

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. HCV 0989/2003

BETWEEN HOWARD CHARVIS CLAIMANT
AND RADIO JAMAICA LTD. DEFENDANT

CONSOLIDATED WITH

CLAIM NO. HCV 0988/2003

BETWEEN KNOX JOHNSON CLAIMANT
AND RADIO JAMAICA LTD. DEFENDANT

Mr. Lawton Heywood instructed by Lawton Heywood and Company for the Claimants.

Mrs. Sandra Minott-Phillips and Mr. Nigel Jones instructed by Myers Fletcher and Gordon for the Defendants.

HEARD: September 28, 2004

KING J.

These are consolidated defamation actions brought against the common Defendant, RADIO JAMAICA LIMITED, by the Claimants HOWARD CHARVIS and KNOX JOHNSON respectively. Both claims arise out of the admitted publication on April 1, 2003 by the Defendant of the words complained of, which in the Particulars of Claim of each claim is the same in all material particulars.

The relevant words are as follows:

“RJR News understands that the St. Catherine North Police have been questioning two of the three outgoing Jamaica Labour Party

Councillors following a recent double murder in Spanish Town. They are Knox Johnson of the Hampton Green Division and Howard Charvis of the Homestead Division.

Mr. Charvis in confirming the report told our newsroom that he and Mr. Johnson were questioned by the police on the night of the incident on March 23 and have again been interrogated

58 years old businessman, Orville Sephas also known as "Rennie Chin" and his 26 years old friend Trevor Reid were fatally shot by gunmen at about 2:30 p.m. on the afternoon of March 23.

It is reported that the men were sitting in front of premises at the intersection of Cumberland Road and Wellington Street in Spanish Town when a white car drove up.

It is further reported that the occupants opened fire killing the men on the spot."

Each Claimant alleged in his Particulars of Claim, in paragraph 5, that:

"In their natural and ordinary meaning the words meant and were understood to mean that the police have good reason to believe that the Claimant is implicated in a double murder as he was questioned by them on the day of the murders and on subsequent occasions."

and in paragraph 6, that:

"Further or alternatively, the words contained in the statement were understood to bear the meaning set forth in paragraph 5 above by way of innuendo and were calculated, meant and intended to disparage the Claimant in his character and reputation."

The Defendant now applies under **Rule 69.4** of the Civil Procedure rules for:

- (1) a determination as to whether the words complained of are capable of bearing the meaning attributed to them in the statement of case, and
- (2) that the award of the costs of this application be determined.

A determination that none of the words complained of are capable of bearing the meaning attributed to them in the statement of case would, inter-alia, render the claim liable to be dismissed by virtue of the provisions of **rule 69.4 (2)**. In the Claimants statement of case no particulars were given of facts or matters relied on in the support of the allegation that the words complained of were used in any sense other than their ordinary meaning (**Rule 69.2**). I must therefore look to the words for their natural and ordinary meaning.

The Attorneys-At- Law for both sides offered written submissions supplemented by oral arguments. The submissions made and authorities cited were not limited to the issue of whether the words complained of were capable of bearing the meaning attributed to them, but addressed the further question of

whether such a meaning is, or is capable of being defamatory. This further question does not, in my understanding of **rule 69.4**, fall to be decided in an application under this rule as a point preliminary to trial. I will therefore treat with only such submissions and authorities as address the issue properly before me under **rule 69.4**, viz, whether or not the words complained of are capable of bearing the meaning attributed to them.

I am indebted to counsel for a number of authorities cited which have assisted both with the definition of the term "natural and ordinary meaning" as well as with the correct approach to be adopted in determining the question of whether the words complained of are capable of bearing the meaning attributed to them.

In **LEWIS v THE DAILY TELEGRAPH LIMITED (1963) 2 all E.R. at 154** Lord Reid explained that:

"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 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 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."

Again in **JONES v SKELTON (1963) 3 all ER 952 at 958** Lord Morris pronounced that:

"the ordinary and natural meaning of the words may be either the literal meaning or it may be an implied meaning or an inferred or 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 part of the ordinary or natural meanings. The ordinary and natural meaning may therefore include any implications or inference which a reasonable reader, guided not by any special but only general knowledge and not fettered by any strict rules of construction would draw."

In the Court of Appeal in **SCCA 21/98 MARGARET MORRIS et al v HUGH BONNICK**, Forte, P directed that "in determining the natural and ordinary meaning of words in a libel action, the Court should not be concerned with the fact that a combination of words may mean different things to different people but must give the "right meanings" to those words, the "right meaning" being the meaning which the ordinary fair minded reader would give.

Lord Reid again in **Lewis and Daily Telegraph** at page 154 recommended the following approach:

"There is no doubt 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 rules of construction. So he can and does read between the lines in light of his general knowledge and experience of world affairs. I leave aside questions of innuendo where the reader some special knowledge which might lead him to attribute to the words a meaning not apparent to those who do not have that knowledge."

And on page 155, as to the test to be applied in determining whether the words were or were not capable of bearing a particular meaning, Lord Reid said:

"it is I think sufficient to put the test this way. Ordinary men and women have different temperaments and outlooks. Some are unusually suspicious and some unusually naïve. One must try to envisage people between these two

extremes and see what is the most damaging meaning that they would put on the words in question."

Instructed by the approaches urged in the cases referred to above and having given due consideration to the submissions of both Counsel, I have carefully considered the words complained of. I note that the words "St. Catherine North Police have been questioning two of the three Jamaica Labour Party Councillors" are followed immediately in the same sentence by the words "following a recent double murder in Spanish Town." I also note the words "were questioned by the police on the night of the incident on March 23 and have again been interrogated (my emphasis).

I find myself unable to say in the Jamaican context that none of the words complained of are capable of bearing the meaning attributed to them. In my judgment the ordinary fair minded Jamaican listener hearing a broadcast on the radio of the words complained of, uninhibited by any knowledge of the rules of construction and reading between the lines in light of his general knowledge and experience of affairs in Jamaica could find that the words complained of bear the meaning attributed to them in paragraph 5 of the Particulars of Claim I therefore find that the words complained of are capable of bearing the meaning attributed to them.

The costs of this application will be to the Claimants.