JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO COA2019CV00119

APPLICATION NO COA2020APP00024

BETWEEN	**CVM TELEVISION LIMITED**	**APPLICANT**
AND	**MICHAEL TROUPE**	**1ST RESPONDENT**
AND	**SYLVAN REID**	**2ND RESPONDENT**

CONSOLIDATED WITH

SUPREME COURT CIVIL APPEAL NO COA2020CV0005

APPLICATION NO COA2020APP00013

BETWEEN	**TELEVISION JAMAICA LIMITED**	**APPLICANT**
AND	**MICHAEL TROUPE**	**1ST RESPONDENT**
AND	**SYLVAN REID**	**2ND RESPONDENT**

Nigel Jones and Ms Liane Chung instructed by Nigel Jones and Co for the applicant CVM Television Limited

Mrs M Georgia Gibson-Henlin QC and Ms Nicola Richards instructed by Henlin Gibson-Henlin for the applicant Television Jamaica Limited

Leonard Green, Ms Sylvan Edwards and Ms Sheri Jones instructed by Chen Green & Company for the respondents

11 and 27 February 2020

IN CHAMBERS

BROOKS JA

[1] Television Jamaica Limited (TVJ) and CVM Television Limited (CVM) have both filed notices of appeal from the judgment of Lindo J made in the Supreme Court on 13 December 2019. TVJ and CVM will be referred to collectively hereafter as "the applicants". The learned judge gave judgment in favour of Messrs Michael Troupe and Sylvan Reid (together referred to herein as the respondents) against the applicants and others. She awarded damages for defamation in favour of Mr Troupe in the sum of $11,000,000.00 and in favour of Mr Reid in the sum of $8,500,000.00. The learned judge also made awards of damages in favour of Mr Reid, against the Attorney General for Jamaica, for false imprisonment and malicious prosecution. The Attorney General has not appealed from the judgment.

[2] The learned judge, on 17 December 2019, granted a stay of execution of the judgment until 11 February 2020. Before that period ended, the applicants each filed applications for an extension of the stay, as against them, pending the hearing of the appeal. They assert that without a stay, a successful appeal will be rendered nugatory and that the applicants will suffer irreparable harm.

[3] The respondents have resisted the applications. They contend that the applicants have no real prospect of succeeding on appeal and that a delay in granting them the fruits of their judgment only adds to the insult and embarrassment that they suffered by the defamatory acts of the appellants and the others. The respondents have pointed

out that although the Attorney General has not appealed, the Attorney General has made no effort to settle the judgment.

The factual background

[4] The background to the litigation is that, on 18 July 2012 a search and seizure was conducted by the Jamaica Constabulary Force's Anti-Lottery Scam Task Force of the Major Organised Crime and Anti- Corruption Agency and the Jamaica Defence Force at the respective homes of Mr Troupe and Mr Reid. Mr Troupe and two of his sons were arrested, as was Mr Reid. The respondents each made broadcasts relating to the arrests. They also, separately, published statements, regarding the arrest, by the then Commissioner of Police, a Superintendent of Police and certain news personnel.

[5] The learned judge found the broadcasts, including the statements made by the reporters employed to the applicants, to be defamatory of the respondents.

The judgment

[6] The learned judge made the following award:

> "Damages for defamation awarded to Mr Troupe in the sum of $11,000,000.00.
>
> Damages for defamation awarded to Mr Reid in the sum of $8,500,000.00.
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> Damages for False Imprisonment awarded to Mr Reid against the [Attorney General] in the sum of $1,050,000.00 with interest at 3% per annum from the date of service of the Claim Form to the date of judgment.
>
> Damages for Malicious Prosecution awarded to Mr Reid as against the [Attorney General] in the sum of $2,450,000.00

> with interest at 3% per annum from the date of service of the Claim Form to the date of judgment.
>
> The Claimant, Mr Reid, is entitled to costs which are to be taxed if not agreed and are to be paid by [TVJ, CVM] and [the Attorney General].
>
> The Claimant, Mr Troupe is entitled to costs which are to be taxed if not agreed and are to be paid by [TVJ] and [CVM].
>
> The [Attorney General] is entitled to costs to be taxed, if not agreed, and to be paid by Mr Troupe."

The applications

[7] In their respective applications, both applicants assert that they have realistic prospects of success in their respective appeals. They each contend that the learned judge erred in finding that the publications:

a. are defamatory;

b. were not made on an occasion of qualified privilege or were matters of public interest; and

c. were not fair comment on a matter of public interest.

[8] They each assert that should the stay not be granted there is a likelihood that, if their appeals are successful, the respondents will not be able to repay the monies involved. Ms Liane Chung, one of CVM's attorneys-at-law, deposed in support of CVM's application, that CVM will also be prejudiced as:

a. the award of damages is excessive;

b. the effect of the judgment is to "prevent [CVM] from broadcasting live and urgent matters which do not present an opportunity for verification"; and

c, the result of the judgment is to "impose an obligation on [CVM] and other media houses to verify all stories…and to investigate and establish the truth of all assertions made…before making a comment on a matter of public interest".

[9] Both Mrs Gibson-Henlin QC, on behalf of TVJ, and Mr Jones, on behalf of CVM, argued that there was a strong likelihood that the appeal would be successful. They both argued, among other things, that the learned judge had set the bar too high for responsible journalism and misapplied the principles regarding **Reynolds**[1] privilege.

[10] Learned counsel both submitted that the balance of justice, which the court is obliged to consider in applications for stay of execution, lies in favour of the applicants. In addition to the fact that the respondents have an opportunity of collecting the judgment sum from the Attorney General, learned counsel submitted that there is always a risk of paying money to an individual. Mrs Gibson-Henlin argued that the mere assertions on behalf of the respondents, that they are businessmen and will be able to repay the judgment sum in the event of a successful appeal, are not enough.

[11] In support of her submissions, learned Queen's Counsel referred to a number of decided cases, dealing with defamation and applications for stay of execution. These included **Watersports Enterprises Limited v Jamaica Grande Limited and**

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[1] From **Reynolds v Times Newspapers Ltd** [1999] 3 WLR 1010

Others, (unreported), Court of Appeal, Jamaica, Supreme Court Civil Appeal No 110/2008, Application No 159/2008, judgment delivered 4 February 2009, **Paymaster (Ja) Limited v Grace Kennedy Remittance Service Limited and Another** [2011] JMCA App 1 and **Combi (Singapore) Pte Limited v Ramanath Sriram and Sun Limited** [1997] EWCA Civ 2164. In addition to those authorities, Mr Jones relied on **Rantzen v Mirror Group Newspapers (1986) Ltd** [1994] QB 670.

The response

[12] Mr Green, on behalf of the respondents, supported the learned judge's decision and contended that the respective appeals have no real prospect of success. Learned counsel argued that the learned judge was entitled to view the publication as a whole and determine from that view, whether it was defamatory. He submitted that, from that perspective, she had made no error. In respect of the balance of justice, learned counsel argued that:

a. there has been damage to the respective reputations of the respondents and they are entitled to the fruits of their judgment, especially since there had been no apology from the applicants;

b. the applicants have not asserted that they or either of them would be ruined or done irremediable harm if it paid the judgment;

c. there was no evidence to support the contention that the respondents would not be able to make repayment in the event of a successful appeal.

He relied on a number of authorities including **Jamaica Observer Limited v Joseph Matalon** [2019] JMA Civ 38.

The analysis

[13] There was no dispute between counsel that applications, such as the present ones, are guided by the principle that the approach to be adopted is that there must be merit in the applicant's appeal and that the result should be the one less likely to result in injustice. The principles are set out in the judgments in **Hammond Suddard Solicitors v Agrichem International Holdings Ltd** [2001] EWCA Civ 2065 and **Combi**.

[14] In **Combi**, Phillips LJ stated, in part:

> "In my judgment the proper approach must be to make that order which best accords with the interest of justice. If there is a risk that irremediable harm may be caused to the plaintiff if a stay is ordered but no similar detriment to the defendant if it is not, then a stay should not normally be ordered. Equally, if there is a risk that irremediable harm may be caused to the defendant if a stay is not ordered but no similar detriment to the plaintiff if a stay is ordered, then a stay should normally be ordered. This assumes of course that the court concludes that there may be some merit in the appeal. If it does not then no stay of execution should be ordered. But where there is a risk of harm to one party or another, whichever order is made, the court has to balance the alternatives in order to decide which of them is less likely to produce injustice. The starting point must be that the normal rule as indicated by Ord 59, r 13 is that there is no

> stay but, where the justice of that approach is in doubt, the answer may well depend upon the perceived strength of the appeal...."

[15] That reasoning has been adopted in a number of cases in this court, including the recent decision of **Marilyn Hamilton v Advantage General Insurance Company Limited** [2019] JMCA Civ 48 (see paragraph [41].

[16] In the present case, the applicants have provided sufficient material to demonstrate that there is some merit in their respective appeals. In considering which approach would result in less injustice, it cannot be said that the applicants have shown that they would be irreparably prejudiced by any execution of the judgment. They have not shown that they would not be able to pay the sums involved, without causing severe dislocation, and they have provided no evidential support for the assertion that the risk exists that they would not be able to recover the sums if they were paid to the respondents. In the meantime, the respondents are entitled to the fruits of their judgment.

[17] There is no merit in the applicants' contentions that the judgments prevent them from carrying out their responsibilities as media houses. The learned judge's decision does not go beyond the particular circumstances of this case. The applicants should always be mindful, in discharging their respective roles as media houses, of maintaining a balance between the rights of individuals and the rights of the public to be informed.

[18] The only hesitation in respect of refusing the application would be the fact that the Attorney General is also liable to the respondents. The Attorney General has not

appealed, and must be deemed to have accepted liability. That consideration is, however, not sufficient to warrant a stay. Whereas the Attorney General is also liable to the respondents, the liability for the damages for defamation is a joint liability, shared with the applicants. If either of the applicants satisfy that liability it will be able to recover from the Attorney General a third of what it has paid (see section 3 of the Law Reform (Tort-Feasors) Act and **Dayne Smith v William Hylton and Another** [2014] JMCA App 35). There is nothing to suggest that it would be more onerous for them to seek to recover those sums from the Attorney General, than it would be for the respondents to carry out that exercise.

[19] The applicants having failed to demonstrate that a grant of a stay would cause less injustice than a refusal, the stay of execution must be refused.

[20] The orders therefore are:

1. The application by TVJ for a stay of execution of the judgment of Lindo J, handed down on 13 December 2019, is refused.

2. The application by CVM for a stay of execution of the judgment of Lindo J, handed down on 13 December 2019, is refused.

3. Costs of the applications to the respondents to be agreed or taxed. Insofar as the attendances at the hearing and

to receive the judgment are concerned, each applicant is only liable to one-half of the respondents' costs in that regard.