

The claim and applications

[2] The claim form and particulars of claim were filed on 11 February 2022. An examination of the particulars of claim reveals that the parties are siblings and that two of the three publications that are the subject of the claim concern property located at Lot 140 Sky Drive, Johnson Hill, Hellshire, Portmore in the parish of St Catherine (“the subject property”). The publications are set out at paragraphs 12, 14 and 15 of the particulars of claim.

[3] At paragraph 12 of the particulars of claim, the following words, which are ascribed to the defendant as being published by him on Facebook are set out:

The woman in the white hat, trying to steal my property in Portmore Hellshire Jamaica. I gave her money 30 yrs ago to buy this property. I learned later that she put her name on the title, creating a joint tenancy. Now she claiming the property belongs to her. Hey, somebody, explain to her joint tenancy, she thinks that the house is hers and the property is mines and now want to buy me out. It is causing me to get an attorney to explain to her what’s a joint tenancy means. My next step is to take her to court and then sell this house.

It is pleaded at paragraph 11 that the defendant published or caused the words to be published on 26 November 2018 and at paragraph 13 it is pleaded that there is a picture of the claimant wearing a white hat.

[4] At paragraph 14 of the particulars of claim, it is pleaded:

That on or about the 16th day of December 2018 the defendant published or caused to be published the following defamatory and disparaging words about the claimant, accusing her of conspiring to kill the defendant:

Hey people, this is the title for my property in Hellshire, Portmore, Jamaica. Zoom on the bottom left hand corner of the page you will see my name, Beverly Maitland, and

her man. The man death, leaving Dennis Maitland and Beverly Maitland on the title. This title is a joint tenancy, if one person dies the other person have total control of the property. However, recently Beverley Maitland became dangerous and evil toward me, and in this situation I just of to be, aware of her recent actions, she might want to set me up to get kill. Now she wants to buy me out of, but I am not for sale, this property is my investment. Beverly Maitland, her man not supposed to be on my title. I gave her money to buy and build this house. So people be careful when you give people in Jamaica to buy things, they will add their names to it and want to claim it later...

[5] At paragraph 15 of the particulars of claim, it is pleaded:

That on or about the 30th day of December 2018 the Defendant published or caused to be published, disparaging and defamatory comments about the claimant accusing her of stealing from their parents, the defamatory and disparaging comments are as follows:

“hey, social media my father is very sick and in a state of leaving the planet. However, Beverly Maitland is in charge of his bank account with his money, is nowhere to be found. The hospital need \$300,000.00 to check the bleeding in his stomach but cannot locate Beverly Maitland. She is missing with my father bankbook to make this payment, we have to ask ourselves, what is going on with this woman in time of emergency? It seems like she wants my father to dies, so she could keep the English pounds in his bank book. Presently, I live in the USA but let me tell her this, no way, you will have that money, mother is wife, and that is her money if he passed. The Jamaican Court will settle this

money matters, so prepare to go to court... Beverly Maitland.

[6] At paragraph 16 of the particulars of claim, it is pleaded that the words at paragraphs 12, 14 and 15 were capable of bearing the following meanings:

- a. The claimant is a thief;
- b. The claimant is an untrustworthy person;
- c. The claimant has committed a crime by conspiring to have the defendant killed;
- d. The claimant is not a fit and proper person to carry on business with.

[7] Then, at paragraphs 17-19 of the particulars of claim, it is pleaded that:

17. The words referred to, were referable to and were understood to refer to the claimant;
18. Further, or alternatively, the words bore and were understood to bear the meaning pleaded at paragraph 16 by way of innuendo as the public would have understood the words to bear the meaning set out herein.
19. The claimant has been a businesswoman in the community for over [sic] years and the publication was brought to her attention by members of the community in which [she] serves as a businesswoman and where she attends church.

[8] An acknowledgment of service was filed on 7 June 2022, indicating service of the documents on the defendant on 3 June 2022; and a defence was filed on 13 June 2022. Case management in the claim was scheduled for 20 November 2024 at which time the court raised certain issues in relation to the defence in light of the applicable rules in the Civil Procedure Rules ("CPR") concerning the requirements of a defence. The case management conference was adjourned for the parties to file any application necessary in light of the issues raised.

[9] On 30 December 2024, an amended defence with the electronic signature of the defendant was filed as well as an application to amend defence. The application to file amended defence was grounded on rule 20.4 of the CPR and that the defendant has an arguable defence. On 8 January 2025, an amended defence signed by the defendant was filed.

[10] An examination of the defence as filed on 13 June 2022 indicates that there was no pleading in response to paragraph 12. In response to paragraphs 14 and 15, it is pleaded that:

13. Paragraph 14 is neither admitted nor denied save that the defendant will say that he was unaware that the Claimant was a Joint Tenant along with her Common Law Spouse until 2018, when the Claimant took legal action against him.

14. The Defendant further states that at all material times the Claimant was the Agent of the Defendant and that it was not the intent of the Defendant to add the Claimant nor her Common Law Spouse as Joint Tenants.

15. The Defendant further states that all transaction in the course of purchasing and constructing was done with the understanding that the Defendant was the Sole Proprietor of the Property at Lot 140 Sky Drive, Johnson Hill, in the parish of St Catherine.

17.[sic] That the Defendant became aware of the presence of the claimant, her Common Law spouse in or around 2018, when, for the first time since the purchase of the property, a copy of the title was presented to the Defendant herein.

[11] Then at paragraphs 19 – 22, under the “Defence of Justification”, the following particulars are pleaded:

19. That at all material times, the defendant herein was the sole provider of funds to purchase Lot 140 Sky Drive, Johnson Hill in the parish of St Catherine, registered at Volume 1133, Folio 920.
20. At no time did the defendant authorise, consent or give permission to the claimant to endorse her name or that of her common law spouse as joint tenants on the certificate of title for the subject property.
21. The words complained of at paragraph 16(c) does [sic] not rise beyond mere vulgar abuse at worst and speculative at best.
22. Given the experience of the defendant with the purchase of the land where, unknown to the defendant, the claimant and her common law spouse were added to the certificate of title without the defendant's knowledge or consent, the comments made reflect the truth of the situation.

[12] On 3 January 2025, an application to strike out the defence filed on 13 June 2022 was filed. The application also sought an order that judgment be entered against the defendant in favour of the claimant. The application was grounded on rules 10.5(3), 10.5(4), 10.7 of the CPR, which deal with the procedural requirements for filing a defence; rule 69.3(a), (b), (c)(i) and (ii), which deal specifically with the requirements for a defence in defamation claims; rule 26.3(1)(d) which empowers a court to strike out a statement of case that does not comply with the rules; and section 20(3) of the Defamation Act which deals with the defence of truth.

[13] When the matter came before the court at the next case management date, at which time the application to strike out was set to be heard, it was revealed that the application to amend defence was not properly before the court and had not been served on the claimant's attorney. The case management conference was therefore adjourned for the application to amend defence to be served so that both could be considered together given that both raise issues as to the sufficiency or merits of the defence.

The submissions

- [14] Although the application to strike out the defence had received a hearing date prior to the application to amend defence, given that the application to amend had been filed first and as the outcome of that application may obviate the need for consideration of the application to strike out, I will set out the submissions on the application to amend first, and accordingly also consider the arguments in that application first, although the submissions overlap.

For the defendant

- [15] In support of the application to amend defence, Mr Brown relying on rule 20.4(1) and 20.4(2) of the CPR submitted that at the first case management conference when the issue was raised as to the adequacy of the defence, an order had been made for the filing of applications by a given date and the application was made within the time ordered by the court. He submitted that the amended defence does conform to Part 10 of the Civil Procedure Rules ("CPR"), which contains the requirements for the filing of a defence.
- [16] Mr Brown submitted that the amended defence frontally addresses the defamatory words and refers to the related case between these parties, which is currently before the court. This amended defence also conforms to Part 69 of the CPR which contain specific requirements applicable in defamatory claims. He argued that in any event, in addition to the form of compliance, the amended defence also has attachments and these form the basis on which the court can conclude that there is merit in the defence. It is clear and obvious that the defence has merits and the only place where it can be tested is at trial, he argued, and the defendant is willing and ready to put all the material before the court on which his defence rests. These applications are not the place for the testing of the defence, he argued.
- [17] Mr Brown submitted that in the case of **Index Communications Network Limited v Capital Solutions Limited et al** [2012] JMSC Civ 50 that was relied on by the claimant, an amendment had been made and at a late stage an application was filed to make another amendment. He argued that this was not the circumstances in the instant case, where the application was being made

at the case management conference, which is when such an application is to be made. He submitted that the claimant would not be prejudiced by the grant of the amendment and in any event, the previous defence at its weakest has merits, which have been strengthened by the amended defence.

- [18] Mr Brown submitted that the court's power to strike out should be exercised as a last resort. Counsel submitted that if the defence shows an arguable case, no matter how tenuous the case and it raises triable issues, no matter how weak, the court should in the exercise of the overriding objective, allow the ventilation of the issues. For this submission, counsel relied on **Kenneth Black v Right Honourable Mr Edward Seaga** CLB 257 of 2001 (delivered 15 November 2002), in which, it was submitted, the court stated that the court must be satisfied that there is no reasonable defence and the court should only strike out where the case is plain and obvious. In this case, it was submitted, it was not plain and obvious that the defence should be struck out.

For the claimant

- [19] Ms Johnson for the claimant took no issue with the timing of the application but submitted that a prerequisite for the court to allow the amended defence is whether the proposed amended defence has merits and discloses reasonable grounds for defending the claim. She referred to the case of **Index Communications**, in which the court, faced with an application for permission to amend at case management conference had considered the merits of the defence. Counsel also relied on **Campbell v Cross et al** [2024] JMSC Civ 68 as "being instructive in determining whether the evidence proffered by the defendants showed enough evidence of succeeding at trial as disclosing reasonable grounds for defending the claim".
- [20] Counsel submitted that the defendant's pleadings fail to show a prima facie defence to the claim of defamation. Referring to the averments at paragraphs 12, 14 and 15 of the particulars of claim, counsel submitted that the defendant had failed to comply with rule 69.3 of the CPR in that he had failed to detail which of the impugned words in the publications are true or not materially different from the truth. Ms Johnson also submitted that the defendant had

failed to address the issue of the publications at paragraph 12 of the claim, which should be viewed as an admission of publication of the defamatory material.

[21] Ms Johnson also submitted that in his proposed amended defence, the defendant was seeking to rely on the affidavits and witness statements from the defendant; however, those documents do not show an arguable defence as they relate to a matter that is currently before the court in which the issues have not yet been determined. She submitted that the defence would have to wait until trial for the statements contained in those documents to be tested and for the court to find the defendant to be a witness of truth. She submitted that those documents should not be “a leg” on which the defence of truth can stand. Counsel further submitted that the defendant had not complied with section 20(3) of the Defamation Act.

[22] Ms Johnson submitted that the court is required to look at the pleadings and decide whether the facts alleged in the defence establish a reasonable defence having regard to the cause of action. She submitted that the defendant had failed to address the allegations complained of in the claim in the manner prescribed by rules 10.5(3) and (4) as well as rule 69.3 of the CPR.

Discussion and analysis

[23] The application for permission to amend defence having been filed prior to the application to strike out the defence, I am of the view that the approach to the application ought to be that which was adumbrated by McDonald-Bishop JA (as she then was) in **Jamaica Redevelopment Foundation Inc v Clive Banton and Sadie Banton** [2019], which was referred to by Jarrett J in **Campbell v Cross**. It seems to me that the approach in **Index Communications** is more apt in the context of the circumstances that are similar to that which obtained in that case, which were that an application to strike out claim had been filed and an application to amend claim was filed apparently in response to the application. In **Jamaica Redevelopment Foundation Inc**, McDonald-Bishop JA stated:

- i. The foremost consideration is whether the proposed amendment is needed in order to determine the real issues in dispute between the parties in light of all the relevant circumstances.
- ii. The court must have regard to the need to avoid prejudice to the other party as well as the need for the efficient administration of justice: **Cobbold v London Borough of Greenwich**, 9 August 1999, unreported, CA; [1999] Lexis Citation 1496 per Peter Gibson LJ. The court must have regard to the need to ensure that court and party resources are not unnecessarily wasted: **Bowerbank v Amos (formerly Staff)** [2003] EWCA Civ 1161.
- iii. The court's approach to late amendments cannot be radically different from the approach to enforcing compliance with any other process requirements and to case management generally. Tolerance to late amendments may undermine the court's ability to manage the litigation process effectively.
- iv. The jurisdiction is now governed by the overriding objective. The older authorities that amendments should be allowed as of right, if a party could be compensated in costs without injustice, had made way for a view which pays greater regard to all the circumstances. This is now summed up by the overriding objective (**Savings and Investment Bank Ltd v Fincken** [2003] EWCA Civ 1630 per Rix LJ).
- v. A heavy onus lies on a party seeking to make a very late amendment to justify it, as regards his own position, that of the other parties to the litigation, and that of other litigants in other cases before the court (**Swain-Mason**

and others v Mills & Reeve (a firm) [2011] EWCA Civ 14 per Lloyd LJ).

- vi. Applications for permission to amend must necessarily turn on the particular facts and no hard and fast rules are possible. The outcome of an application to amend will, therefore, depend on a fact-based assessment of the various relevant considerations. Decided cases can only illustrate the way in which discretion is exercised.
- vii. The interest of justice would not be advanced by amendments that are bound to fail on the merits and so, the court will allow an amendment only if it has a reasonable prospect of success.

[24] Ms Johnson has not challenged the timeliness of the application, and indeed I am not of the view that the application should be regarded as being late in all the circumstances. In any event, the considerations set out by McDonald-Bishop JA indicate that the foremost consideration is whether the proposed amendment is needed to determine the real issues in dispute between the parties. Also of importance is that even though the overriding objective should feature in the considerations of the court, the interest of justice will not be served where the court permits an amendment where the amended defence has no reasonable prospect of success. It follows that even where the amendments are necessary to determine the real issues in controversy, they will not be allowed where the amended defence has no reasonable prospect of success. In light of the pronouncements of McDonald-Bishop JA in **Jamaica Redevelopment Inc v Banton**, Mr Brown is incorrect in his contention that regardless of how weak a defence is it should be allowed to go to trial.

[25] I will now consider whether the amendments are necessary to determine the real issues in controversy and whether the defence as amended, has a reasonable prospect of success.

[26] The amended defences filed on 30 December 2024 and 8 January 2025 are identical in pleadings, save that the documents that were attached to the former

were not attached to the latter. It seems that the latter was filed to cure the defect in the former brought about by the defendant's electronic signature being used to certify the statement of truth. In considering the latter, which, in my view, is the document that complies with the formality of the CPR, I will consider the documents that were attached to the former.

- [27]** In so far as the critical paragraphs of the particulars of claim as outlined earlier at paragraphs [3] – [7] of this judgment are concerned, the amended defence in neither admitting nor denying paragraphs 11 and 13 of the particulars of claim seeks to rely on the defendant's affidavit filed on 13 January 2020 and his witness statement filed on 5 April 2024 in Claim No SU 2019 CV 03714, ("the 2019 claim"), a claim brought by the claimant against the defendant concerning the subject property. Both documents include statements/averments of the defendant giving money to the claimant to purchase the subject property, that the claimant in purchasing the subject property, was acting as the defendant's agent and that the names of the claimant and her common law spouse were added to the certificate of title of the subject property without the defendant's permission. There is also a letter from the company Western Union outlining the transaction history of sums sent to the claimant, apparently by the defendant between 2016 and 2018.
- [28]** In response to paragraph 14, it is pleaded that the paragraph is neither admitted nor denied. It is further pleaded that the defendant wrote to the Commissioner of Police. There is attached to the amended defence filed on 30 December 2024 a letter dated 2 August 2022, written to the Commissioner of Police by the defendant's attorney-at-law which in turn attaches an email dated 23 June 2022. In that email, the defendant writes to the Commissioner of Police informing that he had gone to the Spaulding Police Station and attempted to report a "threat on his life", which happened on "06/04/2022", and that he was advised that it is a civil matter. There is no information as to the content of the threat or the person(s) who issued the threat.
- [29]** In response to paragraph 15, it is pleaded that the paragraph is neither admitted nor denied and that the "hospital bill was unpaid and the claimant was

responsible for said payment". It is also pleaded that defendant puts the claimant to strict proof of any defamation.

[30] In response to paragraph 16, it is pleaded that the defendant relies on the defence of justification and the following particulars are set out:

- a. Acted without permission in placing her name and her late husband's name on title and that a full explanation of what was meant is stated.
- b. The defendant herein wrote to the Commissioner.
- c. The defendant relies on the defence of justification set out below.

[31] The following particulars of the defence of justification are pleaded at paragraphs 23-27 of the amended defence:

23. That it is true in substance and in fact that the defendant gave the claimant money 30 years ago to purchase the property in question.
24. That it is true in substance and fact that the defendant was unaware of the creation of a Joint Tenancy until his lawyer furnished him with a copy of the title in 2018.
25. That it is true in substance and fact that the claimant attempted to have the unauthorised joint tenancy destroyed in her favour, thereby attempting to deprive that defendant of his property.
26. That it is true in substance and fact that the issues at paragraphs 23 and 2 (supra) are before the court.
27. That it is true in substance and fact that at no time did the Defendant herein authorise, consent or give permission to the claimant to endorse her name nor that of her common-law spouse as Joint Tenant on the said title.

[32] In addition, the amended defence asserts (at paragraphs 20, 21 and 22) that:

- (i) The defendant's Facebook page is private;
- (ii) The members of the claimant's community and church do not have access to the private Facebook page of the defendant and the only person who has access is the claimant's daughter;
- (iii) The words were expressed on the private Facebook page of the defendant in expressing his frustrations with the unauthorised actions of the claimant.

[33] It is my view that it is plain that the pleadings, averments and documents included or relied on in the amended defence are necessary to determine the real issues in controversy. So the determination as to whether to grant the application to amend is really dependent on the issue of the reasonable prospect of success of the amended defence.

[34] The issue of the success of defence will be considered within the context of the substantive law as set out in the relevant provision of the Defamation Act as well as the procedural rules set out in the CPR. This is especially so given that the claimant is contending that the defence, even as amended, should not be permitted to stand as it has no reasonable prospect of success or discloses no reasonable grounds for defending the claim.

[35] It is first necessary to deal with the issue of whether there was any publication of the defendant's statement, which has been raised by the pleadings that the defendant's Facebook page was private and no member of the claimant's community nor church has access to it. I note firstly that within the defendant's pleadings on this issue is an admission that the claimant's daughter has access to his Facebook page. The claimant's daughter, in my view, must be regarded as a third party. Also, I am of the view that expressions such as "Hey, somebody", "Hey people", "So people, be careful when you give people in Jamaica to buy things, they will add their names later", "Hey social media," all undermine this aspect of the defence as these words evince an intention that a wide cross-section of persons in the social media arena (including those who

may be familiar with the property and with both the claimant and the defendant) would read the publication. I am of the view, therefore, that this aspect of the defence has no reasonable ground of succeeding at trial.

[36] I will now consider the other aspects of the defence. In doing so, it is first necessary to state at the outset that save for the meaning that the claimant committed a crime by conspiring to have the defendant killed, I am of the view that the words are capable of bearing the meanings alleged. It is my view that in light of the use of the words “she might want to set me up to get kill”, the words, while suggesting that the claimant is likely to conspire to kill the defendant, do not suggest that the claimant has already conspired to kill the defendant. I am, however, of the view that in any event, the latter meaning is still capable of rendering the words defamatory in that the words are suggesting the claimant’s inclination or intention to conspire to kill the defendant and would therefore tend to lower the claimant’s reputation in the minds of well-thinking members of the public.

[37] In this context, it is significant that save for stating that the words suggesting that the claimant had conspired to kill the defendant amount to mere vulgar abuse, the amended defence does not contend that the words contained in the publication are not capable of bearing the meanings alleged. In this regard, I will first consider whether the defence of vulgar abuse has a reasonable prospect of success.

[38] In **Shawna Hawthorne v Fiona Ross** [2016] JMCA Civ 50 Brooks JA in examining the defence of vulgar abuse stated:

[22] In relation to the subject matter of vulgar abuse, I have had regard to Atkin’s Court Forms, volume 15, at paragraph 50, in which it is stated that:

“Notionally defamatory words or statements will not be actionable if the particular circumstances in which they were published mean that they would not have been

understood as anything other than vulgar abuse ...”

[23] In a footnote accompanying the above statement the view was expressed that:

“It is doubtful whether vulgar abuse would now be treated as a free-standing defence as opposed to a ground for striking out the claimant’s meaning (either on the footing that the claim did not surmount the threshold of serious harm required by the Defamation Act 2013 s 1, or was otherwise an abuse of process).”

[24] Further, Halsbury’s Laws of England (2012), volume 32, paragraph 549 states that:

“A person may use strong language of another, which if taken literally would be defamatory, but if it is obvious to the reasonable viewer or reader, from the tone and context, that the words are not intended literally but merely as insults, then the natural and ordinary meaning conveyed will not be a defamatory one. This principle is sometimes called the „defence of mere vulgar abuse” but in fact it is a doctrine of interpretation going to exclude liability... Whether words make a definite charge of misconduct, or are merely abusive or sarcastic, depends on all the circumstances of the case.”

[39] Vulgar abuse was pleaded in relation to paragraph 16(c) which pleaded that the impugned words were understood to mean that the claimant has committed a crime by conspiring to have the defendant killed. Even though it was not

pleaded which specific words were understood to have that meaning, I am of the view that such a meaning is apparent from the words, “I just of to be, aware of her recent actions, she might want to set me up to get kill” which were included in the publication of 16 December 2018.

- [40]** I am of the view that the words in the entire publication of 16 December 2018 provide the context in which the meaning of the impugned words is to be understood. In my view, in the context where the defendant is saying that he gave the claimant money to buy the property for him and that she had title to the property registered in her name, in her spouse’s name and in the defendant’s name, which are acts of dishonesty and then later stating that the claimant wanted to take the property as her own and that she had become dangerous and evil, I am of the view that the words were meant to be taken literally and were not to be regarded as merely insults and therefore the defence has no prospect of succeeding in the defence that the words were mere vulgar abuse. In any event, it seems to me that the defendant, in seeking to rely on the letter to the Commissioner of Police, along with an email in which there is a complaint that the defendant’s life was threatened, is suggesting that the words were meant to be taken literally.
- [41]** Even if I am wrong in my conclusion on the issue of vulgar abuse, the words relevant to that issue are only in relation to one aspect of the publications. Therefore, I must be satisfied that the defendant has a reasonable prospect of success in relation to all aspects of his defence in order for permission to be given for the amended defence to stand. In other words, even if the defendant were to succeed on this aspect of his defence, given that there are other defamatory words used, in relation to which vulgar abuse is not pleaded, the defendant must have a reasonable prospect of success in his defence of those areas in order to have a reasonable prospect in his entire defence. I will therefore consider the other substantive defence, which is justification or truth as it is now referred to under the Defamation Act of 2013.
- [42]** In relation to the defence of truth, the claimant’s complaint is that the defence does not comply with Part 10 or Part 63 of the CPR, or with the provisions of

section 20(3) of the Defamation Act. The claimant is relying on rules 10.5(3), 10.5(4) and 10.7 of the CPR which provide as follows:

10.5(3) In the defence, the defendant must say:

(a) which (if any) of the allegations in the claim form or particulars of claim are admitted;

(b) which (if any) are denied; and

(c) which (if any) are neither admitted nor denied because the defendant does not know whether they are true, but which the defendant wishes the claimant to prove;

10.5(4) Where the defendant denies any of the allegations in the claim form or particulars of claim –

(a) the defendant must state the reasons for doing so; and

(b) and if the defendant intends to prove a different version of events from that given by the claimant, the defendant's own version must be set out in the defence.

10.7 The defendant may not rely on any allegation or factual argument which is not set out in the defence but which could have been set out there, unless the court gives permission.

Rule 69.3(a), (b) and (c) of the CPR provides:

A defendant (or in the case of a counterclaim, a claimant) who alleges that (a) in so far as the words complained of consist of statements of fact, they are true in substance and in fact; and (b) in so far as they consist of expressions of opinion, they are fair comment on a matter of public interest; or c) pleads to like effect, must give particulars stating (i) which of the words complained of are alleged to be statements of fact; and (ii) the

facts and matters relied on in support of the allegation that the words are true.

Section 20(3) of the Defamation Act states:

In proceedings for defamation, a defence of truth shall succeed if

(a) the defendant proves that the imputation contained in the matter that is the subject of the proceedings were true, or not materially different from the truth; or

(b) where the proceedings are based on all or any of the matter contained in a publication taken as a whole, the defendant proves that the publication taken as a whole was in substance true, or was in substance not materially different from the truth, if the words not proven to be true do not materially injure the claimant's reputation having regard to the truth of the remaining imputations.

[43] Guidance as to the approach in considering the defence of truth is to be found in the case of **Campbell v Cross & anor** that was relied on by Ms Johnson. In that case, Jarrett J stated at paragraph [62]:

The rationale behind the defence of truth is that the law protects a claimant's reputation only from attacks which are without merit. Under the Act, as it is at common law, the truth of an imputation is a complete defence, but the defendant must prove that the imputations are true or not materially different from the truth. Additionally, in his or her pleadings, a defendant must state which of the words the claimant complains of are alleged statements of facts and give particulars of the facts and matters relied on in support of the allegation that the words are true. In other words, the defendant must specifically plead which meaning he intends to justify. (See for example **Lucas Box v News Group**

Newspapers Ltd [1985] EWCA Civ J1030-7). Unlike the common law, where any imputation which remains unproven results in the entire defence failing, under section 20(3)(b) of the Act, a defendant can still succeed where he can prove that the claimant's reputation has not been materially injured by those imputations not proven.

[44] As stated previously, the claimant has pleaded that the publications, which are set out at paragraphs 12, 14 and 15 of the particulars of claim are to be understood to mean:

- a. The claimant is a thief;
- b. The claimant is an untrustworthy person;
- c. The claimant has committed a crime by conspiring to have the defendant killed;
- d. The claimant is not a fit and proper person to carry on business with.

With respect to paragraph 12, Ms Johnson correctly pointed out that there is no response in the defence referring specifically to this paragraph. This is in breach of rule 10.5 of the CPR. Also, in failing to refer to which words in the publication are statements of fact, it seems that the defendant did not comply with rule 69.3. I note, however, that at paragraphs 23 - 27, under the heading of "Defence of Justification", the defendant does plead facts that seem to support his statement that the claimant was trying to steal his property by obtaining title for the property in her name, in her spouse's name as well as in his name and subsequently seeking to sever the joint tenancy. Also, the defendant has at paragraphs 8, 12 and 13 of the amended defence referred to documents that he is seeking to rely on, which were attached to the defence filed in December 2024. I am therefore of the view that while the provisions of rule 10.5 are to be complied with by setting out specifically the defence to each paragraph of the particulars of claim and rule 69.3 by stating specifically which of the impugned words in each publication are statements of fact, it can be discerned from the substance of the defence which words in paragraph 12 the

defendant is alleging is a statement of fact and the facts he relies on to support same.

[45] However, as to whether this is a defence that has a reasonable prospect of succeeding, in light of the requirements of the law on the defence of truth, it is significant that the “facts” being relied on by the defendant are not facts that have been proven but are assertions made in the 2019 claim between both parties involving ownership of the land in question. Thus, there is as yet no finding that the claimant took the defendant’s money and purchased the property for the defendant, herself and her spouse. In addition, even if the court in that claim were to find against the claimant, this would not by itself amount to the claimant being a thief or attempting to steal the defendant’s property as this could only be done in a criminal court where the standard of proof is the higher standard of proof beyond a reasonable doubt.

[46] In relation to the statements made in the publication made on 30 December 2018 (paragraph 15 of the particulars of claim) suggesting that the claimant was trying to steal from her parents, the defendant has neither admitted nor denied that allegation but he does not give the reason for this, and in so doing, has failed to comply with rule 10.5 of the CPR. Also, he has failed to state which words are statements of fact and providing the facts and evidence to support these statements. The defendant has pleaded that the hospital bills remain unpaid. However, there is no evidence of this and even more importantly, this bare assertion is again, not sufficient to rise to conclusion that the claimant is guilty of the offence of larceny, which could only be done in a criminal court. I am of the view that the defendant has failed to satisfy the requirements of Parts 10 and 69 of the CPR as well as, section 20(3) of the Defamation Act in relation to the defamatory words used in the publication made on 30 December 2018 and the defamatory meanings ascribed to them. Consequently, the amended defence has no reasonable prospect of success in this regard.

[47] In relation to the publication made on 16 December 2018 (paragraph 14 of the particulars of claim), in which the statement is made about the claimant “setting up” to kill the defendant, I have already dealt with the defence of vulgar abuse

and will now consider the issue in relation to the defence of truth. It seems to me that the defendant has not complied with rule 10.5(3) of the CPR because even though the defendant has pleaded in response to paragraph 14, that the paragraph is neither admitted nor denied, he has not given the reason for this and in any event it seems to me that this is not an allegation to which the defendant is permitted to say he neither admits nor denies because this is certainly information that is within his knowledge. He should know if he made those statements and if they are true. Also, he has failed to comply with the requirements of rule 69.3. Nonetheless, it seems that the truth that the defendant is seeking to rely on is the email and the letter to the Commissioner of Police. The letter and email allege that a threat was made, do not state who made the threat and what words were used to convey to the defendant that a threat on his life was being made. Also, I think it is quite telling that on the defendant's own words, the police to whom the report was made formed the view that it was a civil matter.

[48] It is my view therefore, that the defence of truth has no reasonable prospect of succeeding as the statements of facts and the supporting information that the defendant is seeking to rely on do not prove the truth of the statements which they seek to prove. In addition, there are several words in the publications that have not been pleaded to and no attempt made to provide statements of facts proving the truth of these words. The provisions of section 20(3) of the Act are to the effect that the defence of truth can only succeed where facts which are unproven do not materially injure the reputation of the claimant and in my view, it cannot be said that the statements contained in the publications which have not been pleaded and/or proven do not materially injure the claimant's reputation. The failure to properly allege facts in support of some of the averments are therefore a further obstacle to the defence of truth having a reasonable prospect of success. I am therefore of the view that the application to permit the defendant to amend his defence and for the amended defence to stand must be refused.

[49] The conclusion I have come to is dispositive of not only the application to amend defence but also the application to strike out defence. It is clear, in my

view, that the provisions of rule 10.5 and rule 69.3 of the CPR as well as section 20(3) of the Defamation Act have not been satisfied or complied with. I bear in mind that striking out is a remedy of last resort. I accept the submission of Mr Brown, which is supported by the **Kenneth Black** case, on which he relied, that it is therefore to be granted only in plain and obvious cases. This notwithstanding, I am of the view that given the shortcomings of the defence as initially pleaded and the amended defence in failing to satisfy the requirements of the law, this is a plain and obvious case in which the discretion of the court should be exercised to strike out the defence.

Conclusion

[50] It is my view therefore, that the application to amend defence must be refused as the defence as amended has no reasonable prospect of success having regard to the nature of the defences that are being relied on. The defence falls short of satisfying the requirements of the procedural as well as the substantive law. Consequently, the defence should be struck out.

[51] I therefore order as follows:

- (i) Application for permission to amend defence is dismissed.
- (ii) The defence filed on 13 June 2022 is struck out.
- (iii) Judgment is entered against the defendant in favour of the claimant, with damages to be assessed.
- (iv) Costs of both applications are awarded to the claimant, to be taxed if not agreed.
- (v) The matter is to proceed to a case management conference before a judge of the assessment court on 29 July 2026 at 12:30 pm for ½ hour.
- (vi) Leave to appeal is refused.