THE EASTERN CARIBBEAN SUPREME COURT
IN THE COURT OF APPEAL

SAINT CHRISTOPHER AND NEVIS

NEVHCVAP2024/0004

BETWEEN:

ANSELM CAINES

Appellant

and

JANETTE NISBETT-MELONEY

Respondent

Before:

The Hon. Mde. Vicki Ann Ellis	Justice of Appeal
The Hon. Mr. Trevor M. Ward	Justice of Appeal
The Hon. Mde. Esco L. Henry	Justice of Appeal

Appearances:

Mr. Perry Joseph for the Appellant
Mr. Leon Charles for the Respondent

2024: November 14.

Civil appeal – Defamation – Libel – Natural and ordinary meaning of defamatory words – Malice – Whether proof of express malice ('malice in fact') relevant to consideration of the defence of justification − Injunctive relief to prevent republication of defamatory words – Whether the judge erred by drawing adverse inferences from the witness' testimony

REASONS FOR DECISION

Introduction

[1] **HENRY JA**: On 14th November 2024, the Court delivered an oral decision dismissing Mr. Anselm Caines' ('the appellant') appeal, filed on 25th March 2024,

against the learned judge's judgment in which Mrs. Janette Nisbett-Meloney ('the respondent') was found liable for defamation in respect of words published by her about the appellant on Facebook. The appellant was also ordered to pay the respondent her costs on the appeal to be assessed if not agreed within 21 days. The Court undertook to provide brief written reasons for its decision at a later date. These are the reasons.

Background

[2] It suffices to summarize the salient uncontested facts giving rise to this appeal. On 18th May 2020, the respondent re-posted on Facebook the offending post which was originally published on that platform by someone else using the moniker 'Simi Yah' (presumably the author of the post). In her post, the respondent shared the defamatory material with Henena Francis, Andrew Advizor Prentice, Sherina Chapman, Polius Matthew, Halstead Byron, Shaquana Williams, Anesta Nisbett, Iona Dore, Daniel DaCosta, Sistah C. Griffin, David Griffin, Edwin Maloney and Hazel Brandy-Williams on their Facebook pages.

[3] To avoid republication of the unsavoury material, it is enough for present purposes to outline only the gist of the defamatory words and not rehearse them. This approach is salutary to both litigants. Essentially, the post alleged that in 2018, the respondent's son Mikkel, had been removed from the Nevis Debating Team because he had spoken up about another student's complaint of the appellant's alleged inappropriate behaviour towards her. At the time Mikkel was a student at Charlestown Secondary School. The post also implied that the appellant, who was a staff sponsor of the Literary and Debating Society at the Nevis Sixth Form College, was habitually engaging in sexually improper conversations and conduct with female students.

[4] The respondent, in her defence to the claim pleaded justification and fair comment. However, she could call no witnesses or testify herself because she was not permitted to rely on her witness statements, having failed to file any within the

timelines stipulated by case management order.[1] Consequently, no evidence was adduced on her behalf.

[5] The learned judge ruled that the combined effect of the entire post was defamatory of the appellant. He found that the respondent could not avail herself of the defence of fair comment because her post did not qualify as commentary, much less commentary on a matter of public interest. He cited as authority **Deldridge Flavius v Dr. Ernest Hilaire**[2] in which this Court explained that fair comment is established by a defendant who demonstrates that the impugned publication consists of comment:

a) on a matter of public interest;
b) that although it may consist of or include inferences of fact, must be recognized as comment as distinct from imputation of fact and should therefore as a general rule explicitly indicate the factual basis for the comment;
c) that must be grounded in the truth or facts protected by privilege; and
d) such as an honest person could have made on the proved facts.

[6] Regarding the issue of justification, the learned judge took into account the appellant's testimony and that of his witness Ms. Q'wando Jones. It emerged that the respondent's son was not selected as part of the island's debating team to compete in the Leeward Islands Debating Competition ('LIDC'), because based on assessments, he was lagging behind in school; he repeatedly exhibited undesirable behaviour; and primarily because several other debaters outperformed him in the critical areas of elocution and presentation. Ultimately, the learned judge held that the respondent had not established justification as a basis for publishing the defamatory post and he ruled that she was liable to the appellant. He entered judgment for the appellant, ordered that damages be assessed, and awarded him prescribed costs.

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[1] Dated 21st November 2022.

[2] SLUHCVAP2015/0003 (delivered 22nd July 2015, unreported).

[7] The learned judge noted the acknowledgement by Ms. Jones that she overheard a conversation by students regarding the allegation of inappropriate behaviour by the appellant. He remarked in passing "… it is curious that Ms. Jones, as an educator, would overhear a student complain about alleged misconduct by a person who would have stood in *loco parentis* to students but not take any steps to report or fully investigate and determine the facts of the complaint, but any criticisms levied (sic) at Ms. Jones is ancillary to these proceedings."[3]

Grounds of appeal

[8] Although he was the successful party, the appellant was nonetheless dissatisfied with aspects of the learned judge's decision and filed this appeal. His notice of appeal contained four grounds. They are that the learned judge erred by: a) not determining the natural and ordinary meaning of some of the words used in the publication; b) not making a finding as to whether the defamatory words were actuated by malice; and c) not considering whether to grant injunctive relief and by failing to grant an injunction to restrain the respondent from republication of the defamatory words. In his fourth ground of appeal, the appellant criticized the learned judge for certain inferences he drew in respect of the Ms. Jones' conduct alluded to earlier. Those are the issues that arise for consideration. They will be considered in turn.

[9] The grounds of appeal raise points of law and criticize certain factual findings. In relation to the former, in order for the appellant to successfully appeal against a determination on the law, he must satisfy the Court that the learned judge made a decision that is plainly wrong. As to the latter, it is trite law that an appellate court will not lightly disturb a lower court's factual findings, evaluation of those facts or factual inferences drawn from them. It would do so only if satisfied that in determining the live dispute, the trial judge erred in principle by not considering relevant factors, or by giving them too much or not enough weight, or by considering irrelevant matters, and thereby exceeded the generous ambit within which

[3] Para. 32 of the judgment delivered on 9th February 2024.

reasonable disagreement is possible, and by doing so made a decision which is plainly wrong. **Dufour and Others v Helenair Corporation Limited and Others**[4] is one of many cases in which this Court has stated that principle.

Failure to determine the natural and ordinary meaning of certain defamatory words

[10] The nub of the appellant's first ground of appeal is that the learned trial judge should have, but did not make a full determination as to the meaning of all of the words in the offending publication, and in particular failed to decide whether all of the defamatory imputations conveyed in the Facebook post bore the meanings ascribed to them at paragraphs 16-19 of the statement of claim and paragraphs 17 and 38 of his witness statement. He relied on **Flood v Times Newspapers Limited**[5] and **John W. Morris v Radio Jamaica Limited and Latoya Johnson**.[6]

[11] The appellant complained that the most glaring omission in this regard was the trial judge's failure to consider the defamatory imputations attributable to the words in the post describing him as '*an online troll spewing lies*' who '*resorted to slander after the debates took place*' and '*tormented* [and] *haunted Mikkel Meloney from a fake page used to spew hate*.' He argued that the learned judge erred by failing to determine whether these words bear the natural and ordinary meaning identified by the appellant at paragraph 17 of the statement of claim that he ascribed to them. In those paragraphs he asserted that those words suggest that he had committed the tort of libel and an electronic crime contrary to section 13(1) and (3) of the **Electronic Crimes Act**.[7]

[12] On the appellant's behalf, learned counsel Mr. Perry Joseph contended that the learned trial judge, did not fully discharge his duty in making the required evaluation of the meanings of the words used in the offending post. Consequently, this default

[4] (1996) 52 WIR 188.
[5] [2012] UKSC 11.
[6] [2020] JMSC Civ. 179.
[7] Cap. 4.41 of the Laws of St. Christopher and Nevis.

potentially prejudices him for purposes of the assessment of damages, in light of the weight accorded to the criterion of the gravity of the libel. He cited in support **John v MGN Limited**[8] in which Sir Thomas Bingham MR stated, '[i]n assessing damages the appropriate damages for injury to reputation the most important factor is the gravity of the libel.' He submitted that alternatively or additionally, he is entitled to appeal if the learned trial judge employed a defamatory meaning which does not accord with the full extent or the 'true defamatory sting of the offending words' as this too would adversely affect the award of damages. Citing **Slim and Others v Daily Telegraph Ltd. and Others**,[9] Mr. Joseph concluded that the learned trial judge erred in these respects in the discharge of his functions.

[13] Learned counsel Mr. Leon Charles made no submissions regarding this ground of appeal on the respondent's behalf.

Discussion

[14] A finding by a trial judge as to the meaning of alleged defamatory words is one of law. It is well-established that an appellate court is entitled to disturb such findings of law and substitute its own as to the meaning only if satisfied that the judge got it wrong - **Bonnick v Morris**[10]. Likewise, it is settled law that in arriving at the meaning of the words, the judge is required to ascribe to them their natural and ordinary meaning as would reasonably be applied by an ordinary person. As stated by Lord Nicholls of Birkenhead:

> "In short, the court should give the article the natural and ordinary meaning it would have conveyed to the ordinary reasonable reader …, reading the article once. The ordinary, reasonable reader is not naive; he can read between the lines. But he is not unduly suspicious. He is not avid for scandal. He would not select one bad meaning where other, non-defamatory meanings are available. The court must read the article as a whole, and eschew over-elaborate analysis and, also, too literal an approach."[11]

[8] [1997] QB 586 at pg. 607F.
[9] [1968] 2 QB 157.
[10] [2002] UKPC 31, at para. [9], per Lord Nicholls of Birkenhead.
[11] Ibid.

[15] Simply put, the law is that a trial judge must decide what defamatory meanings the impugned words are capable of bearing. In doing so, the judge considers the meanings attributed to the words by the claimant in his pleadings and must decide if they bear such meaning or some other defamatory meaning – **Jameel v The Wall Street Journal Europe SPRL**.[12] Interestingly, rule 58.4 of the **Civil Procedure Rules (Revised Edition) 2023** allows for an application to be made by either party for an order determining whether or not the impugned words complained of, are capable of bearing the meanings attributed to them in the statement of claim. No such application was made in the court below. In such a situation, the trial judge must conduct that exercise at trial once all of the evidence is in.

[16] In his statement of claim, the appellant pleaded that the impugned words among other things in their ordinary and natural meaning meant and were understood to mean that he "sexually harassed, assaulted and or raped under aged girls; is a fugitive from the law; attempts to harass, silence and or victimize persons who try to expose this alleged behavior by several means including making defamatory statements and internet bullying; unfairly and without justification used his influence/positions to victimize Mikkel Meloney and a young girl/third party, by having them removed from the debating team as punishment for exposing him; is guilty of criminal behavior, a rapist, sexual deviant and is subject to imprisonment; as attorney at law, engaged in unethical and criminal conduct that should result in disbarment and criminal proceedings." The appellant also ascribed innuendos to the publication and invited the Court to find that the words were to be so understood.

[17] The learned trial judge found simply "[t]he Facebook post when broken down alleged that the Defendant's son was unjustly removed from the Debating Society Team in 2018 as retaliation for speaking up about a fellow student who had complained about the appellant's inappropriate behavior towards her. The Facebook post also suggested that the appellant was indulging in sexually inappropriate conversations

[12] [2004] EMLR 89.

and/or behaviors with female students."[13] He reasoned that on any analysis, both imputations in the Facebook post are *prima facie* defamatory and especially the allegations of sexual misconduct. He concluded that the combined effect of the entire post was defamatory of the appellant. He did not set out or refer to the legal principles which guide the court in arriving at the meaning of the impugned words in a libel case.

[18] It is instructive that the appellant found no fault with the learned judge's failure to articulate the applicable legal principles, or with his finding in relation to the meaning of the sexual misconduct allegations, even though they distilled into one sentence the several meanings, imputations and innuendos set out in the statement of claim. This suggests that he is satisfied that the learned judge had in mind and applied the relevant law in arriving at the meaning of that portion of the post. It is worth noting that the judge took the same approach in arriving at the natural and ordinary meaning with respect to the allegations that the appellant 'spread lies about Mikkel and had him removed from the Debating Team.' It is self-evident that his concise statement contained the gist of that part of the publication.

[19] Although the learned trial judge did not spell out the guiding principles of law that govern how the court determines the meaning of the impugned words in a libel case, it is clear that he applied his mind to them when examining the Facebook post. Having done so, he formulated in a very condensed but accurate manner and ascribed to them, the natural and ordinary meanings which an ordinary person would reasonably conclude that they convey. He was entitled to make that finding in law. The Court was satisfied that the learned judge was not wrong in making that determination as to the natural and ordinary meaning of that part of the Facebook post. There is therefore no basis for disturbing his finding.

[13] Para.12 of the judgment dated 9th February 2024.

Finding as to whether the defamatory words were motivated by malice

[20] The next ground of appeal takes issue with the absence of any finding by the learned judge that the republication of the Facebook post by the respondent was actuated by malice. Learned counsel Mr. Joseph argued that malice having been pleaded as a motive for the publication, it was imperative that the learned judge considered this as a live issue in determining liability. In support, he cited a number of cases including **Deldridge Flavius v Dr. Ernest St. Hillaire**,[14] **Dean Jonas v James Rose aka Tanny Rose**,[15] **Desmond Blanchard v Gildon Richards**[16] and **Elizabeth Neville v C.& A. Modes Limited**.[17]

[21] Mr. Charles countered that malice is not an essential component of the tort of defamation and arises for consideration only if a viable defence of fair comment or qualified privilege is advanced by a defendant. Accordingly, it was not necessary for the learned trial judge to address this aspect of the pleading.

Discussion

[22] It is settled law that a *prima facie* case of the tort of defamation is made out on a balance of probabilities by the claimant, only if, he adduces evidence that establishes four salient elements of the tort. Firstly, he must show that the defendant has published to one or more third parties, words or other material. Secondly, that such words or material is defamatory of the claimant. Thirdly, that they convey an imputation that has the potential to seriously damage the claimant's reputation. Fourthly, it must be shown that such words or other matter is not excusable as being truthful, constituting fair comment on a matter of public interest or otherwise defensible.[18] Malice is not a necessary ingredient of that tort except in the sense that 'legal malice' (otherwise referred to as 'malice in law') is inherently imputed in law and presumed to exist merely by dint of the publication. Proof of express malice

[14] SLUHCVAP2015/0003 (delivered 22nd July 2015, unreported).
[15] ANUHCV2009/0221 (delivered 21st September 2011, unreported).
[16] Dominica Civil Suit No. 25 of 1998 (delivered 7th December 2001, unreported).
[17] 1945 S.C. 175.
[18] Halsbury's Laws of England Vol. 32 (2023).

or 'malice in fact' becomes necessary and relevant only when qualified privilege or fair comment is raised as a defence.[19]

[23] As to what constitutes defamation, the learned authors of **Gatley on Libel and Slander** state:

> "A man commits the tort of defamation when he publishes to a third person words [or matter] containing an untrue imputation against the reputation of another."[20]

[24] In relation to whether malice is a requirement in defamation, they explain:

> "… the word "malice" in these cases is used in a technical sense as meaning the wrongful intention which the law always presumes when a wrongful act is done without legal justification or excuse. … In the tort of defamation the law presumes malice in this sense from the mere act of the defendant in publishing the defamatory matter. Malice is imputed to him without any evidence but the making of the statement."[21]

> "The state of mind, then, of a person who publishes a libel or slander is immaterial in determining liability except where the occasion is privileged, in which case the plaintiff has to prove actual malice in the popular sense of the term."[22]

[25] In the instant case, having found that the respondent could not avail herself of the defence of fair comment, it was not necessary for the learned judge to consider whether malice was present in relation to the remaining defence of justification. The respondent filed no counter-appeal against the decision. Accordingly, the issue of malice does not arise on appeal.

[26] The law is clear that malice has no bearing in determining whether justification is established. It follows that it was not relevant to a determination of whether the Facebook post was defamatory. The learned judge therefore had no duty to consider whether the publication was motivated by malice. Accordingly, he did not

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[19] Ibid.
[20] Sir James F. Stephen, *Gatley on Libel and Slander* (8th edn, Sweet & Maxwell 2013) para 3.
[21] Ibid para. 6.
[22] Ibid para. 8.

err by not taking it into account in arriving at the conclusion that the publication was defamatory of the appellant.

Failure to grant injunctive relief

[27] Another ground of appeal was that the learned judge erred by not giving any thought to whether injunctive relief was appropriate in the circumstances of this case. The appellant contended that among the remedies claimed was an injunction restraining the respondent from republication of the offending Facebook post. He argued that the learned judge should have granted an injunction in view of the threat by the respondent to re-publish the offending post. This alleged threat is contained in the following statement in the post '*If I were you, I would quit while ahead or else more information will be released so that you and your reputation might be irreparably ruined*.'[23] To his credit, learned counsel Mr. Joseph accepted while making oral submissions, that the respondent was not the author of the Facebook post and therefore the threat by the author to persist in publication of more defamatory material could not be attributed to her.

[28] Learned counsel Mr. Charles submitted quite correctly that it is trite law that where a party can show that its rights are being infringed, the court may refuse to grant an injunction if damages would be an adequate remedy. Moreover, the real question that the court has to ask is whether it is just that the claimant should be confined to his remedy in damages. Citing **Shelfer v City of London Lighting Co**.,[24] he stated that it provides guidance as to how the court will exercise its discretion when considering a prayer for an injunction. He concluded that having made an award of damages to be assessed, the learned judge obviously demonstrated that he considered that to be a suitable remedy. He reasoned that on the facts there was no basis to support a finding that the respondent threatened or intended to republish the defamatory publication.

[23] At para. 8 of the statement of claim dated 10th May 2021.
[24] [1895] 1 Ch. 287.

Discussion

[29] The appellant sought a multiplicity of remedies in his statement of claim. He prayed for damages including aggravated and exemplary damages; an injunction restraining the respondent whether by herself, her servants, agents or third parties on social media or otherwise from publishing the defamatory statements; a suitable retraction and apology in terms to be approved by him; costs, court fees and interest.

[30] The learned judge provided no explanation as to why he awarded general damages and not aggravated or exemplary damages, injunctive relief or a retraction and apology. In fact, it is pellucid that those other reliefs were not considered by him.

[31] It is trite law that after making a finding of liability in tortious claims a trial judge has a duty to determine what remedy or remedies are appropriate in view of all of the circumstances. It is settled law that injunctive relief is one of the reliefs available to a successful claimant in a defamation lawsuit.

[32] An injunction is an equitable remedy that directs a party to refrain from doing something or requiring him or her to do something either conditionally or unconditionally. It is granted at the court's discretion if the court considers that it is just and convenient to grant such relief. An injunction may be interlocutory in nature or permanent (perpetual).[25]

[33] In defamation cases, the court will evaluate all of the circumstances in arriving at a proportionate and just remedy. Usually, if it is satisfied that damages or other alternative remedy is more appropriate and meets the justice of the case, injunctive relief would not usually be granted to restrain further publication, unless republication is threatened by the tortfeasor or for some other reason the court apprehends repeated publication at the instance of the claimant. **Dunlop Pneumatic Tyre Co. Ltd. v Maison Talbot**[26] is authority for the proposition that the

[25] Halsbury's Laws of England Vol. 11 (2020), paras. 1072 and 1086.
[26] (1903) 52 WR 254.

court will grant an injunction to restrain further publication of the defamatory material, only if, satisfied that there is good reason to conclude that the defendant is likely to republish it.

[34] There is nothing in the learned judge's judgment to suggest that he considered whether an injunction should be granted. It is presumed that he did not. However, while it is clear that he did not consider injunctive relief as an option, he clearly addressed his mind to what relief would meet the justice of this case. He was satisfied that damages would be adequate. Although, it would have been desirable for him to indicate why he did not grant an injunction, this is objectively discernible from the fact that there was no evidence from which it could reasonably be concluded that the respondent intended or was likely to republish the defamatory material. There was simply no evidence in the court below that would justify a finding that injunctive relief was appropriate or that damages would be inappropriate. On any reasonable assessment of the evidence, the learned judge's decision not to grant an injunction was logical, legitimate, defensible and not wrong. It cannot justifiably be said that he erred in not having regard to the prayer for an injunction and by not granting one.

Adverse factual inferences – Ms. Jones

[35] In the fourth ground of appeal, the appellant took issue with the learned judge's statement that he considered it curious that Ms. Jones did not launch a full investigation into the alleged complaint by Mikkel regarding the appellant and a female student. Ms. Jones' uncontested testimony was that Mikkel did not make a complaint to her, however, she overheard a conversation that he was having with other students in which he claimed that the appellant hit a female student on her buttocks. Ms. Jones testified further that she could not recall if she spoke to the appellant about it. She indicated however that she spoke with the female student in question who told her that the alleged incident did not happen.

[36] Learned counsel Mr. Joseph submitted that the learned judge's comment must be characterized as an inference of fact or finding of fact. He argued that it is wholly unfounded, unfair and unjustifiable and not borne out by the evidence led at trial. Furthermore, he stated that the learned judge erred in so concluding. He cited **Masters Home Improvement Australia Pty Ltd v North East Solutions Pty Ltd**[27] and **Crown v Odinga Foster**.[28]

[37] Learned counsel Mr. Charles made no submissions on this ground of appeal.

Discussion

[38] To his credit, on probing from members of the Court, learned counsel Mr. Joseph readily accepted that the learned judge's comment that Ms. Jones failed to initiate a fulsome investigation was not determinative of any of the issues in the case and therefore was not germane to a determination of the dispute between the parties in this appeal. It is self-evident that on the pleaded cases, the only issues before the learned trial judge were whether the respondent was liable to the appellant for defamation; whether the respondent could avail herself of the defences of justification or fair comment, and if not, what remedies should be awarded to the appellant.

[39] It is indisputable that the learned judge's comment regarding what he perceived to be a seeming indifference by Ms. Jones regarding the wisdom of conducting an investigation into the allegations against the appellant, has no bearing on resolution of the issues before the Court. Moreover, the learned trial judge's observation was not in conflict with Ms. Jones' testimony. He was therefore entitled to comment on the evidence as he did. By doing so, he made no erroneous finding or inference of fact which would afford a legitimate basis for appeal in law or on the facts.

[27] [2017] VSCA 88.
[28] Saint Vincent and the Grenadines High Court Claim No. 35 of 2011 (delivered 3rd June 2015, unreported).

Miscellaneous

[40] It has not gone unremarked that the appellant was the successful party in the proceedings in the High Court, yet felt it necessary to appeal against aspects of the learned judge's reasoning and commentary. The Court is constrained to provide guidance on this unusual course of action which hopefully will be borne in mind by legal practitioners whose clients may suggest taking a similar tack.

[41] Conventional wisdom and entrenched civil practice standards disapprove of appeals by parties who have triumphed in all aspects of their claims in the court below, unless there are exceptional circumstances that warrant the launching of an appeal. Such appeals are frowned upon especially if pursued to challenge the lower court's reasons for the decision. **Supperstone, Goudie and Walker on Judicial Review** makes the point: "[a]ppeals are made against orders, not reasons given in a judgment. Thus a party who has been wholly successful cannot appeal merely as to the correctness of an aspect of the reasoning of the court."[29] The authors noted further that an exception to this principle was highlighted in **Secretary of State for Work and Pensions v Morina and Another**[30] in respect of an appeal from a social security commissioner concerning a jurisdictional point, even though the appellant was the overall winner on the merits but not on the jurisdictional issues.

[42] The underlying principle was enunciated in **Lake v Lake** [31]('**Lake**') where the court held that a judgment or order against which an appeal could be brought pursuant to section 27 of the Judicature Act, 1925, meant the formal judgment or order which was drawn up and disposed of the proceedings and which in appropriate cases the successful party could enforce or execute. It held further that the right of appeal did not extend to a finding or statement in the reasons given by the court for the conclusion reached.

[29] Supperstone Goudie, Walker, *Judicial Review (7th edn, Butterworths, 2024)* Chapter 20, para. 20.83.
[30] [2007] EWCA Civ 749.
[31] [1955] EWCA Civ J0519-1.

[43] In **Lake**, a wife cross-petitioned the court for a decree of judicial separation on the ground of her husband's cruelty, he having filed a petition for divorce on grounds of the wife's cruelty and adultery. The wife denied both allegations and asserted that even if adultery was made out, it had been condoned. The petition and cross-petition were both dismissed as having not been sufficiently proved. The wife attempted to appeal aspects of the reasons for the decision that she considered to be a finding that she had committed adultery. On that issue, the appellate court held that there was nothing in the order, which was in the usual and correct form, against which an appeal could lie. Furthermore, even if the wife succeeded in disproving adultery the order would not require amendment, nor could a retrial lead to a result different from that which was achieved by the order as it stood. **Lake** was applied in **Braceurself v NHS England**[32] and considered in **Veriton Advisors (UK Partners) LLP v Jump Trading International Limited**.[33]

[44] On the subject of appeals from the High Court in civil matters, the **Eastern Caribbean Supreme Court (Saint Christopher and Nevis) Act**[34] provides at section 33(1)(b):

> "33. (1) Subject to the provisions of this Act or any other enactment—
>
> (a) …
>
> (b) an appeal shall lie to the Court of Appeal, and the Court of Appeal shall have jurisdiction to **hear and determine the Appeal, from any judgment or order of the High Court** and for the purposes of, and incidental to, the hearing and determination of any appeal and the amendment, execution and enforcement of any judgment or order made thereon, and the Court of Appeal shall have all the powers, authority and jurisdiction of the High Court." (Emphasis added)

[45] The foregoing provision empowers the Court of Appeal to entertain and dispose of appeals from judgments and orders. Applying the learning from **Lake**, what is contemplated by use of the terms 'judgment or order' is not merely the reasoning

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[32] [2023] ECWA Civ 837.
[33] [2023] EWCA Civ. 701.
[34] Cap. 3.11 of the Laws of Saint Christopher and Nevis (Revised Edition) 2020.

underpinning aspects of the decision but rather the ultimate determination captured in the formal judgment or order.

[46] In the case at the appeal bar, it is noteworthy that even if the appellant had prevailed on all grounds in this appeal, the only possible change would have been to include injunctive relief in the order as a further remedy. In light of the discretionary nature of the court's jurisdiction in that area of law there was no guarantee that a variation of the order would be automatic in such eventuality. In any event, the rest of the judgment including the reasoning could not realistically or legally have been adjusted at this level. In essence, the appellant was facing the prospect of a pyrrhic victory.

[47] The authorities establish that a successful party who seeks to appeal a judgment or order made in his favour, will not be permitted to impugn the reasoning of the judge to score technical points which have no effect on the judgment or order. To entertain such 'appeals' would be contrary to the overriding objective of the **Civil Procedure Rules (Revised Edition) 2023** to do justice between parties. This is because such appeals lead to deployment of the court's scarce resources to resolve academic questions, serve no utility and seek merely to assuage the appellant's hurt feelings, ego and/or litigious appetite. Such appeals are therefore to be discouraged. Legal practitioners are encouraged to have conversations about such matters with their clients as part of the introductory phase of their relationships.

Conclusion

[48] The issues on appeal were all determined against the appellant, the Court having found that the appellant failed to raise issues or advance arguments which found favour with the Court. For the foregoing reasons, the four grounds of appeal were dismissed.

[49] The Court acknowledges the assistance rendered by both legal practitioners by way of written and oral submissions.

I concur.
Vicki Ann Ellis
Justice of Appeal

I concur**.**
Trevor M. Ward
Justice of Appeal

By the Court

Chief Registrar