (etc.) and that he knew the Claimant Michael Perkins. On the 4th May 2012, he visited the website of Nevis Pages and saw the posting with the alleged offending words. He contacted the Claimant as he was aware of a recent Judgment involving the Claimant. Mr. Jeffers also stated that the statement he read on the website was saying that the Claimant should be in jail and they did not care what the Court had said but Perkins was involved in something dishonest.

Under **cross examination** by Dr. Browne Q.C, Mr. Jeffers stated that he was part of the Claimant's political camp, and that he regarded a person holding the post of Speaker to be a person of high esteem. He regarded Mr. Perkins as a person of high esteem as he was the Deputy Speaker of the National Assembly.

[18] The Defendant Kirthley Hardtman in his testimony stated that he was an attorney and businessman and one of his business ventures is that of the Nevis Pages Limited. He stated further that Nevis Pages operates a website that provides News, Sports, Services, Ferry schedules etc., and also carried an online open forum called "put in your 2 cents". This forum he stated was introduced to let the public express an opinion on News of the day; and operated like Facebook and Twitter, and allowed persons to log on, register and make postings.

The website was managed by an Administrator based in Canada, but the uploading could be done anywhere in the world.

Mr. Hardtman also said that he was not involved in the day to day running of the website. He had a local manager named Peter James.

[19] Under cross examination by Mr. Hobson Q.C, Mr. Hardtman stated that he read the Nevis Pages when time allowed him to and that he was unaware of any Judgment granted against Leeward Times. He only became aware that the Administrator of the website and the Manager of his company had edited the original posting after he received the letter from Mr. Hobson Q.C. Mr. Hardtman was adamant that the website was not controlled by him and he was present in Court representing Nevis Pages as a shareholder.

[20] Mr. Peter James the Manager of Nevis Pages in his testimony stated that he was the General Manager of Nevis Pages and also the Webmaster/Administrator of the site, since the webserver is in Canada.

[21] Mr. James said that the Administrator of the website would monitor the items posted on a regular basis, and if the posts appeared to be derogatory or defamatory that post was either removed from the site or edited to remove the offensive sections.

[22] In or around 4th May 2012, Mr. James stated that a contributor to the Forum wrote under the name "NRP Baby" and posted an item captioned "Honest mistake Perkins need a Jail not a Court win."

Mr. James stated in his witness statement that the entry was edited to remove the name Perkins, as this was standard practice with some entries. In his oral testimony, he claimed that the Administrator removes derogatory matter, and he could not edit anything under the "2 cents" section if it is from an outside source. He also said that he did not know "NRP Baby" and he had no way of knowing who it was.

[23] Under cross-examination by Mr. Hobson Q.C, Mr. James reiterated his evidence in chief and stated that if he sees an offensive posting, he would contact the Administrator. In this case he was not aware of who it was that requested editing as he did not receive a complaint only a letter from Mr. Hobson Q.C.

Court's analysis & Findings- Issue No. 1

[24] In **Gatley on Libel and Slander** the learned authors stated at paragraph 1.3 10th Edition;

"Defamation is committed when the Defendant publishes to a third person words or matter containing an untrue imputation against the reputation of the Claimant."

At paragraph 1.5 it states;

"There is no wholly satisfactory definition of a defamatory imputation. Three formulae have been particularly influential.

1. Would the imputation tend to lower the Plaintiff in the estimation of right thinking members of a society generally? See: **Sim vs Stretch**[1]
2. Would the imputation tend to cause others to shun or avoid the Claimant? See: **Youssoupoff vs Metro-Goldwyn-Mayer**[2]
3. Would the words tend to expose the Claimant to hatred, ridicule or contempt?

The question "What is defamatory relates to the nature of the statement made by the Defendant; Words may be defamatory even if they are believed by no one and even if they are true or actionable."

Conversely the mere fact that words are untrue does not make them defamatory because they may not affect the Claimant's reputation. Non defamatory words may however be actionable as malicious falsehood or negligence.

[25] In the case of **Ramsahoye vs. Peter Taylor & Co. Ltd.** [3] Boller J echoed the dicta in **Woolford vs. Bishop**[4]. 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 Plaintiff. If the Court determines the first question in favour of the Plaintiff, 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.

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[1] [1936] 52TLR 669
[2] [1934] 50 TLR 581
[3] [1964] LRBG 29
[4] [1940]

Where the words are clearly defamatory on their face, a finding that they are capable of being defamatory will almost inevitably lead to the conclusion that they are defamatory in the circumstances.

But where the words are reasonably capable of either defamatory or non-defamatory meanings, the Court must decide what the ordinary reader or listener of average intelligence would understand by the words."

[26] In determining whether the words are capable of bearing any defamatory meaning, this Court must determine, what was the permissible range of meanings that the alleged defamatory words could carry; when the Court is satisfied that the words complained of are capable of a defamatory meaning, then the Court can consider whether in fact the words bore the alleged or any defamatory meanings.

The dicta of Lord Diplock in **Slim vs Daily Telegraph Ltd.** [5] is instructive;

He stated;

"In deciding what meanings the words are capable of bearing, there is acknowledgment that the words are reasonably capable of bearing different meanings, but that after deciding what are the possible meanings, the decision maker must decide on one of those meanings as being the only natural and ordinary meaning of the words."

[27] Again in determining the ordinary and natural meanings of the words, the criteria that the Court should adopt was stated succinctly by Nicholas LJ in the case of **Bonnick vs Morris**[6];

"The Court should give the article the natural and ordinary meaning it would have conveyed to the ordinary reasonable reader, reading the article once. The ordinary

[5] [1968] 2 Q.B 157
[6] [2002] UKPC 31

reasonable is not naïve, he can read between the lines, but 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. (My emphasis)

[28] Again in **Lewis vs Daily Telegraph Ltd.** Lord Reid emphatically 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 a knowledge of the rules of construction."

[29] This Court is required by Law and the relevant cited authorities to read the words posted on the Nevis Pages website as a whole.

The legal authorities on this matter indicate that other portions of an article or speech that contains defamatory words are admissible to establish the context in which the offending words were published, because context affects meaning.

In determining the ordinary and natural meanings of the words, the Court must take into account all the words used by contributor to the Nevis Pages online website and endeavour to determine their ordinary and natural meaning to the reasonable person in the society.

[30] The Law also states that the ordinary and natural meaning of the words may include implications and inferences which reasonable people in the society would draw from the words. If the implications and imputations tend to lower the Claimant in the estimation of right thinking members of society or expose him to public hatred and ridicule the words would be defamatory.

[31] After reviewing the evidence and the authorities on this issue I am of the opinion that the message posted on the Nevis Pages website are defamatory on the face of it, and the words are capable of meaning or understood to mean that the Claimant should be sent to jail for stealing money in relation to the road construction between New Castle and Cotton Ground and also the Taiwanese Government for the Performing Arts Centre and the Vance Amory Airport.

Further that the decision of the Court was wrong and that he had been living on misappropriated funds since CCM Government lost the election in 2006.

[32] However the core issue here is **who was the publisher of those words?** And could a reasonable man understand the defamatory statements as referring to the Claimant and therefore exposed him to grave injury to his character and reputation, and brought him into public scandal, odium and contempt resulting in Damages to him.

[33] Whether the words are Defamatory and could be understood to be defamatory is for the Court to decide and what an ordinary reader or listener of average intelligence would understand by the words.

See: **Ramsahoye vs. Peter Taylor & Co Ltd.**

[34] It is well settled Law that for a statement to be defamatory, it must contain either expressly or by implication statements of fact which would tend to lower the Claimant in the estimation of right thinking members generally.

It is trite Law that a statement is defamatory, if it imputes dishonesty to a person in the context of his Trade, Business or profession.

The test again is of how the ordinary reasonable man on the Charlestown to Gingerland bus to whom the words are published is likely to understand them.

[35] In applying the test, the Court is of the considered opinion that the ordinary reasonable man would come to the conclusion that the message posted imputed that Mr. Perkins was a person who should be jailed for stealing money from Taxpayers in relation to road construction, from the Taiwanese Government for the Performing Arts Centre and for fraud at the Vance Amory Airport.

I am of the view that the message posted on Nevis pages would likely be understood by the "right thinking members of society" as defamatory of Mr. Perkins.

[36] One of the main requirements for a successful action in Defamation is that the Defamatory words must be shown to have referred to the Claimant. In most cases the Claimant will be mentioned by name, but this is not a necessary requirement. The test is whether a reasonable man might understand the Defamatory statements as referring to the Claimant.

[37] The learned authors of **Gatley on Libel & Slander 10th Edition** paragraph 7.1 states;

"To succeed in an action of Defamation, the Claimant must not only prove that the Defendant published the words, and that they are defamatory he must also identify himself as the person defamed. It is an essential element of the cause of action for Defamation that the words complained of should be published "of" the Claimant. That is to say it must be capable of referring to him. Where the Claimant is expressly identified by name, it is not necessary to produce evidence to prove that anyone to whom the statement was published did identify the Claimant. The question is not whether anyone did identify the Claimant, but whether persons who were acquainted with the Claimant could identify him from the words used."

[38] The message posted on the website "put in your 2 cents" dated Friday 4th May 2012 referred to "Mr. Perkins" and his "Honest mistakes", a reference which Mr. Perkins has

stated that he made in a previous statement in relation to another case which was heard and determined by the High Court.

[39] Mr. Alexis Jeffers sole witness for the Claimant in his witness statement at paragraphs 3, 6, 7 states that he knows the Claimant Michael Perkins and after reading the posting he immediately contacted the Claimant by text and alerted him to the posting. In his oral testimony Mr. Jeffers stated that the posting was saying that the Claimant should be in Jail and that they did not care about what the Court said, but the Claimant was involved in something dishonest.

[40] After again reviewing the evidence on this issue, I am satisfied that the ordinary fair minded listener would reasonably conclude that Mr. Perkins was the person being referred to in the online posting. Further that the words complained of could have the effect of lowering him in the estimation of right thinking members of the St. Kitts and Nevis society and expose him to hatred, contempt, or ridicule and cause persons to shun and avoid him.

[41] However a crucial question again remains to be determined;

Who is the publisher of the offending words and is the Defendant the publisher?

[42] Learned Queen's Counsel Mr. Theodore Hobson in his written submissions contends that the Libel was published on the Defendant's website known as Nevis Pages under a section "put in your 2 cents" by one "NRP Baby."

[43] In response learned Queen's Counsel Dr. Henry Browne submits that the Law of Defamation in the Federation is governed by the Common law and it must be proved that Nevis Pages Ltd printed and published the words complained of.

To determine whether the Defendant printed and published the words complained of, the Court must be provided with evidence or material showing how the Internet works and the role played by the Defendant in the publication of the material complained of.

Dr. Browne Q.C further contended that it was common ground that the words complained of were on the website owned by the Defendant; but that did not prove that Nevis Pages Ltd uploaded the posting on the Internet.

Learned Queen's Counsel referred to the Witness Statement of Peter James, the General Manager of the Defendant company who stated that "the site is run by an Administrator with technical support and servers located in Canada."

Dr. Browne argued that this piece of evidence was uncontroverted and showed that the Defendant was not involved in the uploading of material to the Nevis Pages website.

[44] Learned Queen's Counsel Dr. Browne referred the Court to the case of **Dow Jones & Co. Inc vs Gutnick**[7] per Gleason CJ, MC. Hugh, Gummow and Hayne L.J who held that "publication" occurs where the material complained of is available in a comprehensible forum. In the case of material available on the Internet the Law Lords held that such material would not be published, until it was downloaded unto the computer of a person who has used a web browser to pull the material from the web server. It is where the person downloads the material that the damage to reputation may be done that would be the place where the tort of Defamation is committed.

[45] Dr. Browne Q.C contends that the Internet Service Provider (ISP) hosting a website or even the moderator of a chatroom cannot be the publisher of Defamatory material posted on the Internet.

Learned Counsel cited the case of **Blunt vs Tilley**[8] per Eady J in support of his contention. "For a person to be held responsible there must be knowing involvement in the process of publication of the relevant words. It is not enough that a person merely plays a passive role

[7] [2002] 210 CLR 575
[8] [2007] 1 NLR 1243

in the process. An ISP which performs no more than a passive role in facilitating postings on the Internet cannot be deemed to be a publisher at Common Law."

[46] Learned Queen's Counsel also cited the case of **Godfrey vs Demon Internet Ltd**[9] where Morland J held that Demon Internet was a publisher at Common Law because it was not merely the owner of an Electronic System through which postings were transmitted, but chose to receive and store the newsgroup containing the offending postings on its computers, and to transmit them in response to requests.

Learned Queen's Counsel submits that in **Demon's case** it was not simply a conduit as is the Defendant in the case at Bar, but it hosted and transmitted the offending material which it could delete if it chose to. When a defamatory posting was transmitted from Demon's news server to a subscriber Demon published the posting.

[47] The Eastern Caribbean Supreme Court of Appeal in the decided case out of Dominica **Lennox Linton, Island Communications Ltd, Raglan Riviere vs Kieron Pinard-Byrne** [10] per Michel J.A, stated:

a) Publication would normally be considered to have taken place when the defamatory words were communicated to a third person meaning a person other than the Claimant or the Defendant in the Defamation action, while communication would normally be considered to have taken place when the words were heard or read by the third person.

b) The present case concerns words spoken in the course of a radio broadcast, and words written in an article posted on the website. In the case of a radio broadcast, it has long been established that a publication takes place once the broadcast is

[9] [2001] QB 201
[10] DOMHCVAP2011/0017

heard by a 3rd person, whilst in the case of an Internet article, it has only recently been established in the case of **Godfrey vs Demon Internet Ltd** that publication takes place when a third person accesses the site where the material is posted and he (the third person) reads the material.

c) Of course equally relevant in the Defamation action **is the issue of the mode of publication of the Defamatory material and the issue of the place of publication, because proceedings for Defamation can only be pursued in the Jurisdiction in which the Defamatory material is published. (My emphasis)**

d) The case of **Bata vs Bata**[11] is generally cited as the authority for the proposition that the Tort of Defamation is committed in the place where the publication of the Defamatory material was received by the hearer, reader or viewer. For radio broadcasts, publication would be considered to have taken place in the jurisdiction(s) where the broadcast was heard.

In terms of the Internet, the issue was addressed by the Australian High Court in the case of **Dow Jones & Co. Inc vs. Gutnick** where the Court examined extensively several of the issues involved in the Internet publication of Defamatory material and concluded that publication of Internet content (whether words and/or images) takes place in the jurisdiction(s) where the content is downloaded from the website where it was posted. Both the reasoning and the conclusion in **Dow Jones** are likely to be applied by the Courts in the Commonwealth and it can be considered as having settled (for the time being at least) the issue of "publication of internet content".

[11] [1948] WN 366

[48] Learned Queen's Counsel Dr. Browne submitted that he adopted the reasoning of the Court of Appeal in the cited case and contended that nowhere in the pleadings or in the Witness Statement of the witness for the Claimant Alexis Jeffers was there any identification as to where the posting was downloaded or where it was read which is similar to the situation in the **Lennox Linton case.**

[49] Michel J.A was pellucid in the judgment in **Lennox Linton** when he stated as follows;

"The first and third Appellants have submitted and maintained that there is no evidence that the words complained of in the Internet article were published in Dominica; publication of the words in the jurisdiction (Dominica in this case) would of course have to be proved by the Claimant in a Defamation action in order to succeed against a Defendant who posts material or submits material for posting on a website."

[50] Michel J.A further stated "on the facts of the present case there was in my view a live issue as to whether or not it was proved at the Trial that any person downloaded the Internet article in Dominica."

The Respondent's witness Perry R. Bellot in a witness statement loaded with hearsay and opinion evidence seemed to have said everything other than he downloaded the first Appellant's article in Dominica from the third Appellant's website (My emphasis).

He also said quite a lot under cross examination, sometimes unrelated to the question asked of him, but did not say that he downloaded the Internet article in Dominica.

[51] The learned Justice of Appeal Michel stated even further;

"It was a critical element of the Respondent's case in the Court below that he establish that the Internet article was published in Dominica to a person other than himself or the Appellants, which would be established by proving that a 3rd person had downloaded the

article in Dominica because the website on which the Article was posted is the worldwide web, and the worldwide web has millions of users who have free and open access to the content of the website and because Mr. Bellott gave evidence (via his witness statement) that he resided in Dominica and that he read the article written by the 1st Appellant on the 3rd Appellant's website.

[52] Learned Queen's Counsel submits that the dicta of Michel J.A in the **Lennox Linton case** applies with equal force mutatis mutandis to the case at Bar. Mr. Jeffers never stated in his witness statement that he downloaded the Internet article, and that he read the same in St. Kitts and Nevis. Therefore Dr. Browne argues that the jurisdiction of the Court has not been triggered to determine this case and the Court has to dismiss the case.

[53] The learned Michel J.A expounded further on this issue of publication and stated;

"The learned trial Judge appeared to have accepted the Respondent's invitation to infer that Mr. Bellott had in fact downloaded and read the Internet article in Dominica and so he found that there was Publication of the article in Dominica."

"I differ with the learned Judge on this finding. I also place no significance on that fact that Mr. Bellott was never questioned at the trial by Counsel for the Defendants as to whether he had downloaded and read the article whilst he was in Dominica… The submission on this by Counsel for the Respondent appeared to be an attempt to invert the Burden of proof, and to put the onus on the Defendant in a defamation action to prove that the publication of the defamatory statement did not take place within the jurisdiction, It was for the Respondent (As the Claimant in the Court below) to prove publication in Dominica and not for the Appellants (as Defendants in the Court below) to disprove it."

[54] I have quoted extensively from the Judgment of the learned Michel J.A, because the **Lennox Linton case** is strikingly similar to the case at Bar and this Court of Appeal authority is binding on this Court.

Upon a review of the evidence on this issue I have great difficulty in concluding that the Defendant Nevis Pages was a publisher as it appeared to be the owner of an Electronic system through which postings were transmitted but there is no evidence that it stored the offending postings on its computers and transmitted them in response to requests.

I have also reviewed the evidence in its totality and the cited authorities and find that there is no evidence before me that there was publication of the offending words in the jurisdiction of Saint Kitts and Nevis.

I concur with learned Queen's Counsel Dr. Browne Q.C that the sole witness for the Claimant Mr. Alexis Jeffers in his testimony and witness statement has failed to identify where the posting was downloaded, and that failure is fatal to the success of the Claimant in this matter.

It was a critical element of the Claimant's case that he establish that the Internet article was published in St. Kitts and Nevis to a person other than himself or the Defendants, which would be established by proving that a third person had downloaded the article in St. Kitts and Nevis, because the website was posted on the worldwide web with millions of users.

[55] There is also a matter for further adjudication by the Court which was raised by learned Queen's Counsel for the Defendants Dr. Browne Q.C, who submitted that the Claimant must establish publication of the words complained of to a substantial number of persons within the jurisdiction.

Learned Queen's Counsel cited the case of **Jameel vs Dow Jones & Co. Inc**[12] where the Court of Appeal in considering whether a claim for Libel should be struck out as an Abuse applied the test of whether there was a real and substantial Tort within the jurisdiction. The Defendant in **Dow Jones** had 6000-19,000 subscribers, but only five could have been shown to have accessed the words complained of, two of who did not know the Claimant, and the other three were "members of the Claimant's camp". The Court of Appeal struck out the Claim as an Abuse of process and that the proceedings were not serving the legitimate purpose of protecting the Claimant's reputation. The extent of the publication was minimal and did not amount to a real and substantial Tort.

[56] In applying the above cited case to the evidence adduced in this matter it is very clear that apart from the Claimant and the sole witness Alexis Jeffers, no one else seemed to have downloaded the offending article within the jurisdiction of St. Kitts and Nevis. Mr. Jeffers in his testimony also stated that he was part of the Claimant's political camp, and the Court will therefore treat his evidence with a degree of caution.

[57] As I stated before, the central troubling issue in this case is who is the author of the posting on the Internet website- Nevis Pages dated 4th May 2012 "put in your 2 cents" and where were these words published, since the individual "NRP Baby" appears to be unknown and no evidence has been adduced to trigger the jurisdiction of this Court.

[58] In my opinion, no useful purpose would be served to dwell any further on the Law and evidence in this matter. This action has not succeeded in serving the legitimate purpose of protecting the Claimant's reputation. In fact the Claimant in my opinion has suffered no loss to his reputation as he has been recently appointed to be a Senator, and the Deputy Speaker of the National Assembly, a position which he states in his evidence to be one of

[12] [2005] EWC A CIV 75

the highest in the hierarchy, and a laudable position which his witness Alexis Jeffers stated is given to a person of high esteem.

Conclusion

[58] Having regard to the totality of the evidence, my findings are as follows;

1. That there is no evidence that the offending words were published by the Defendants in the Court's jurisdiction of St. Kitts and Nevis.
2. That the words are considered to be defamatory in their natural and ordinary meaning but;
3. That the Claimant has not proved that the Defendant published the alleged offending words.
4. That there is no evidence that a real and substantial Tort was committed.
5. That the Claimant has suffered no loss to his reputation, integrity and character by the defamatory words.

[59] This matter is therefore dismissed with Costs to be agreed upon or assessed in accordance with Part 65.5 of the CPR

[60] I thank learned Queens Counsel on both sides for their assistance to the Court.

Lorraine Williams

High Court Judge.