

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE
Civil Division

COMMONWEALTH OF DOMINICA

Claim No. DOMHCV2019/0267

BETWEEN:

LENNOX LINTON

Claimant

-and-

[1] **ANTHONY ASTAPHAN**
[2] **SIMEON ALBERT**
[3] **NATURE ISLAND COMMUNICATIONS**
CORPORATION (KAIRI FM)

Defendants

Before Master Alvin S. Pariagsingh

Appearances: Cara Shillingford – Marsh for the Claimant; and
Peter I. Foster QC leading Lennox Lawrence and Jodie Luke instructed by
Rénée T. St. Rose for the First Defendant.

2022: May 23;
July 20

DECISION

**First Defendant's application to strike out, to restrict reliance on documents
disclosed and for an extension of time to file witness statements**

[1] **PARIAGSINGH, M:-** Before the Court is the First Defendant's application filed on May 21, 2021. The application seeks (5) reliefs. They are:

1. An order striking out paragraph 16 of the Statement of Claim;
2. An order striking out paragraph 8 of the Statement of Claim;
3. A determination of whether the words complained of are capable of bearing the meanings attributed to them in paragraphs 8 and 12 of the Statement of Claim and if not, that the claim be struck out;

4. The Claimant be precluded from relying on certain documents disclosed; and
5. A variation of the case management timetable to extend the time for the filing of witness statements by the First Defendant.

THE CLAIM:

[2] The Claimant's claim is in defamation. The Claimant is an elected Member of Parliament and the Leader of the Opposition of this jurisdiction. The First Defendant is an Attorney at Law and a member of the inner bar.

[3] The Claimant's case is that the First Defendant defamed him on two occasions. The first occasion was on December 30, 2016. The First Defendant was a caller on a radio broadcast hosted by the Second Defendant which was published by the Third Defendant. The defamatory words pleaded are as follows:

Anthony Astaphan - Linton has made an attempt, many attempts to sabotage the CBI and Economic Development Citizen by Investment Program. This is now a declaration of war, against the country and the people of this country by him. It's a terrorist declaration of war by him, an economic form of terrorism....

Simeon Albert: hhmm

Anthony Astaphan: play on the air, in the most dishonest way. The only, honest motivation that Linton would have is a desperate pathological, ah, desire for facial recognition.

Simeon Albert: hhmm

Anthony Astaphan: Linton wants his face, however you wish to describe, it recognized in the world regardless of whether he is lying or not, and he is in fact, and he, and he, and he is in fact, and he is in fact lying. And Linton has now gone on the international media to commit an act of economic terrorism against the integrity of the program, and the integrity of the government, the ability of the government to assist the development of the country, to reconstruct the country after a storm and to assist the poor and the working class in this country. And Linton as of today should be branded an economic terrorist, and a traitor to this country and must never be forgiven for his betrayal of this country, because, solely because his sole desire is to have his face, describe it how you wish, recognized on the

international, in the international community. He has sold out his country for a few seconds of fame, and God will take care of him'

- [4] The second occasion the Claimant complains about was on January 03, 2017. Three days after, the Claimant contends that the First Defendant was written to concerning this first defamatory statements. Much like the first instance, the Claimant contends that the First Defendant made defamatory statements about the Claimant on a radio broadcast hosted by the Second Defendant on the Third Defendant's radio station. The words complained of are:

Anthony Astaphan: I think his predominant motive, he is a pathological liar, he's a saboteur, and he's a traitor to the country. When you lie to destroy the engine of life, the bloodline of a country that is going to lead to suffering, and deprivation and poverty, of the working class and, and the middle class, and, and the civil servant class people, you are a traitor to the country.....

The other thing I want to deal with, "Did you listen to Linton today on the DBS News?"

Simeon Albert: I missed it.

Anthony Astaphan: At 1:15

Simeon Albert: I missed the news at 1:15

Anthony Astaphan: When he said that the, that the statement about dodgy sales of passport under the table were independent findings of CBS? Comrade

Simeon Albert: Hhhmm

Anthony Astaphan: Linton, if Linton said that and I believe that Linton is, is schizophrenic. Linton is a dangerous human being because he does not know the difference between fact and fiction. And Linton is prepared to lie, and he will probably lie, and he will probably lie on his parent's grave. And he must be condemned for lying to the extent, now that he has gone on the platform to, and has tricked, betrayed his country. And that, that political criminal goes on CBS and said what he says. To demonize our country which the, with the smile of Judas!

Anthony Astaphan: I mean the man is dangerous pathological liar... So I repeat, Linton has taken his dishonesty to the level where we must condemn his as a liar, as a saboteur, and as a traitor to the nation.

Because either out of wickedness, or corruption, or an ulterior motive, he went out of his way to assist in seeking to destruct, to destroy the good name of Dominica CBI Program, and the country of Dominica to the detriment of Dominica..”

[5] The First Defendant has not denied the words as pleaded by the Claimant. With respect to both sets of statements, the First Defendant contends that the words were not false or defamatory but were rather fair comment on matters of public interest.

[6] A convenient place to start with in disposing of the application is relief (c) above. A determination of this ground in favour of the First Defendant may dispose of this matter in its entirety.

Relief (c) A determination of whether the words complained of are capable of bearing the meanings attributed to them in paragraphs 8 and 12 of the Statement of Claim and if not that the claim be struck out;

[7] The Court’s power to determine whether the words pleaded in a defamation claim are capable of bearing the meaning ascribed is derived from **Part 69 Rule 69.4 of the Civil Proceedings Rules 2000 as amended (CPR)**. This rule provides that:

‘69.4 (1) At any time after the service of the statement of claim, either party may apply to a judge in chambers for an order determining whether or not the words complained of are capable of bearing a meaning or meanings attributed to them in the statement of case.

(2) If it appears to the judge on the hearing of an application under paragraph (1) that none of the words complained of are capable of bearing the meaning or meanings attributed to them in the statement of case, the judge may dismiss the claim or make such other order or give such judgment in the proceedings as may be just.’

[8] The scope of the determination of this Court is to answer the legal question of whether the words complained of are capable of having meanings attributed to them only. This Court is not tasked with determining the meaning of the words.

[9] The approach the Court takes to an application such as the one at bar was set out in **Skuse v Granada Television Limited (1996) EMLR 278** at 285 as applied by Alleyne J in **Gonsalves v Gibson & Ors, SVGHCV2006/0405 and 0406**. The Court has to consider the following in answering the legal question:

1. The court should give to the material complained of the natural and ordinary meaning which it would have conveyed to the ordinary reasonable viewer.
2. The hypothetical reasonable reader [or viewer] is not naive but he is not unduly suspicious. He can read between the lines. He can read in an implication more readily than a lawyer, and may indulge in a certain amount of loose thinking. But he must be treated as being a man who is not avid for scandal and someone who does not, and should not, select one bad meaning where other non-defamatory meanings are available.
3. While limiting its attention to what the defendant has actually said or written, the court should be cautious of an over-elaborate analysis of the material in issue.
4. The court should not be too literal in its approach.
5. A statement should be taken to be defamatory if it would tend to lower the plaintiff in the estimation of right-thinking members of society generally.
6. In determining the meaning of the material complained of the court is not limited by the meanings which either the plaintiff or the defendant seeks to place upon the words.
7. The defamatory meaning pleaded by a plaintiff is to be treated as the most injurious meaning the words are capable of bearing and the questions a judge sitting alone has to ask himself are, first, is the natural and ordinary meaning of the words that which is alleged in the statement of claim and, secondly, if not, what (if any) less injurious defamatory meaning do they bear?
8. The court is not at this stage concerned with the merits or demerits of any possible defence.

[10] The First Defendant has placed reliance on the case of **David Carty v Hubert Hughes, AXAHCV2015/0040** for the proposition that the Court must look at the entirety of the speech before arriving at a conclusion. I agree with this proposition, however the First Defendant has never disputed the words pleaded nor has he sought to put before the Court a transcript of the entire interview. In the absence of a transcript, I am constrained to consider the words pleaded, which have not been denied.

[11] The First Defendant submitted that the words which the Claimant alleged in paragraphs 6 and 10 of the Statement of Claim are not capable of bearing the defamatory meaning ascribed to them.

[12] The Claimant submitted that the words in their natural ordinary meaning are defamatory. The Claimant goes on to give a range of meanings he says can be attributed to the words.

[13] The statements made by the First Defendant contain phrases and adjectives, all attributed to the Claimant, such as; attempts to sabotage, declaration of war, terrorist declaration, economic form of terrorism, lying, desperate pathological liar, commit an act of economic terrorism, traitor, schizophrenic, condemned for lying, tricked, betrayed his country, political criminal, smile of Judas, saboteur, assist in seeking to destruct the good name of Dominica. The most natural and literal meanings of these phrases and adjectives they are all capable of carrying negative connotations. If proven at trial, are capable of lowering the Claimant in the eyes of members of society.

[14] Having considered both submissions, I agree with the Claimant. The words in their natural ordinary meaning were capable of conveying to the ordinary reasonable listener who is not unduly suspicious and who can read between the lines a range of defamatory meanings including the meaning pleaded at paragraphs 8 and 12. There is repeated reference to dishonesty and this carries a negative connotation that could lead the listener to think that the Claimant might have committed misfeasance or misconduct in public office. In **Pinard-Byrne v Lennox Linton [2015] UKPC 41** the Privy Council

emphasized (at paragraph 30) the importance of the allegation of dishonesty in upholding the finding of the trial judge that the words complained of were capable of bearing the defamatory meanings ascribed to them in the Statement of Case. This reinforces my view that if proved, the words are capable of lowering the estimation of the Claimant in the minds of right – thinking members of society.

[15] I therefore do not agree that the claim should be struck out as the words complained of are incapable of having a defamatory meaning or the meaning ascribed by the Claimant.

Relief (a) and (b) - striking out of paragraphs 8 and 16 of the Statement of Claim.

[16] The power of the Court to strike out a party's statement of case and the circumstances in which that power ought to be exercised is now well settled. One of the most recent statements of the law in this regard is set out by Thom JA in **Agnes Danzie et al V Cecil Anthony SLUHCVP2015/0009** at paragraph 13 where it is stated:

“It is a well-established principle that the court's power to strike out a statement of case should only be used sparingly (*Real Time Systems Limited v Renraw Investments Limited and Others* [2014] UKPC 6). Also, in *Salfraz Hussain v Birmingham City Council and Others* the English Court of Appeal, in considering the exercise of discretion to grant relief from sanctions where judgment was entered in default, stated: ‘it must be kept in mind that discretionary powers are not to be exercised in order to punish a party for incompetence—they must be exercised in order to further the overriding objective’. In exercising his discretion, the learned judge was required to consider what was the appropriate response having regard to all of the circumstances, including whether there were other alternatives available that would be just in the circumstances.”

[17] The First Defendant contends that paragraph 8 and in particular the alternative plea of innuendo ought to be struck out.

[18] In support of this submission, the First Defendant submits that the Claimant's failure to plead particulars of innuendo is fatal to the alternative plea of the Claimant.

[19] The First Defendant relies on the authorities of **Slim v Daily Telegraph Limited [1968]**

2 Q.B. 157 and **Deans Jonas v James Rose, ANUHCv2009/0221** to support the proposition that particulars of innuendo must be pleaded. In addition, the First Defendant relied on an extract from **Gatley on Libel and Slander at paragraph 3.19** to support the point.

[20] The Claimant submitted that reliance on **Slim v Daily Telegraph** is premature. The Claimant says this case is distinguishable as it did not deal with whether any of the meanings should have been struck out. It dealt with whether a Plaintiff would be confined to the meaning they pleaded. Further, the Claimant contends that this authority can be relied on at the end of the trial to assist the Court in determining what findings it can or cannot make within the confines of the pleaded case.

[21] With respect to **Dean Jonas v James Rose**, the Claimant submits that this case was based solely on innuendo unlike this case which is based on natural ordinary meaning and in the alternative innuendo. In any event, the approach adopted by the Court in this case was not to strike out but to grant permission to amend.

[22] In my view the Claimant's pleaded case is clear. His first line of attack is the natural ordinary meaning of the words complained of. His reliance on innuendo is in the alternative. **Gatley on Libel and Slander 12th Edition- at page 1000** provides the following guidance on the pleading of innuendo:

'26.23 Pleading innuendoes. Where the claimant relies on an innuendo meaning, he must plead particulars of the facts and matters on which he relies in support of that sense. These facts or matters will generally incorporate either a special definition of the words known only to a limited class of persons (such as slang or technical terms) or facts extrinsic to the libel which, if known about, affect the way the words complained of are understood. In either case, the claimant must identify the person or persons to whom the words were published and who are alleged to have had knowledge of the special meaning or the extrinsic facts. In default of compliance with the requirements for pleading innuendo meanings, the pleaded meaning may be struck out.'

[23] The First Defendant submits that defamation arising from the natural and ordinary meaning of words is a separate claim from defamation arising from innuendo and that the two claims must be separately pleaded and particularized. The First Defendant further submitted that innuendo is different from the natural and ordinary meaning and that it is based on extrinsic or special facts which are known to the persons, to the viewers and listeners of the publication. I agree with this submission as a general proposition. It is clear that where an innuendo meaning is relied on, particulars of facts and matters to support the meaning must be pleaded. This is however a general rule and is not absolute.

[24] There are however exceptions to the general rule. One such exception to the rule is borderline cases. If the Claimant is relying on general knowledge for example, he may not have to plead particulars of a legal innuendo. **Gatley on Libel and Slander 12th Edition- at page 1001** states:

'26.24 Borderline cases. There may be cases in which the claimant is not certain whether he should rely on the natural and ordinary meaning of the words complained of or on a true or legal innuendo. For example, it may not always be easy to decide whether an extrinsic fact relied on is a matter of special knowledge, or whether it is just general knowledge in the light of which the ordinary, though indirect, meaning of the words has to be ascertained. (Difficulty will only usually arise where there is doubt as to whether the facts relied on are matters of general knowledge. If the facts relied on are a matter of general knowledge, an innuendo will not be required: *O'Brien v Wilson & Horton* [1971] N.Z.L.R. 386: "general knowledge is not an extrinsic fact for the purpose of [this rule] but is matter not requiring to be proved, in the light of which the jury can interpret the publication". Where a claimant relies upon extrinsic facts alternatively as being within the general knowledge of the community and as supporting an innuendo, he will not be ordered to supply particulars of the persons having knowledge of those facts unless it is obvious that the first alternative must fail: *Hughes v Mirror Newspapers* (1985) 3 N.S.W.L.R. 504. On the meaning of "general knowledge", see Bean J. in *Fox v Boulter* [2013] EWHC 1435 (QB) at [16]. In such cases, the best course is to plead in the alternative. *Lewis v Daily Telegraph* [1964] A.C. 234 at 281, per Lord Devlin: "I do not think that this should present any difficulty in practice. The pleader must ask himself whether he contemplates that evidence will be called in support of the allegation: if he does, it is a legal innuendo, and if he does not, it is not. If he is in doubt, he can plead in two paragraphs; and then if at the trial his opponent agrees or the judge rules that it is a matter of general knowledge, the legal innuendo can be dropped." This approach was approved of by the Court of Appeal of Hong Kong

in Oriental Press Group Ltd v Next Magazine Publishing Ltd (No.2) [2000] H.K.L.R.D. L15.'

[25] In my view the failure to plead particulars of innuendo where it is pleaded as an alternative does not automatically lead to a striking out. It is open to the Court at the trial to accept the ordinary natural meaning of the words without reference at all to any innuendo meaning. It must be remembered that the ordinary and natural meaning of the words is not confined to the literal meaning. Lord Morris in **Jones v Skelton [1963] 1 W.L.R 1363, 1370-1371** stated:

"The ordinary and natural meaning of words may be either the literal meaning or it may be implied or inferred or an indirect meaning: any meaning that does not require the support of extrinsic facts passing beyond general knowledge but is a meaning which is capable of being detected in the language used can be a part of the ordinary and natural meaning of words ...

The ordinary and natural meaning may therefore include any implication or inference which a reasonable reader guided not by any special but only by general knowledge and not filtered by any strict legal rules of construction would draw from the words."
(emphasis added)

[26] The argument of the First Defendant presupposes that the Claimant will be relying on extrinsic or special facts in support of the innuendo meaning. This approach is flawed because it does not take into account the fact that the natural meaning is not necessarily confined to the literal meaning.

[27] The answer to this in my view lies in the pleading itself. The Claimant is confined to his pleaded case. He has pleaded an innuendo meaning in the alternative without condescending to any particulars of extrinsic or special facts in support of the innuendo meaning. If he intends to rely on facts not pleaded in his Statement of Claim, he simply will not be permitted to lead evidence in his witness statements where there was no forewarning of the material facts. The objection to the lack of pleadings of particulars of innuendo in my view can and ought to be taken if any evidence is sought to be led on the issue which were not pleaded.

[28] Striking out the alternative case of innuendo in my view is not proportionate to the failure to plead facts in support of the innuendo meaning. To hold otherwise would be on an assumption that the Claimant intends to rely on facts to prove the innuendo meaning when he has not said so.

[29] The Claimant has not sought for permission to amend. The Claimant has stoutly defended his pleadings. In this regard, I will not make any order for any amendment to Paragraph 8 neither will I strike it out. If the Claimant attempts to lead evidence beyond the scope of his pleaded case, the same would be liable to being struck out.

[30] The First Defendant has also sought an order striking out paragraph 16 of the Statement of Claim. The basis of this application is that the Claimant has not pleaded any particulars of malice which impute any spite, ill will, indirect or ulterior motive on the part of the Defendants, and a failure to apologise does not constitute malice.

[31] The particulars of malice pleaded can be summarised as the Claimant belongs to one political party and the Defendants are public supporters of another political party. That the Defendants have repeatedly defamed the Claimant and continue to do so, including after receiving the Claimant's letter of December 31, 2016 and a pre-action letter dated September 12, 2019. The Defendants have also failed to apologise.

[32] The First Defendant has pointed the Claimant to the authority of **Blackwell v News Group Newspapers Ltd & Ors [2007] EWHC 3098**. This case is submitted as authority for the proposition that absence of an apology does not provide evidence of malice.

[33] In my view, this objection is premature. The Claimant is confined by his pleadings. He is or ought to be aware of the requirements to prove malice both in terms of pleadings and evidence. In particular, that no evidence will be permitted in the absence of a pleading of the material fact.

[34] The insufficiency of the pleading on malice in my respectful view is not a matter on which I should grant permission to amend. Insufficiently pleaded allegations of malice will result in a bar to leading evidence at the trial. The Claimant as with paragraph 16 has defended his pleaded case. He has not sought permission to amend and as such no such permission will be granted. I will however not strike out paragraph 16.

Relief (d)- An order precluding the Claimant from relying on certain documents disclosed.

[35] The First Defendant seeks an order precluding the Claimant from relying on five (5) documents disclosed. They are:

1. Article dated January 01, 2017 on DA Vibes entitled 'Linton to seek legal advice on 60 minutes criticism';
2. Article dated November 21, 2016 in the Sun News Paper entitled "Who are the holders of Dominica's diplomatic passports? Local the Sun;
3. Judgment dated November 11, 2019 in Dino Union (Caribbean) Holding Limited –v- Shangrila International Development Holding Limited et al;
4. Article on Aljazeera entitled: Diplomats for sale: How an ambassadorship was bought and lost/ Corruption News/ Al Jazeera;
5. Affidavit of Paolo Zampolli filed on the Paolo Zampolli v Range Developments et al Index No. 156698/2019 in the Supreme Court of the State of New York.

[36] The scope of disclosure is set out in **Rule 28.4 CPR** which states:

'If a party is required by any direction of the court to give standard disclosure, that party must disclose all documents **which are directly relevant** to the matters in question in the proceedings.'

[37] The Claimant has referenced the disputed documents in his reply. In particular the articles are referenced at paragraphs 7 and 9. The judgment and court proceedings are referenced in paragraph 10.

[38] A document is relevant if it goes to a fact in issue in the case. Disclosure of a document however, does not mean it is part of the evidence in a case, without more. In civil proceedings all evidence is given by witness statements (or summaries) and if the documents referred are not referenced in the witness statements, barring agreement from the other side they may not be admitted into evidence.

[39] The purpose of disclosure is to forewarn the other side that a party wishes to rely on a particular document. It not only gives the opposing side the opportunity to inspect the documents being relied on but it also gives them a chance to dispute the authenticity of that document.

[40] **Rule 28. 18 CPR** provides a procedure to dispute the authenticity of a document by filing a notice to prove a document. A notice to prove a document must be filed at least 42 days before the trial. What this notice does is put the disclosing party on notice that they will be required to prove not only the truth of the contents of the document but also the authenticity of the document.

[41] A service of this notice often times requires the disclosing party to bring an additional witness to lay evidential foundation and put the document into evidence before it is used. This procedure is provided for challenging documents disclosed.

[42] The effect of the conjoint effect of **Parts 28 and 29 CPR** is that a disclosed document must either be put in evidence by a witness in his/her witness statement or by agreement. The witness putting in the document can be cross examined on the document. The opposing party can also even apply to strike it out as a hearsay document or for being irrelevant if it is sought to be introduced into evidence. Disclosing a document alone does not permit a party to rely on it as part of his case. The document must be put in evidence either through a witness or by consent. Failing this, the document simply is not in evidence. Documents disclosed are not evidence. Evidence is what is contained in witness statement (including documents annexed or referred to which were disclosed).

[43] In respect of the Articles referred to in [35] (a), (b) and (d) these can be challenged in the usual manner prescribed in **Rule 28.18CPR**. The relevance of these documents hinges on them being admitted into evidence. There is the safeguard of filing a notice to prove and asking the judge to strike out these documents from any witness statements.

[44] In respect of the judgment disclosed at (c), this document is a public record. It contains findings of a High Court Judge. A challenge to it may be very hard to make except on the ground that it is irrelevant to the issues to be determined. It is too early to determine that issue. Any issues of its relevance or weight to be attached to it can be addressed in closing arguments to the trial judge.

[45] In respect to document (e), affidavits filed in court proceedings may be subject to certain restrictions before they are admissible in this jurisdiction. In terms of its relevance, nothing prevents the Claimant from disclosing it. Ultimately the relevance of the document hinges on its admissibility. Once admitted into evidence, relevance would be a matter for the trial judge.

[46] Accordingly, I will not make any order prohibiting the Claimant from relying on any document at this stage.

EXTENSION APPLICATION:

[47] The First Defendant seeks an extension of time to file his witness statements. This application was filed on the deadline date for the filing of interlocutory applications. The last day for the filing of the witness statements was May 28, 2022. The application was therefore made prompt in the circumstances.

[48] The test to be applied is not the relief from sanctions test as submitted by the Claimant. It is the less stringent test. The reason advanced is a good reason in the

circumstances. A good reason is not a reason which is absent of fault but it is contextual. If the First Defendant was successful on this application, there would be no need to file any witness statements as the matter may have come to an end.

[49] The First Defendant's application was not without merit and there was wisdom in awaiting the determination of the application before witness statements were filed. This approach was in keeping with the overriding objective and saved the parties costs and judicial time.

[50] In the circumstances I will extend the time for the First Defendant to file and for the parties to exchange witness statements.

COSTS:

[51] The general rule is that costs follow the event. This rule is subject to the discretion of the Court. On this application I am minded to apply an issue based approach.

[52] The Claimant successfully resisted the striking out issue on the basis that the words were not capable of having the defamatory meaning pleaded. The Claimant is entitled to his costs on this issue.

[53] In respect of the striking out of paragraphs 8 and 16 the grounds advanced were far from unmeritorious. I have ruled that these paragraphs stay as they are and that any evidence in respect of which the material fact was not pleaded would not be allowed. On these grounds each party should bear their own costs on this issue.

[54] In respect of the application to prohibit reliance on documents disclosed, again, this issue was resolved in favour of the Claimant. On this issue the Claimant is entitled to his costs.

[55] On the application for extension of time, this limb of the application was necessary and reasonable to make. The Claimant also operated on the basis of the wrong test in successfully opposing the application. The First Defendant is accordingly entitled to his costs on this issue.

[56] Of the four main issues addressed, the Claimant has been successful on two and is entitled to 50% costs of the application. The First Defendant has been successfully on one issue and is entitled to 25% costs of the application. On one issue, each party shall bear their own costs. When the First Defendant's costs is set off against the Claimant's costs, the order will be that the First Defendant shall pay the Claimant 25% of his costs of this application.

ORDER:

[57] It is hereby ordered that:

1. The Court holds that the words complained of by the Claimant are capable of bearing the defamatory meanings attributed to them in paragraphs 8 and 12 of the Statement of Claim;
2. The First Defendant's application to strike out paragraphs 8 and 16 of the Statement of Claim is refused;
3. The First Defendant's application to restrict the Claimant's reliance on documents disclosed on his list of documents is refused;
4. Time is extended for the First Defendant to file and for the parties to exchange their witness statements to on or before September 16, 2022;
and

5. The First Defendant shall pay the Claimant 25% of his costs of this application to be assessed by this Court in default of agreement within 28 days on the application of either party.

**Alvin Shiva Pariagsingh
High Court Master**

By the Court,

Registrar