Neutral Citation Number: [2022] EWHC 316 (QB)

Case No: QB-2021-001130

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
MEDIA AND COMMUNICATIONS LIST

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 17 February 2022

Before:

RICHARD SPEARMAN Q.C.
(Sitting as a Deputy Judge of the Queen's Bench Division)

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Between :

MUYANG MATILDA EPSE HILLS	**Claimant**
- and -	
ANGIE BRIDGET FOMUKONG EPSE TABE (AKA ESANZA MATEKE, BRIDGET BENJAMIN)	**Defendant**

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Andrew Otchie (instructed by **JBP Solicitors**) for the **Claimant**
The **Defendant** did not appear and was not represented

Hearing date: 9 February 2022

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Judgment

Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by way of e-mail and by release to Bailii. The date and time for hand down will be deemed to be 10:30am on 17 February 2022.

Richard Spearman Q.C.:

Introduction and nature of the hearing

1. This is a remedies hearing in a claim for libel and harassment. Both parties are members of the Cameroonian community in the United Kingdom. The Claimant is a mental health nurse who lives and works in Northampton. The Defendant operates a number of Facebook accounts and, in addition, a YouTube news channel called BB TV, which specialises in broadcasting in Pidgin English and has followers both in the United Kingdom and internationally. The Claimant has never met the Defendant and has had no dealings with her other than those which have given rise to the present proceedings. It is her case, however, that on or about 17 November 2020 she first learned that the Defendant was posting unpleasant and derogatory material about her online, and that in spite of her efforts to get the Defendant to desist and the commencement and prosecution of the present proceedings, the Defendant has persisted in a campaign of abuse and intimidation against her ever since, including at the same time as the hearing.

2. The Claimant was represented at the hearing by Andrew Otchie. The Defendant did not appear and was not represented. This was in line with the Defendant's previous stance in the proceedings, in which she has declined to take any part. The Claimant contended that the Defendant was aware that the hearing was taking place and had decided not to participate. In particular, on 8 February 2022, the day before the hearing, the Claimant's solicitors sent the Defendant by email "a copy of the Claimant's statement of costs filed with the court ahead of tomorrow's hearing". That email was sent to an address provided by the Defendant online, bridgetbenjaminproduction@hotmail.com, both on her YouTube channel, and, I was told, in connection with her Paypal account. In addition, both Mr Otchie from the Bar and the Claimant during her oral evidence stated that the Claimant was posting material about the hearing while it was taking place.

3. The claim was begun by claim form dated 26 March 2021. This contains the following brief details of the claim: "A Claim for defamation and harassment further to statements and publications made from 17 November 2017 and ongoing". The date of 17 November 2017 seems to be a mistake for 17 November 2020. Under "Value" the claim form states "The Claimant expects to recover a sum between £5,000 and £10,000". The Particulars of Claim are undated but it appears (see below) they were served at the same time as the claim form. The prayer for relief includes a claim for: "Damages, including aggravated and exemplary damages, exceeding £5,000 but not exceeding £10,000". The Defendant failed to file an Acknowledgment of Service or a Defence, and the Claimant obtained a default judgment by Order of Master Eastman dated 4 May 2021.

4. That Order stated that damages would be assessed at a Case Management Conference before Master Eastman on 1 November 2021. On that date, however, Master Eastman did not assess damages. Instead, he made an Order which provided (among other things) that (i) the Claimant's costs budget was approved in the sum of £57,540, (ii) the Claimant should file and serve witness evidence of fact by 29 November 2021, (iii) the Claimant should file and serve a schedule of loss by 13 December 2021, (iv) any counter-schedule of loss was to be filed and served by 7 January 2022, (v) the Claimant was permitted to rely upon a report of Dr Fanka dated 20 October 2021 as expert evidence, and (vi) the assessment of the Claimant's damages should be tried as in-person hearing by a Judge of the Media and Communications List on the first available date between 7 February and 25 March 2022. The Claimant served a witness statement

and a schedule of loss in accordance with that Order, but the Defendant did not serve a counter-schedule of loss or otherwise take any steps pursuant to that Order.

5. On 9 December 2021, the Claimant's solicitors sent an email to the Court asking if the date for the hearing of the assessment of damages could be changed from 10 February 2022 as the Claimant's Counsel had another commitment on that date. On 10 December 2021, the Court replied saying that the hearing had been listed on 9 February 2022. It is apparent from those emails that there must have been some other communication concerning the hearing date. However, those emails do not appear to have been copied to the Defendant. Further, there was no evidence before me that any other communication concerning this hearing date had been sent to the Defendant either by the Claimant's solicitors or by the Court (although I was shown proof of posting to the Defendant of (i) a letter before claim on 22 February 2021, (ii) the claim form, Particulars of Claim and a response pack, on 29 March 2021, (iii) a second copy of the Order dated 4 May 2021, on 5 October 2021, and (iv) the Order dated 1 November 2021, on 15 November 2021). Nevertheless, as set out above, I was satisfied that the Defendant knew about the date. In this regard, her failure to attend the hearing or communicate about it seemed to be in keeping with her lack of engagement throughout.

6. In those circumstances, I decided that it was appropriate to proceed with the hearing in the absence of the Defendant. This was, however, subject to two further points.

7. First, in accordance with the Order of Master Eastman of 1 November 2021, the Claimant served a schedule of loss dated 27 October 2021 in which she sought damages of no less than £15,000 for defamation and damages of no less than £13,000 for personal (psychiatric) injury/pain suffering and loss of amenity. The latter claim was based on the report of Dr Fanka, which concludes (in summary) that as a result of the publications and conduct complained of in these proceedings the Claimant sustained emotional and psychological injuries such that she developed an adjustment disorder and became suicidal, withdrawn and suffered from severe stress/anxiety and depression. However, the Claimant had made no application for permission to amend the claim form pursuant to CPR 17.1(2)(b) to increase the upper limit of the amount claimed in these proceedings from £10,000 to "no less than" £28,000. I indicated that if the Claimant wished to pursue a claim for an increased amount, such an application would need to be made, any additional court fee would need to be paid (or an undertaking to pay it would need to be given), and notice would need to be given to the Defendant. In these circumstances, the Claimant decided at the hearing to limit her claim to £10,000.

8. Second, in the light of the provisions of CPR 39.3 and the Human Rights Act 1998, in order to safeguard against the risk of injustice to the Defendant, and in spite of the prospect that this might result in these proceedings being further prolonged and in the Claimant being required to incur further costs, I indicated at the hearing that I would proceed in the absence of the Defendant on the basis that any Order that I made should include provisions which reflect CPR 39.3(3)-(5):

> "(3) Where a party does not attend and the court gives judgment or makes an order against him, the party who failed to attend may apply for the judgment or order to be set aside.
>
> (4) An application under paragraph (2) or paragraph (3) must be supported by evidence.

> (5) Where an application is made under paragraph … (3) by a party who failed to attend the trial, the court may grant the application only if the applicant –
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> (a) acted promptly when he found out that the court had exercised its power to strike out or to enter judgment or make an order against him;
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> (b) had a good reason for not attending the trial; and
>
> (c) has a reasonable prospect of success at the trial."

9. I was not addressed as to whether section 12 of the Human Rights Act 1998 applied to the hearing before me, on the basis that the Claimant was seeking relief which, if granted, would affect the exercise of the Defendant's right to freedom of expression. However, it seemed to me at least arguable that it did apply, and, accordingly, that section 12(2) was in point:

> "If the person against whom the application for relief is made ("the respondent") is neither present nor represented, no such relief is to be granted unless the court is satisfied –
>
> (a) that the applicant has taken all practicable steps to notify the respondent; or
>
> (b) that there are compelling reasons why the respondent should not be notified."

10. On this basis, the approach which I adopted accorded with that indicated by Warby J in *Pirtek (UK) Limited v Robert Jackson* [2017] EWHC 2834 (QB) at [20]:

> "I took a two-stage approach, considering (1) whether the defendant had received proper notice of the hearing and the matters to be considered at the hearing; (2) if so, whether the available evidence as to the reasons for the litigant's non-appearance supplied a reason for adjourning the hearing. I considered it necessary to bear in mind that the effect of s.12(2) is to prohibit the Court from granting relief that 'if granted, might affect the exercise of the Convention right to freedom of expression' unless the respondent is present or represented or the Court is satisfied that '(a) the applicant has taken all reasonable steps to notify the respondent; or (b) that there are compelling reasons why the respondent should not be notified'."

Default Judgment: The Law

11. In *New Century v Makhlay* [2013] EWHC 3556 (QB), Carr J held at [30]:

> "A default judgment on liability under CPR Part 12 is a final judgment that is conclusive on liability. The Particulars of Claim are, in effect, a proxy for the judgment, setting out the basis of liability. Once judgment is entered, it is not open to a defendant

> to go behind it. Damages of course still have to be proved, and a defendant can raise any issue which is not inconsistent with the judgment – see the White Book 2013 notes to CPR 12.4.4."

12. Warby J identified the approach the Court should adopt in relation to a default judgment in *Brett Wilson LLP v Persons Unknown* [2016] 4 WLR 69 at [18]-[19]:

> "18 The claimant's entitlement on such an application is to 'such judgment as it appears to the court that the claimant is entitled to on his statement of case': CPR 23.11(1). I accept Mr Wilson's submission that I should interpret and apply those words in the same way as I did in *Sloutsker v Romanova* [2015] EWHC 2053 (QB) [84]: "This rule enables the court to proceed on the basis of the claimant's unchallenged particulars of claim. There is no need to adduce evidence or for findings of fact to be made in cases where the defendant has not disputed the claimant's allegations. That in my judgment will normally be the right approach for the court to take. Examination of the merits will usually involve unnecessary expenditure of time and resources and hence [be] contrary to the overriding objective. It also runs the risk of needlessly complicating matters if an application is later made to set aside the default judgment: see *QRS v Beach* [2014] EWHC 4189 (QB), [2015] 1 WLR 2701 esp at [53]-[56]."
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> 19 As I said in the same judgment at [86]: "the general approach outlined above could need modification in an appropriate case, for instance if the court concluded that the claimant's interpretation of the words complained of was wildly extravagant and impossible, or that the words were clearly not defamatory in their tendency."
>
> Those instances of circumstances which might require departure from the general rule are not exhaustive, but only examples. I have considered whether there is any feature of the present case that might require me to consider evidence, rather than the claimant's pleaded case, verified by a statement of truth and uncontradicted by the defendants. I do not think there is any such feature. I have therefore proceeded on the basis of the pleaded case, both in my introductory description of the facts above, and in reaching the conclusion that the claimant has established its right to recover damages for libel, and to appropriate injunctions to ensure that the libel is not further published by the defendants."

The Claimant's pleaded case

13. The relevant facts pleaded in the Particulars of Claim are as follows:

(1) The Defendant is a popular celebrity member of the Cameroonian community in the UK. She is the controller, owner and/or the promoter of BB TV (Bridget Benjamin TV), a YouTube news channel followed by Cameroonians all over the world which specialises in broadcasting Pidgin English news. She also operates a string of Facebook accounts including the following: (i) Bridget Benjamin Empire (Benzomix), (ii) Bridget Benjamin Biz, (iii) Pennini Pennaskis and (iv) penny mukom. She is known under various identities with various dates of birth including the following: Angie Bridget Fomukong Epse Tabe (d.o.b 16.07.1975), Angie Bridget Fomukong (d.o.b 16.07.1975, Esanza Mateke (d.o.b 25.12.1968) and Bridget Benjamin (d.o.b 16.07.1975). She is also the owner and/or controller of an unregistered production company "Bridget Benjamin Production house". The Defendant "is credited with thousands of followers on social media worldwide".

(2) In various publications in Pidgin English on the above YouTube channel, and on other online platforms, including Facebook, the Defendant made various untrue and defamatory statements and published them to the whole world, describing the Claimant as a prostitute and unhygienic and a troublemaker within the community.

(3) On or around 17 November 2020 the Claimant was informed that a derogatory statement concerning her had been published on the Defendant's Facebook page, in which the Defendant accused the Claimant of using fake profiles and/or other people to abuse the Defendant. The publication complained of is attached as Exhibit 1 to the Particulars of Claim. In common with all the other publications complained of by the Claimant, it is in Pidgin English, but Exhibit 1 includes the following free translation: "Muyang Matilda Hills clap for yourself. You hate me even though I do not know you. Continue using fake accounts (people) to insult me".

(4) Following this publication, the Claimant became the subject of "giant gossip" within the Cameroonian community. She identified the Defendant, who was unknown to her, as the source of "the derogative unwarranted comments". She made contact with the Defendant's husband, and urged him to encourage the Defendant to desist from making these defamatory publications, and harassing her.

(5) Although not expressly pleaded, it appears that Exhibit 2 to the Particulars of Claim relates to this incident. In essence, it comprises a demand for a public apology from the Defendant, and includes the words: "If your wife does advocate for (sic) cyber bullying, she needs to stop bullying others. I need an apology from her …"

(6) The Defendant responded by publishing Exhibit 3 on her Bridget Benjamin Facebook page. This states (according to the free translation): "I exposed your life and you are now calling the whole world begging and crying that I remove the publication. If I remove it today you will change the story. Shame". It is pleaded that this mocked the Claimant for requesting the removal of the original publication.

(7) Immediately after that, the Defendant published the Claimant's photograph with further vulgar insults on the Defendant's Pennini Pennaskis Facebook page "as shown at Exhibit 4". It is pleaded that this publication "expressly refers to the Claimant's vagina as smelling". Exhibit 4 contains no free translation. However, it

was the evidence of Delphine Dungchi, a witness called on behalf of the Claimant, that this is the meaning of the words "the famous smelling lass Mustang Matilda".

(8) Between 11 December 2020 and some unspecified later date, the Defendant published and broadcast further insulting and humiliating materials concerning the Claimant through the YouTube channel BRIDGET BENJAMIN TV under the titles Vaccine 1, Vaccine 2, Vaccine 3, Vaccine 4, Vaccine 5, Vaccine 6, Vaccine 11 and "much more", which remain accessible at the link stated in the Particulars of Claim.

(9) On 18 February 2021 the Defendant published further insulting and defamatory words concerning the Claimant on her Pennini Pennaskis Facebook page as shown in Exhibit 5. This publication included the following words: "Muyang Matilda a note from one of ur chukam pass. Rotten lass woman. Apple cider vinegar Na 500frs try go buy one drink and use some for wash that rat lass…". Again, Exhibit 5 contains no free translation, but it was the evidence of Ms Dungchi that the words "chukam pass" mean "prostitute" and that "rotten lass woman" refers to a woman whose vagina has decay. The gist of the message is to the following effect: "Here is a note from one of the people who has been sleeping with you. Your vagina is so rotten that you need to buy apple cider vinegar to wash it out as water will not do".

(10) The publications meant and were understood to mean that the Claimant is (a) a prostitute, (b) dirty and an unhygienic/unclean woman, (c) engaged in conspiracy with others to harass and insult other members of the community and "therefore guilty of a criminal conduct", and (d) an embarrassment to Cameroonian women.

(11) The Defendant's publications have caused serious injury to the Claimant's reputation; have brought her into public scandal, odium and contempt; and have caused injury to her feelings.

(12) Further, the Defendant's publications amounted to harassment of the Claimant.

(13) In support of her claim for aggravated and/or exemplary damages the Claimant pleads that the Defendant has acted in a high-handed, malicious, insulting and aggressive manner towards her. She further pleads that the Defendant has continued to make defamatory publications, and has ceased to desist, despite the Claimant taking formal action to attempt to prevent her. In support of these contentions, the Claimant relies (among other things) on the following facts and matters: (a) when, having contacted the Defendant's husband on or about 22 November 2020 to beseech him to encourage the Defendant to desist from making defamatory publications and harassing the Claimant, the Defendant did not desist but instead on 23 November 2020 the Defendant published further insults against the Claimant, and mocked her for asking for the defamatory material to be withdrawn, (b) the Claimant was so distressed that she reported the matter to the Metropolitan Police and, further, developed "severe depression and suicide ideation", (c) in response to the letter before claim dated 22 February 2021, the Defendant published "further trolling general messages" and said that the Claimant was "wasting her time" as she is untouchable, and (d) the Defendant further boasted that she will not desist from continuing with the harassment and publication of false statements about the Claimant, and in March 2021 stated that "threats to commence court proceedings do not move her as the person who will take her to court is not yet born".

(14) The prayer for relief seeks (a) damages, including aggravated and exemplary damages, exceeding £5,000 but not exceeding £10,000, (b) an injunction restraining the Defendant from further publishing, or causing to be printed, published or distributed, words bearing the meanings complained of in the Particulars of Claim, or any similar words defamatory of the Claimant, (c) such further or other relief as the Court deems just and necessary, (d) interest, and (e) costs.

14. It is apparent from this synopsis that the Particulars of Claim contain limited information concerning the extent of publication of any of the statements complained of. Specifically, neither the fact that the Defendant "is credited with thousands of followers" nor the fact that the publications complained of are available to "the whole world" tells one anything about how many people read these particular statements.

15. The Exhibits provide little further information. For example, it appears from Exhibit 4 that it had been posted for 19 hours when the screenshot attached to the Particulars of Claim was taken, and had attracted 9 likes and 39 comments during that time. From this it is apparent that it had been read by at least 9 people, and from the number of comments it is reasonable to infer that it attracted some measure of attention. However, without sight of the comments it is impossible to know how many people commented on the words complained of, or whether they indicate belief or disbelief in them.

16. In addition, the Particulars of Claim contain no express plea of serious harm (see section 1(1) of the Defamation Act 2013: "A statement is not defamatory unless its publication has caused or is likely to cause serious harm to the reputation of the claimant").

17. So far as concerns the claim for harassment, the Particulars of Claim make no reference to sections 1, 3 and 7 of the Protection from Harassment Act 1997 ("PHA") and no express reference to the elements which need to be proved to make good such a claim.

18. Mr Otchie did not submit a Skeleton Argument for the hearing, or address these matters in oral submissions, although he did provide a copy of 42 pages, including a table of monetary awards for defamation, taken from Duncan and Neill on Defamation, 5th edn. He referred me to two awards contained within that table. However, I did not gain much from this, as the awards were so disparate, and the facts of each case are so different.

The claim for defamation

19. As Lord Sumption explained in *Lachaux v Independent Print Ltd* [2020] AC 612 at [14], whether a statement has caused "serious harm" falls to be established "by reference to the impact which the statement is shown actually to have had", and that, in turn, "depends on a combination of the inherent tendency of the words and their actual impact on those to whom they were communicated". Further, as appears from [16], in light of wording of section 1(1) of the Defamation Act 2013, a statement may not be defamatory even if it amounts to "a grave allegation against the claimant" if (for example) it is "published to a small number of people, or to people none of whom believe it, or possibly to people among whom the claimant had no reputation to be harmed". At the same time, the assessment of harm of a defamatory statement in not simply "a numbers game" (see *Mardas v New York Times Co* [2009] EMLR 8, Eady J at [15]). Indeed: "Reported cases have shown that very serious harm to a reputation can be caused by the publication of a defamatory statement to one person" (*Sobrinho v Impresa Publishing SA* [2016] EMLR 12, Dingemans J at [47]).

20. Other points which arise from the *Sobrinho* case include the following:

> "46 …. [F]irst … "Serious" is an ordinary word in common usage. Section 1 requires the claimant to prove as a fact, on the balance of probabilities, that the statement complained of has caused or will probably cause serious harm to the claimant's reputation …
>
> 47. Secondly, it is open to the claimant to call evidence in support of his case on serious harm and it is open to the defendant to call evidence to demonstrate that no serious harm has occurred or is likely to do so. However, a Court determining the issue of serious harm is, as in all cases, entitled to draw inferences based on the admitted evidence …
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> 48. Thirdly, there are obvious difficulties in getting witnesses to say that they read the words and thought badly of the claimant, compare *Ames v The Spamhouse Project* [2015] EWHC 127 (QB) at [55]. This is because the claimant will have an understandable desire not to spread the contents of the article complained of by asking persons if they have read it and what they think of the claimant, and because persons who think badly of the claimant are not likely to co-operate in providing evidence."

21. In *Doyle v Smith* [2019] EMLR 15, Warby J cited these passages with approval at [116]. Warby J went on to emphasise the importance of the point about inference, and (among other things) approved at [117] the following words of HHJ Moloney QC in *Theedom v Nourish Training (trading as CSP Recruitment)* [2016] EMLR 10:

> "Depending on the circumstances of the case, the claimant may be able to satisfy section 1 without calling any evidence, by relying on the inferences of serious harm to reputation properly to be drawn from the level of the defamatory meaning of the words and the nature and extent of their publication."

22. Although the Supreme Court stated the law differently from the Court of Appeal in *Lachaux v Independent Print Ltd* [2018] QB 594, the following passages from the judgment of Davis LJ are consonant with the correct legal analysis of section 1 as set out in the judgment of Lord Sumption:

> "72 … serious reputational harm is capable of being proved by a process of inference from the seriousness of the defamatory meaning … there is no reason in libel cases for precluding or restricting the drawing of an inference of serious reputational harm derived from an (objective) appraisal of the seriousness of the imputation to be gathered from the words used.

> 73 … The seriousness of the reputational harm is … evaluated having regard to the seriousness of the imputation conveyed by the words used: coupled, where necessary or appropriate, with the context in which the words are used (for example, in a newspaper article or widely accessed blog).
>
> 79 There may, for instance, be cases where the evidence shows that no serious reputational harm has been caused or is likely for reasons unrelated to the meaning conveyed by the defamatory statement complained of. One example could, for instance, perhaps be where the defendant considers that he has irrefutable evidence that the number of publishees was very limited, that there has been no grapevine percolation and that there is firm evidence that no one thought any the less of the claimant by reason of the publication …" (emphasis added).

23. In *Dhir v Saddler* [2018] 4 WLR 1, Nicklin J said at [55]:

> "In my judgment, the authorities demonstrate that it is the *quality* of the publishees not their *quantity* that is likely to determine the issue of serious harm in cases involving relatively small-scale publication. What matters is not the extent of publication, but to whom the words are published. A significant factor is likely to be whether the claimant is identified in the minds of the publishee(s) so that the allegation "sticks" …
>
> (ii) A feature of the "sticking power" of a defamatory allegation that has potential relevance to the assessment of serious harm is the likelihood of percolation/repetition of the allegation beyond the original publishees ("the grapevine effect") (*Slipper v BBC* [1991] 1 QB 283, 300 *per* Bingham LJ). In *Sloutsker v Romanova* [2015] EWHC 545 (QB); [2015] 2 Costs LR 321, Warby J said at [69]:
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> > "… It has to be borne in mind that the assessment of whether there is a real and substantial tort is not a mere numbers game, and also that the reach of a defamatory imputation is not limited to the immediate readership. The gravity of the imputations complained of… is a relevant consideration when assessing whether the tort, if that is what it is, is real and substantial enough to justify the invocation of the English court's jurisdiction. The graver the imputation the more likely it is to spread, and to cause serious harm. It is beyond dispute that the imputations complained of are all extremely serious." …" (emphasis added)

24. Applying these principles to the facts pleaded in the Particulars of Claim, I consider that those facts satisfy the threshold requirement contained in section 1. In particular: the imputations were sufficiently grave that they had a significant propensity to spread and cause serious harm; the "grapevine effect" is a recognised phenomenon which is associated with defamatory publications that are made online and using social media and it is reasonable to draw the inference that this effect occurred in this case; and the Claimant's pleaded case is that the allegations were in fact widespread, persistent, and caused serious injury to her reputation as well as very serious upset and distress to her.

25. Those conclusions are supported by the Claimant's evidence, which includes the following. Among shows which the Defendant broadcasts regularly by live streaming are "Vaccines" in which the Defendant "vaccinates" members of the Cameroonian diaspora community by "bash[ing] them live for what she considers to be their misconduct". People are encouraged to take part by calling or texting comments which are then read out to add to the show. At least some of these broadcasts remain accessible on the Internet either on the Defendant's Facebook pages or by searching against her live streams. One video (which does not appear to be one of the publications which is specifically complained about in the Particulars of Claim, but which repeats the same allegations about the Claimant being a prostitute, a dirty woman, and someone whose overall conduct was undignified) attracted over 3,000 views and comments online.

26. Further, the Claimant filed a supplemental witness statement dated 8 February 2022, in which she stated that on 4 February 2022 she had become aware that the Defendant had published further allegations about the Claimant via her YouTube channel which remained accessible online to her viewers and to the general public at large on her website and on a Facebook link. The Claimant further states:

> "Essentially, she identified me as being one of those who are seeking to bring her to justice and she called me names including fool and prostitute. She also expressly states that she will kill me unless I desist from pursuing her.
>
> … this is not the only occasion in which she has made such threats against me since the start of these proceedings. I have noticed that every time my Solicitors serve her with papers in respect of the case, she instantly makes further abusive publications against me. For instance, after the hearing of 1 November 2021, my Solicitors served her with the outcome of the case and on the same day at 16:30 pm she made further publications laughing at me as can be seen [by] following this link …
>
> I am really concerned as the continuing threats and derogatory publication have permanently vilified me within my community and has substantially damaged my mental health. I have tried everything to make the defendant stop but nothing seems to work.
>
> She has a community of more than 12,500 followers on Facebook and more than 14,000 on YouTube. That is damaging me on the ongoing basis."

27. The evidence of Ms Dungchi, in a witness statement dated 28 October 2021, is that she follows the Defendant's Pidgin English news broadcasts and also follows her on Facebook. She is the person who notified the Claimant about the Defendant's Facebook publication on or about 17 November 2020 and who further noticed that on 18 February 2021 the Defendant had stated (in Cameroonian Pidgin English) that the Claimant was a prostitute and a dirty woman. Ms Dungchi states that this post "was the subject of several hundreds of comments" and that various people were laughing at the Claimant while others were criticising the publication. She further states that the Claimant "has since become the subject of ongoing gossips within our community as many fans of [the Defendant] have now turned against her and have been abusing her regularly".

28. Accordingly, this evidence further supports the Claimant's case on serious harm.

29. Turning from that issue to the measure of damages, the relevant principles as to quantification of damages in a defamation case were set out by Warby J in *Barron v Vines* [2016] EWHC 1226 (QB) at [20]-[21]:

> "20 The general principles were reviewed and re-stated by the Court of Appeal in *John v MGN Ltd* [1997] QB 586. A jury had awarded Elton John compensatory damages of £75,000 and exemplary damages of £275,000 for libel in an article that suggested he had bulimia. The awards were held to be excessive and reduced to £25,000 and £50,000 respectively. Sir Thomas Bingham MR summarised the key principles at pages 607 – 608 in the following words:
>
> > 'The successful plaintiff in a defamation action is entitled to recover, as general compensatory damages, such sum as will compensate him for the wrong he has suffered. That sum must [1] compensate him for the damage to his reputation; [2] vindicate his good name; and [3] take account of the distress, hurt and humiliation which the defamatory publication has caused. In assessing the appropriate damages for injury to reputation the most important factor is [a] the gravity of the libel; the more closely it touches the plaintiff's personal integrity, professional reputation, honour, courage, loyalty and the core attributes of his personality, the more serious it is likely to be. [b] The extent of publication is also very relevant: a libel published to millions has a greater potential to cause damage than a libel published to a handful of people. [c] A successful plaintiff may properly look to an award of damages to vindicate his reputation: but the significance of this is much greater in a case where the defendant asserts the truth of the libel and refuses any retraction or apology than in a case where the defendant acknowledges the

> falsity of what was published and publicly expresses regret that the libellous publication took place. It is well established that [d] compensatory damages may and should compensate for additional injury caused to the plaintiff's feelings by the defendant's conduct of the action, as when he persists in an unfounded assertion that the publication was true, or refuses to apologise, or cross-examines the plaintiff in a wounding or insulting way. Although the plaintiff has been referred to as "he" all this of course applies to women just as much as men.'

21 I have added the numbering in this passage, which identifies the three distinct functions performed by an award of damages for libel. I have added the lettering also to identify, for ease of reference, the factors listed by Sir Thomas Bingham. Some additional points may be made which are relevant in this case:

(1) The initial measure of damages is the amount that would restore the claimant to the position he would have enjoyed had he not been defamed: *Steel and Morris v United Kingdom* (2004) 41 EHRR [37], [45].

(2) The existence and scale of any harm to reputation may be established by evidence or inferred. Often, the process is one of inference, but evidence that tends to show that as a matter of fact a person was shunned, avoided, or taunted will be relevant. So may evidence that a person was treated as well or better by others after the libel than before it.

(3) The impact of a libel on a person's reputation can be affected by:

a) Their role in society. The libel of Esther Rantzen was more damaging because she was a prominent child protection campaigner.

b) The extent to which the publisher(s) of the defamatory imputation are authoritative and credible. The person making the allegations may be someone apparently well-placed to know the facts, or they may appear to be an unreliable source.

c) The identities of the publishees. Publication of a libel to family, friends or work colleagues may be more harmful and hurtful than if it is circulated

amongst strangers. On the other hand, those close to a claimant may have knowledge or viewpoints that make them less likely to believe what is alleged.

d) The propensity of defamatory statements to percolate through underground channels and contaminate hidden springs, a problem made worse by the internet and social networking sites, particularly for claimants in the public eye: *C v MGN Ltd* (reported with *Cairns v Modi* at [2013] 1 WLR 1051) [27].

(4) It is often said that damages may be aggravated if the defendant acts maliciously. The harm for which compensation would be due in that event is injury to feelings.

(5) A person who has been libelled is compensated only for injury to the reputation they actually had at the time of publication. If it is shown that the person already had a bad reputation in the relevant sector of their life, that will reduce the harm, and therefore moderate any damages. But it is not permissible to seek, in mitigation of damages, to prove specific acts of misconduct by the claimant, or rumours or reports to the effect that he has done the things alleged in the libel complained of: *Scott v Sampson* (1882) QBD 491, on which I will expand a little. Attempts to achieve this may aggravate damages, in line with factor (d) in Sir Thomas Bingham's list.

(6) Factors other than bad reputation that may moderate or mitigate damages, on some of which I will also elaborate below, include the following:

a) "Directly relevant background context" within the meaning of *Burstein v Times Newspapers Ltd* [2001] 1 WLR 579 and subsequent authorities. This may qualify the rules at (5) above.

b) Publications by others to the same effect as the libel complained of if (but only if) the claimants have sued over these in another defamation claim, or if it is necessary to consider them in order to isolate the damage caused by the publication complained of.

> c) An offer of amends pursuant to the Defamation Act 1996.
>
> d) A reasoned judgment, though the impact of this will vary according to the facts and nature of the case.
>
> (7) In arriving at a figure it is proper to have regard to (a) Jury awards approved by the Court of Appeal: *Rantzen* 694, *John*, 612; (b) the scale of damages awarded in personal injury actions: *John*, 615; (c) previous awards by a judge sitting without a jury: see *John* 608.
>
> (8) Any award needs to be no more than is justified by the legitimate aim of protecting reputation, necessary in a democratic society in pursuit of that aim, and proportionate to that need: *Rantzen v Mirror Group Newspapers* (1986) Ltd [1994] QB 670. This limit is nowadays statutory, via the Human Rights Act 1998."

30. Applying that guidance to the facts of the present case, I consider that it would be appropriate to make one award in respect of all the defamatory publications complained of, and I have little hesitation in holding that the Claimant is entitled to an award of £10,000, which is the figure at which she has capped her claim. That award does not take account of the claim for harassment, although, as set out below, if that claim falls to be taken into account as well that figure would be even more clearly justified. Any lower award would fail to serve the relevant purposes, identified above. In summary:

(1) The Claimant's pleaded meanings are, in the main, both tenable and seriously defamatory of the Claimant (the qualification relates to the third pleaded meaning, as I consider the suggestion that the Defendant accused the Claimant of being engaged in a criminal conspiracy is extravagant and unsupportable, at least on the basis of the Exhibits to the Particulars of Claim: in my view, the true meaning of Exhibit 1 is that the Claimant has been guilty of getting other people to insult the Defendant by providing them with false information about the Defendant).

(2) Allegations that the Claimant is a prostitute, unclean and unhygienic are particularly hurtful and damaging as the Claimant is in fact a mother and a mental health nurse.

(3) These allegations thus strike at both her personal and her professional lives at the same time.

(4) When considering the gravity of the allegations made, the Court can view the publications complained of both singly and collectively: the Defendant's "followers", or at least a number of them, would have been likely to see the whole series, over a length of time, and the incremental effect of reading these allegations over a period of time would have been very harmful to the Claimant's reputation.

(5) All the allegations are assertions of fact: they are not couched in the language of suspicion or tempered in any way.

(6) The number of people likely to have read the words complained of is substantial: looking at the evidence in the round, there was a significant primary readership, including within this jurisdiction; and looking beyond these primary recipients, the evidence demonstrates the almost inevitable operation of the "grapevine effect", in which scandalous allegations "percolate" by way of both the internet and gossip.

(7) It is also right to have in mind the warnings in the case law as to the damaging potential of internet publications, due to their permanence online: in particular, website publications remain accessible in ways that hard copy publications did not, so that a person's reputation may be "damaged forever" (*ZAM v CFW* [2013] EWHC 662 (QB) at [61]-[62] per Tugendhat J).

(8) The Claimant's evidence details the distress, embarrassment, humiliation and indeed serious mental health issues occasioned by the publications complained of.

(9) There were a number of seriously aggravating features of the Defendant's conduct: (a) although she has produced no evidence in support of any of her allegations, she has at all times remained completely unrepentant; (b) she appears to be motivated by an unfounded hostility and vindictiveness towards the Claimant; (c) this is compounded by her stance that she is above the law and the Claimant has no effective means of redress against her; (d) in spite of the efforts of the Claimant's solicitors and the existence of these proceedings she has continued to disseminate the publications in issue and indeed has compounded that by adding to them; (e) she remains entirely unapologetic about this grave course of conduct; and (f) her lack of engagement with the litigation is also an aggravating factor (see *Sharma v Sharma* [2014] EWHC 3349 (QB)).

(10) In light of the Defendant's conduct to date, the Claimant cannot be confident that these proceedings will mean the end of the matter. She is entitled to ask for an award of damages that signals that the Defendant's allegations against her are false.

The claim for harassment

31. In light of the above, it is unnecessary to consider the claim for harassment in any detail. I will nevertheless address the most significant aspects of it.

32. The principal cases on what amounts to harassment were reviewed by Nicklin J in *Hayden v Dickenson* [2020] EWHC 3291 (QB). From those cases, Nicklin J extracted the following principles at [44] (citations omitted):

> "(i) Harassment is an ordinary English word with a well understood meaning: it is a persistent and deliberate course of unacceptable and oppressive conduct, targeted at another person, which is calculated to and does cause that person alarm, fear or distress; "a persistent and deliberate course of targeted oppression".

(ii) The behaviour said to amount to harassment must reach a level of seriousness passing beyond irritations, annoyances, even a measure of upset, that arise occasionally in everybody's day-to-day dealings with other people. The conduct must cross the boundary between that which is unattractive, even unreasonable, and conduct which is oppressive and unacceptable. To cross the border from the regrettable to the objectionable, the gravity of the misconduct must be of an order which would sustain criminal liability under section 2 of the PHA. A course of conduct must be grave before the offence or tort of harassment is proved.

(iii) The provision, in section 7(2) of the PHA, that "references to harassing a person include alarming the person or causing the person distress" is not a definition of the tort and it is not exhaustive. It is merely guidance as to one element of it. It does not follow that any course of conduct which causes alarm or distress therefore amounts to harassment; that would be illogical and produce perverse results.

(iv) Section 1(2) provides that the person whose course of conduct is in question ought to know that it involves harassment of another if a reasonable person in possession of the same information would think the course of conduct involved harassment. The test is wholly objective. "The Court's assessment of the harmful tendency of the statements complained of must always be objective, and not swayed by the subjective feelings of the claimant".

(v) Those who are "targeted" by the alleged harassment can include others "who are foreseeably, and directly, harmed by the course of targeted conduct of which complaint is made, to the extent that they can properly be described as victims of it".

(vi) Where the complaint is of harassment by publication, the claim will usually engage Article 10 of the Convention and, as a result, the Court's duties under sections 2, 3, 6 and 12 of the Human Rights Act 1998. The PHA must be interpreted and applied compatibly with the right to freedom of expression. It would be a serious interference with this right if those wishing to express their own views could be silenced by, or threatened with, proceedings for harassment based on subjective claims by individuals that they felt offended or insulted.

(vii) In most cases of alleged harassment by speech there is a fundamental tension. Section 7(2) of the PHA provides that harassment includes "alarming the person or causing the person distress". However, Article 10 expressly protects speech that offends, shocks and disturbs. "Freedom only to speak inoffensively is not worth having".

(viii) Consequently, where Article 10 is engaged, the Court's assessment of whether the conduct crosses the boundary from the unattractive, even unreasonable, to oppressive and unacceptable must pay due regard to the importance of freedom of expression and the need for any restrictions upon the right to be necessary, proportionate and established convincingly. Cases of alleged harassment may also engage the complainant's Article 8 rights. If that is so, the Court will have to assess the interference with those rights and the justification for it and proportionality. The resolution of any conflict between engaged rights under Article 8 and Article 10 is achieved through the "ultimate balancing test" …

(ix) The context and manner in which the information is published are all-important. The harassing element of oppression is likely to come more from the manner in which the words are published than their content.

(x) The fact that the information is in the public domain does not mean that a person loses the right not to be harassed by the use of that information. There is no principle of law that publishing publicly available information about somebody is incapable of amount to harassment.

(xi) Neither is it determinative that the published information is, or is alleged to be, true. "No individual is entitled to impose on any other person an unlimited punishment by public humiliation such as the Defendant has done, and claims the right to do". That is not to say that truth or falsity of the information is irrelevant. The truth of the words complained of is likely to be a significant factor in the overall assessment (including any defence advanced under section 1(3)), particularly when considering any application interim injunction …On the other hand, where the allegations are shown to be false, the public interest in preventing publication or imposing remedies after the event will be stronger. The fundamental question is whether the conduct has additional elements of oppression, persistence or unpleasantness which are distinct from the content of

> the statements; if so, the truth of the statements is not necessarily an answer to a claim in harassment.
>
> (xii) Finally, where the alleged harassment is by publication of journalistic material, nothing short of a conscious or negligent abuse of media freedom will justify a finding of harassment. Such cases will be rare and exceptional."

33. Guidance as to the correct approach when ascertaining the measure of damages for harassment was provided by Nicklin J in *Suttle v Walker* [2019] EWHC 396 (QB) at [54]-[56]:

> "54. Damages for harassment under the Protection from Harassment Act 1997 are to compensate a claimant for distress and injury to feelings, see *ZAM v CFW & Anor* [2013] EMLR 27 [59]. As I have noted, an award under this head overlaps with that element of compensation that is a constituent part of an award for libel damages.
>
> 55. So far as assessment of harassment damages is concerned there are established guidelines taken from employment discrimination cases, see *Barkhuysen v Hamilton* [2018] QB 1015 [160]:
>
> > 'Guidelines for damages in harassment were given by the Court of Appeal in *Chief Constable of West Yorkshire Police v Vento* (No2) [2003] ICR 318. The court identified three broad bands for compensation for injured feelings: a top band for very serious cases, a middle band for moderately serious cases and a third band for less serious cases, such as isolated or one-off occurrences. Only in the most exceptional cases, it was said, would it be appropriate to award more than the top band and awards of less than £500 were to be avoided as they risked appearing derisory. Again, adjustment for inflation is required. The former adjustment was made by the Employment Appeal tribunal in 2009 in *Da'Bell v National Society for the Prevention of Cruelty to Children* [2010] IRLR 19. Inflation since then has been some 20%, leading to a range in band 3 of up to £7,200, a middle band from £7,200 to £21,600 and a top band from £21,600 to £36,000. A *Simmons v Castle* adjustment is also required.'
>
> 56. The Vento bands, as they are called, have since been increased again: see paragraph 10 of The Employment Tribunal's Presidential Guidance of 5 September 2017:
>
> > 'A lower band of £800 to £8,400 (the less serious cases), a middle band of £8,400 to £25,200 (cases that do not merit an award in the upper band) and an upper band of £25,200 to £42,000 (the most serious cases), with the most exceptional cases capable of exceeding £42,000.'"

34. Dealing with the facts of that case, Nicklin J stated at [57]:

> "I consider that the following particular elements of the harassment, separate from the harassing element in the defamatory nature of the publications themselves, have an impact on the seriousness of the harassment and to the assessment of damages:
>
> a. The campaign was clearly and deliberately targeted by the Defendant at the Claimant via Facebook. The foreseeable response to it was vicious and frightening; it was calculated to (and did) whip up hatred for the Claimant and to put her in fear for her safety.
>
> b. The campaign was relentless over a period of three to four weeks and I am satisfied, on the evidence, that has had a lasting adverse effect on the Claimant.
>
> c. The use of a Facebook group was deliberately to recruit others to 'gang up' on the Claimant, whilst the Defendant and some of the commentators who chose to post comments on the page hid behind online anonymity. This is a hallmark of 'cyber bullying'. It is a particularly pernicious form of harassment because the victim may well feel constantly under siege and powerless to stop it."

35. In the present case, the Defendant subjected the Claimant to a prolonged attack over a lengthy period. The allegations were serious, and went to core elements of the Claimant's life. They occasioned great hurt and distress to the Claimant, extending to anxiety, depression and the risk of suicide. The Claimant was accused, entirely without foundation, of being a prostitute, unclean and unhygienic. As was entirely predictable and as must have been apparent to the Defendant, the campaign had a significant effect on the Claimant's private life: as Ms Dungchi states, the Claimant was "heartbroken", extremely worried both because "we are a small diaspora community and almost everyone knows everybody" and because of concern that the allegations might affect her position as a nurse if her employers were to find out about them, and she fell into depression as she was unable to handle the continued abuse. Further, there were a number of seriously aggravating features of this harassing course of conduct. In particular, the allegations were not only serious and repeated but targeted and spiteful; and the course of conduct involved recruiting others to "gang up" and join in the abuse.

36. Overall, this was a serious, thoroughly unpleasant and vindictive case of online harassment that was pursued gloatingly over a long period and which had a very serious effect on the Claimant's private life and her mental health. In my judgment, it justifies an award of general damages in the middle *Vento* band, and would have the effect that the Claimant is entitled to recover the full amount of £10,000 at which she has elected to cap her claim even if, contrary to my findings, the claim for defamation did not by itself justify an award at that level. This reflects my assessment of the seriousness of the harassment and its effect on the Claimant. A significant award is warranted in particular because the Claimant was simply unable to cope with these horrid allegations.

Injunction

37. On the basis of her pleaded case and in light of the other considerations discussed above, in my judgment the Claimant is plainly entitled to the grant of a permanent injunction.

38. However, the terms of that injunction must be tailored to reflect the wrongdoing that has been made out, as well as to ensure that what is prohibited is clear to the Defendant.

Costs

39. As set out above, the Claimant's costs budget was approved in the sum of £57,540. In the event, however, the Claimant's statement of costs which was sent to the Defendant on 8 February 2022 is in the much lower sum of £15,903.60. Mr Otchie confirmed that this is the amount sought by the Claimant for the entirety of the proceedings, and invited me to assess her costs summarily. I consider that is appropriate. I can see nothing untoward with any aspect of those costs, and the total sum claimed appears to me to be entirely reasonable and proportionate, especially having regard to the approved costs budget in a much greater amount. Therefore, considered both on an item by item basis and in terms of the overall claim, there is no obvious reason to award the Claimant any less than the full sum. I therefore assess those costs in the full amount of £15,903.60.

Disposal

40. For these reasons, (i) the Claimant is awarded damages in the sum of £10,000; (ii) I will grant an injunction to restrain repetition; and (iii) the Defendant must pay the Claimant's costs of the claim, which are summarily assessed in the sum of £15,903.60. When circulating this judgment in draft, I indicated that, subject to any further argument, I proposed to make an Order in the terms set out in the Appendix. I explained that, in contemplating an Order in those terms, I had taken into account the Claimant's evidence before me that the Defendant uses a number of different names, and is difficult to pin down, and, in particular, that she has been given to understand by the police that they have encountered difficulty in progressing her complaint to them for these reasons. I received no contrary submissions, and I shall therefore make an Order as indicated.

APPENDIX

ORDER

PENAL NOTICE

IF YOU THE DEFENDANT, ANGIE BRIDGET FOMUKONG EPSE TABE, ALSO KNOWN AS ESANZA MATEKE, ALSO KNOWN AS BRIDGET BENJAMIN, DO NOT COMPLY WITH PARAGRAPH 2 OF THIS ORDER YOU MAY BE HELD TO BE IN CONTEMPT OF COURT AND IMPRISONED OR FINED, OR YOUR ASSETS MAY BE SEIZED.

ANY OTHER PERSON WHO KNOWS OF THIS ORDER AND DOES ANYTHING WHICH HELPS OR PERMITS THE DEFENDANT TO BREACH THE TERMS OF THIS ORDER MAY ALSO BE HELD TO BE IN CONTEMPT OF COURT AND MAY BE IMPRISONED, FINED OR HAVE THEIR ASSETS SEIZED.

Notice to the Defendant

You should read the terms of this Order very carefully. You are advised to consult a solicitor. This Order prohibits you from doing the acts set out in paragraph 2 below for the purposes of this Penal Notice. You have the right to ask the court to vary or discharge this Order (in addition to your right to apply to set aside this Order, as set out in paragraph 4 below).

UPON the Orders of Master Eastman dated 4 May 2021 and 1 November 2021 giving judgment in default of Acknowledgment of Service and Defence and ordering a hearing to assess damages

AND UPON hearing Counsel for the Claimant and the Defendant being neither present nor represented

AND UPON a consideration of CPR r. 39.3 and section 12 of the Human Rights Act 1998

AND UPON the Court handing down judgment on 17 February 2022

IT IS ORDERED THAT:

1. The Defendant shall pay to the Claimant £10,000 by way of damages for all her causes of action in defamation, and for harassment.

2. The Defendant must not publish on Facebook, YouTube or by any other means whether herself or whether by her servants or agents or otherwise howsoever words or images bearing the following meanings or any similar meanings defamatory of the Claimant: (a) that the Claimant is a prostitute, (b) that the Claimant is dirty or an unhygienic or unclean woman, (c) that the Claimant is guilty of getting other people to insult the

Defendant by providing them with false information about the Defendant, and (d) that the Claimant is an embarrassment to Cameroonian women.

3. The Defendant shall pay to the Claimant the Claimant's costs of the claim, summarily assessed in the sum of £15,903.60.

Applying to set aside this Order

4. Pursuant to CPR r.39.3(3), the Defendant may apply to set aside this order, any such application to be supported by evidence. That application should be made to Mr Justice Nicklin in the first instance.

Appealing this Order

5. This is a decision from which the Defendant requires permission to appeal, which the Defendant has not sought from the lower court and which she therefore needs to seek from the Court of Appeal should she wish to appeal. In this regard:

   (a) pursuant to CPR 52.12(1) the Defendant must seek permission to appeal in an Appellant's Notice (which must also comply with the provisions of Practice Direction 52C, and in particular Section II of Practice Direction 52C); and

   (b) pursuant to CPR 52.12(2) the Defendant's time for filing an Appellant's Notice at the Court of Appeal is extended until 4.30 pm on 17 March 2022.

Service

6. This Order shall be served on the Defendant by the Claimant.

7. The Claimant has permission to serve the Order by post at the address in Pennington Way, London SE12 that is given for the Defendant in the Claim Form and by email at the email address bridgetbenjaminproduction@hotmail.com,

8. Upon service of the Order by both post and email as aforesaid, permission is granted to the Claimant to dispense with personal service of the Order.

17 February 2022