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Case No: QB-2022-002298

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
MEDIA & COMMUNICATIONS LIST

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 19/12/2022

Before :

THE HONOURABLE MRS JUSTICE COLLINS RICE

Between :

HASAN ABDULLAH ISMAIK

Claimant

- and -

FADAAT MEDIA LIMITED

Defendant

Mr Richard Munden (instructed by Brandsmiths) for the Claimant
Ms Victoria Jolliffe (instructed by DAC Beachcroft LLP) for the Defendant

Hearing date: 25th November 2022

Approved Judgment

This judgment was handed down remotely at 10.30am on 19th December 2022 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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THE HONOURABLE MRS JUSTICE COLLINS RICE

Mrs Justice Collins Rice :

Introduction

1. The Claimant, Mr Ismaik, is a Jordanian businessman of Palestinian heritage. He is Chairman of a UAE group of investment companies which he set up in 2006, and has significant business interests in the UK and Europe. He owns or supports various charitable and humanitarian institutions.
2. The Defendant, Fadaat Media, is a UK company which publishes an international Arabic-language newspaper, *Al-Araby Al-Jaheed*, with an associated website.
3. Mr Ismaik brings defamation proceedings against Fadaat Media because of two versions of an article it published in Arabic, in the *Al-Araby* newspaper and on its website, on 21st October 2021. They are almost identical, but the newspaper version omits the last two paragraphs and the accompanying photo of Mr Ismaik. The parties have agreed an English translation of the article. It is annexed to this judgment, in the longer online version.
4. By consent order of Nicklin J of 11th October 2022, a preliminary issues hearing was listed to determine (a) the ‘natural and ordinary’ meaning of the article; (b) whether, in that meaning, it is defamatory of Mr Ismaik at common law; and (c) whether it amounts to allegations of fact or opinion. This judgment considers and decides those issues.

Legal principles

5. I directed myself to the guidance on ‘meaning’ distilled from the authorities and set out in *Koutsogiannis v Random House Group* [2020] 4 WLR 25, at paragraphs 11 and 12. The guidance of the authorities is of course just that – guidance – intended to simplify not complicate the exercise. And each case turns on its own facts.
6. My task is to “*determine the single natural and ordinary meaning of the words complained of, which is the meaning that the hypothetical reasonable reader would understand the words bear*”. The governing principle is reasonableness. The intention of the publisher is irrelevant in law: the test focuses on how words are read, not how or why they came to be written. It is objective, not subjective.
7. Natural and ordinary meaning does not rely on the reader having any special knowledge. No evidence beyond the article complained of is admissible as to what it means. So I keep in mind, as guided, the perspective of an ordinary, reasonable reader of a newspaper article, reading it once through in the context in which it appears, and forming an impression of what it conveys on its face. The reasonable reader is neither naïve nor suspicious; is able to read between the lines and pick up an implication; and is allowed a certain amount of loose thinking without being avid for scandal.
8. I am guided away from over-elaborate analysis of text. I need to avoid both literalism, and any strained or forced interpretation. I can and must determine the single meaning I myself consider correct, and am not bound by the meanings advanced by the parties, so long as I do not alight on something more injurious than the claimant's pleaded meaning.

9. I have further directed myself to *Koutsogiannis* at paragraphs 16 and 17 for guidance on considering whether the words complained of contain allegations of fact or opinion. On this, again, the question is how the words would strike the ordinary, reasonable reader. Subject matter and context can be especially important here. “*Opinion is something which is or can reasonably be inferred to be a deduction, inference, conclusion, criticism, remark, observation, etc.*” but sometimes care is needed: there is a difference between comment which is pure opinion and comment which is an imputation of underlying fact.
10. I am reminded by the authorities that the test for the difference between fact and opinion is an objective one. That comes back to how the words would strike the ordinary reasonable reader. I have to look at the substance, not the intention of the writer or any label the writer may have attached.
11. The test at common law for whether a (natural and ordinary) meaning is defamatory is well-established: whether it substantially affects in an adverse manner the attitude of other people towards a claimant, or has a tendency to do so. Some recent authorities put it in terms of identifying that a claimant has breached the common, shared values of our society. This is not about actual impact at this stage, it is about the meaning of the words themselves and their inherent tendency to damage someone’s reputation. ‘Substantially’ imports a threshold of gravity or seriousness.
12. Factual allegations of wrongdoing can be broadly categorised at three different levels of gravity: (1) someone is guilty of something, (2) there are reasonable grounds to suspect they are guilty, (3) there are grounds to investigate whether they are guilty (*Chase v News Group Newspapers* [2003] EMLR 11 [45]). This may be a guide to assessing the gravity of allegations. But again, it is just that – a guide, not a rigid and exclusive categorisation into which allegations must be forced.
13. While there are three preliminary issues I am required to determine, the authorities also counsel against the dangers of trying to solve them in too linear or compartmentalised a fashion (*Triplark v Northwood Hall* [2019] EWHC 3494 (QB) at [16]-[17]). I have to bear in mind whether this is a case in which the questions of ‘meaning’ and ‘fact/opinion’ might throw light on each other, such that it would be wrong to tackle them in an order which proves to be a trap of false logic. I note the risk and seek to avoid it.

The parties’ pleaded meanings

14. Mr Ismaik takes four meanings, or imputations, from the article, which he says are defamatory of him, namely that he:
 - a) has betrayed his country and his heritage in return for money (despite already possessing a fortune) by willingly acting as a crude mouthpiece for the *right-wing, extremist* Zionists who pay and control him, thereby allowing himself to be falsely presented by them as a representative of the views of Jordanians of Palestinian descent, when he knows he is promoting the agenda of such Zionists, for money, at the expense of Jordanian and Palestinian interests;
 - b) is a convicted criminal, having been convicted in respect of petty sums in Jordan;

- c) is guilty of money laundering on a significant scale (a *Chase* level 1 allegation); and
 - d) has paid Google to conceal his criminal past and true character in search engine results.
15. He says these are all allegations of fact, but that the *italicised* text ‘right-wing, extremist’ is an expression of opinion. He says they all have defamatory tendency.
16. Fadaat Media says the natural and ordinary meaning of the words complained of is instead that:
- a) Mr Ismaik has been used by Zionists *who have funded him* to promote the *extremist right-wing* view that the Arab-Israeli conflict will be resolved by ending the Jordanian state and preventing the creation of a Palestinian state. *That view is detrimental to the interests of the Claimant’s own country.*
 - b) He was, in the past, convicted in respect of petty sums in Jordan.
 - c) There had been grounds to suspect him of guilt in a major money laundering case (a *Chase* level 2 allegation).
 - d) He has used Google services to hide search results relating to his past, including court rulings and prosecutions, while promoting his good deeds.
17. Fadaat Media accepts these are all factual allegations, apart from the *italicised* text in meaning (a), which it says amounts to the expression of opinion. It accepts that meanings (b) and (c) are defamatory of Mr Ismaik. But its case is that meanings (a) and (d) are not.

Consideration

(i) Approach and context

18. The standard approach to determination of meaning is first to read the words complained of without knowing what either party wants to say they mean; to form and note some provisional views; then to read the pleadings and the skeleton arguments, and listen to any oral submissions, before reaching a final view.
19. On my first encounter with this article, I had to deal with several factors making access to its meaning more effortful than it would have been for original readers, and I have kept that in mind throughout this exercise.
20. The first is that I was reading an agreed translation prepared for the purposes of litigation, rather than a piece of journalism in English. Accuracy was no doubt a priority for the parties in agreeing an English version, but what is lost in translation is at least some of the idiom and readability (and all of the layout) of the original piece. It inevitably takes a slower and more laborious read to yield its meaning as a result.
21. The second is that I have no context in English for this article. I was provided with a complete (untranslated) version of the *Al-Araby* newspaper for the day, and could see where the article appeared in it. I could also form some general impressions of *Al-*

Araby. But I had few clues as to the immediate context in which an original reader would have encountered this article. Context and orientation are important for understanding the meaning a piece of journalism conveys. So before reading the article from beginning to end, I stood back to see what general context I could get for what *kind* of writing it might be.

22. I inferred from the material I had that *Al-Araby* is a serious, broadsheet-style daily news, current affairs and politics publication (the parties confirmed that inference in broad terms at trial). Within a paper like that, there are different sub-genres of journalism. The article in the print version was bylined to a named journalist and appeared on an 'opinions' page. In the online version it was bylined as the journalist's 'column' under the heading 'Perspectives'. So I was prepared by this to read an opinion or comment piece of individual journalism, on a serious topic, rather than a news or entertainment item, or editorial. With that in mind, my initial orientation to the article (with a view to capturing an ordinary newspaper reader's interested but not studious approach) was as follows.
23. First, as to subject-matter, it was a piece of political journalism concerned in general with the Arab-Israeli conflict, and in particular with an article published in *Foreign Policy*, 'a prestigious English-language magazine', giving some views about that conflict and the way forward. This article had appeared under Mr Ismaik's name.
24. Second, as to tone, it was plain the journalist's perspective was strongly partisan: pro-Palestinian and anti-'Zionist', a term used throughout, and with clear pejorative intent. It struck me as a piece of anti-'Zionist' polemic. The journalist branded the *Foreign Policy* article an expression of 'extreme' 'Zionist' views (with some sense of tautology about that). And it was 'the Zionists' who must be held responsible for it.
25. That was my initial impression of the genre of the piece. I then read it once, all through, for 'meaning' (at a pace allowing for the need to overcome the barrier of translation), from the perspective of an ordinary, reasonable reader of a broadsheet opinion piece by a journalist whose voice and general world view would be instantly recognisable from the outset. I noted my provisional views.
26. I noticed the first two paragraphs were taken up with setting the scene by introducing Mr Ismaik in abrasive terms, before the piece launched into a critique of the *Foreign Policy* article, summarising and condemning the geo-political views the journalist said it espoused. There is no link to the original article, and no concern to give a contextualised or balanced view of it; it is used as an example of 'Zionist' thinking, to be condemned as such.
27. The piece's interest in Mr Ismaik had struck me as principally a framing device for its political polemic. But this litigation of course focuses on what it says about him. I had formed and noted some preliminary views about that in my first complete read through. I now deal with the piece's meaning about Mr Ismaik, in the order in which material appears. The ordinary, reasonable newspaper reader, looking at it once over, would absorb information about Mr Ismaik incrementally from the structure within which it is presented.

(ii) The 'conviction' allegation

28. The first thing the article conveys is that Mr Ismaik is to be understood as an ‘Arab Zionist’, that is a bad thing, and he has made attempts at ‘varnishing his image’. So the reader is prepared from the outset to expect the piece to unpack this composite proposition.
29. The very next thing conveyed is that Mr Ismaik was convicted in Jordan ‘in financial cases involving petty sums of money’. There is no real doubt about the meaning of that, and no real dispute between the parties about it. Mr Ismaik’s pleaded meaning draws out to the foreground that it means he ‘is a convicted criminal’; and Fadaat Media’s pushes into the background that he ‘was, in the past, convicted’. In my view, both of these add micro-commentary which is unnecessary to understanding the meaning conveyed, and which over-elaborates the process by which an ordinary reader would simply absorb the core factual information without fine analysis.
30. In my view, the natural and ordinary meaning of this allegation is that:

Mr Ismaik was convicted in Jordan in financial cases involving petty sums of money.

This is plainly an imputation of fact at *Chase* level 1 – that Mr Ismaik was guilty of the misconduct alleged against him. It is equally plainly of defamatory tendency – criminal convictions are the epitome of conduct gravely violating generally-held values and norms, and people would tend to think much less well of someone convicted of financial crime, however ‘petty’ the amounts involved.

(iii) The ‘prosecution’ allegation

31. In the next sentence, the article says Mr Ismaik caused the resignation of the Governor of the Central Bank of Jordan ‘after he was prosecuted in a major money laundering case’.
32. This is another factual allegation of clear defamatory tendency, but the parties disagree over the *Chase* level – Mr Ismaik fears it is a level 1 imputation of guilt, while Fadaat Media says it is at most a level 2 imputation that there are (or were) reasonable grounds to suspect him of guilt.
33. The more serious interpretation relies on two things. The first is the smoke of scandal which envelops this allegation and is said to be suggestive of the underlying fire of truth. Mr Ismaik is said to have ‘fled’ to the UAE after his conviction and returned with vast unexplained wealth; and then there is the resignation of the Governor of the Bank. The second relies on the ‘repetition rule’ – that by repeating the previous allegation (by prosecutors) of money laundering against Mr Ismaik without recognisable distance, qualification or balance, the article is in effect making it afresh.
34. I agree the reader is being invited to infer there is no smoke without fire. But I am not persuaded the reader would easily make the jump to an equivalence of an imputation of guilt. It is in my view a strained interpretation of *this* text to read the ‘prosecution’ reference as an unqualified allegation of guilt (and I was shown no comparable authority which has done so). Here, the allegation of prosecution is made in close proximity to the allegation of conviction (which is later repeated in the article); there is in my view a clear contextual contrast between the two, which the ordinary reader

would readily notice and grasp. Without descending into the lawyerly technicalities of the test for prosecution (in the UK or elsewhere), an ordinary reader would easily in such a context understand that prosecution is being *distinguished from* conviction here; it reflects a prosecution authority's decision that it has enough reason to put to a case to court for trial and determination of criminal guilt, not necessarily that a defendant must be understood to be guilty – in its opinion or at all. No timeline or historical perspective is given, so in my view, the ordinary and natural imputation here is that Mr Ismaik was prosecuted *but not convicted* in a major money laundering case (either because he was acquitted or because the trial has yet to conclude).

35. In my view, the natural and ordinary meaning of this allegation is that:

Mr Ismaik was prosecuted in a major money laundering case.

That is an allegation of fact at *Chase* level 2: there were reasonable grounds to suspect him of having done what he was alleged to have done, otherwise the matter would not have got as far as prosecution. The article does not say what part he was alleged to have played in that case, whether he was prosecuted alone or with others, when he was prosecuted, or anything else. But on any basis, an allegation of reasonable grounds to suspect involvement in 'major' money laundering, whatever that involvement might have been, is clearly defamatory. It is an allegation of grounds for suspecting at least complicity in a grave violation of the criminal law, which would undoubtedly significantly lower a person in others' estimation.

(iv) The 'image reshaping' allegation

36. The second paragraph tells the reader Mr Ismaik has 'naturally' been 'busy reshaping his image' by making donations to the poor and to students and by supporting foundations. He had acquired great wealth and was 'attempting to create a new image'. In particular, he is said to have 'used the paid search facilities of Google for the purposes of self-promotion and to hide court rulings and prosecutions he had been subject to.' This is said to be 'understandable' enough, given the two criminal allegations (conviction and prosecution) and an attempt to improve his image.
37. There is not a great distance between the parties as to the natural and ordinary meaning of this allegation, but Mr Ismaik fears it conveys an imputation that he is 'deceptive and dishonest', hiding his past criminal cases and producing a publicly misleading impression of who he is.
38. I am clear an ordinary reader of this article would not be so naïve as to think powerful and wealthy individuals and bodies as a general rule have any practice of full online disclosure, or that there is any shared societal expectation that they do or should. On the contrary, ordinary readers know that everyone is free to try to influence, so far as they can and want to, what is searchable online about them, and that high-profile individuals may be both strongly motivated and well-resourced to do so. So I am not persuaded there is a natural and ordinary imputation of deception or dishonesty in an allegation that someone has 'curated' (to use a neutral term) their online presence as delivered by the algorithms of search engines.
39. Image control by the influential is a fact of contemporary life. It is well-known that possibilities exist, whether or not for payment, to influence the outcome of search

engine results. Where public image matters, and options exist for maximising the positive and minimising the negative, those options can be expected to be taken. Views may differ as to how far that is an admirable, effective and/or prudent practice. But to learn that someone with a public profile has used such existing facilities to burnish and advertise their positive credentials online, and minimise access to disobliging material of any sort, is unsurprising and carries no implication of dishonesty.

40. Nor am I persuaded that, where the disobliging material involves a history of conviction and prosecution, that alters the position materially, or attracts some additional quality of dishonesty or deceptiveness to the natural and ordinary meaning. People may have a variety of things in their past they would rather not draw public attention to, and many reasons for not doing so. Failing to advertise one's past engagement with criminal law enforcement, and taking steps to minimise its obviousness online, is not the same as lying about it. There are certainly *specific* contexts where disclosure is expected and reticence would positively misleading, but nothing beyond the *general* is engaged here.
41. In these circumstances, my conclusion is that the natural and ordinary meaning of this allegation in context is that:

Mr Ismaik has used the options provided by the search engine Google to maximise the possibilities that online search results will be reputationally advantageous to him, and minimise the likelihood that it will reveal he has been subject to prosecutions and adverse court rulings.

This is a factual allegation about something he is said to have done.

42. This allegation is not couched in flattering, or even neutral, terms; it conveys that the image-reshaping activity is embarrassing and invites judgment as such. But I am not persuaded it is an allegation that Mr Ismaik has done something gravely contrary to shared societal norms, morals and values, or that people would tend to think seriously the worse of him as a result of learning this, *over and above* what has already been said about him having been in fact the subject of those prosecutions and rulings.
43. In my view, a person who has been subject to conviction, adverse court rulings or prosecution would not necessarily be expected to be up front about it online, or deserving of grave censure, *over and above the censure attracted by the underlying conduct*, for not having been so. General reticence about such matters does not violate recognised norms of honesty and integrity. (There is even arguably a growing consensus around positive entitlement to be 'forgotten' online, in some respects legally as well as morally.) So I am not persuaded this meaning has a defamatory tendency of its own, over and above the allegations of the underlying conduct itself.

(v) The 'authorship' allegations

(a) First impressions

44. The pivot on which the article turns is in the next sentence: however 'understandable' attempts at image control may be, what was by contrast 'incomprehensible' was Mr Ismaik's association with the *Foreign Policy* article. The journalist is disgusted by

the political stance of that article. He marks that by ascribing its provenance to ‘Zionists’, and by offering a ‘Zionist’ explanation of why it bears the name of Mr Ismaik, a Jordanian of Palestinian heritage.

45. The article is described as espousing the ‘Zionist project’: an end-point to the Arab-Israel conflict which involves validation of Israeli ‘occupation and settlement’ in the West Bank and Gaza, which ‘denies Palestinians their historical rights and rejects international resolutions’, and which means ‘the Jordanian state disintegrating and being headed by a king with no more than a symbolic role playing the part of a mayor of a village under occupation’. In short, it is described as an article ‘*that promotes the extremist right-wing Zionist view that the Arab-Israel conflict will be resolved by ending the Jordanian State and preventing the creation of a Palestinian state*’.
46. The reader understands the *Foreign Policy* article solely through the lens of the journalist’s own views. Five of the seven paragraphs of the online version of the piece are preoccupied with condemning the article’s politics. It also describes a strong reaction against it by Palestinian and Jordanian public opinion; so much so that Mr Ismaik had been ‘compelled’ to publish an explanation of the article ‘which amounted to an apology’.
47. The disparagement of the article draws in Mr Ismaik. It uses a number of recognisable rhetorical devices to do so. First, it posits that, since the views in the article are so obviously contrary to the best interests of Palestinians and Jordanians, it was extraordinary that any Jordanian or Palestinian should have allowed themselves to be associated with them, so an external explanation must be sought for that. The proffered explanation is that the article should not really be understood as the product of Mr Ismaik’s own independent thinking and journalism: it must be the work of ‘Zionists’, and the product of a well-resourced PR-machine run by states supporting those ‘Zionists’. So Mr Ismaik had ‘*relayed*’ that product by lending his name to it. The ‘Zionists’ had ‘*used him*’. He is referred to as the ‘*author*’ of the article in inverted commas.
48. Then the rhetoric posits that Mr Ismaik can be understood to have benefited from ‘Zionist’ money in lending his name to the article. It infers the ‘Zionists’ had operated in this way to seek some broader legitimacy, or appeal, for the political views expressed in the article by associating it with Mr Ismaik as a Jordanian of Palestinian descent. And finally, it declares that it was to the further discredit of the article, and Mr Ismaik, that the ‘Zionists’ had found no-one better than him – a ‘nobody’, an ‘ignoramus’, and one with a blemished record – to serve that purpose.
49. So on my first complete read-through of the article, the provisional meaning I thought the ordinary reasonable reader would take from all this about Mr Ismaik was along the following lines. The piece was an angry political and ideological critique of the content of the *Foreign Policy* article, expressed in rhetoric inflected against ‘Zionists’. The journalist felt so passionately that its outlook was contrary to the political interests of Palestinians and Jordanians that he underlined the point with rhetoric to the effect that it was hard to believe any Jordanian/Palestinian could have written it, and readers should instead see in it the direct hand of ‘Zionists’. None of this was to the credit of the true culprits – well-resourced and devious ‘Zionists’ – or Mr Ismaik.

(b) *Reconsideration: the claimed meanings*

50. Turning then to the parties' claimed meanings, I was able to recognise a measure of agreement between them, and correspondence with my own initial views, to the extent that Mr Ismaik was being suggested to have associated himself with an article promoting political views extreme in nature and contrary to Arab interests; and that these were 'Zionists' views produced with 'Zionists' money. But I thought both parties were proposing more literal and factual content to this allegation, which on my initial reading I thought more thoroughly polemical. And I learned that Mr Ismaik feared it was loaded with imputation in two further respects I had not initially picked up: that he was being accused of having personally betrayed or been disloyal to his country and heritage, and that there was an allegation of false presentation or deceptiveness in what he was said to have done. So I have thought about all these aspects again. But I have also reminded myself not to lose the perspective of the ordinary, reasonable reader who consumes writing like this swiftly and impressionistically before moving on, nor to over-labour the exercise.
51. On the question of whether there is an imputation of betrayal or disloyalty in this piece, Mr Munden, for Mr Ismaik, invited me to make comparisons with some of the allegations made in *Rahman v ARY Network* [2016] EWHC 3110 (QB), and the conclusions reached at [62] and [73]. He suggests in this case there is an equivalent imputation Mr Ismaik is 'in bed' with 'Zionists' – the enemies of his country and his people – and has taken funds from them in return for propagandising on their behalf. Closely associated with that is the imputation, he says, that his motives were exclusively mercenary: he allowed himself to be portrayed as articulating an opinion, including on behalf of a section of Palestinian/Jordanian thought, that he and they did not in fact hold; they were the views of 'Zionist' others all along.
52. I have reflected on this, and looked again at the article. I keep in mind that an ordinary, reasonable reader can read between the lines and pick up an imputation, and indeed they may be more ready to do so than the average lawyer. But they are not suspicious-minded, or avid for personal scandal. And they are reading an opinionated political comment piece.
53. So I have also kept in mind the piece's political partisanship, and the background of the Arab-Israeli conflict. That is a long-standing tragedy, freighted with powerful components of mutual grievance in which entire national identities are at stake and which has proved chronically resistant to peaceful progress and workable outcomes around which consensus can be built. Debate about the way forward is characterised by vehemence and polarity, and often reduced to binary simplicities, but at the same time it encompasses issues of considerable complexity and deep historical and cultural significance. An ordinary reasonable reader of this article would not only be familiar with that context in at least broad terms, but can be taken to possess a degree of political awareness of, and familiarity with, its accompanying rhetorical tropes. I have broadsheet readership with an interest in politics in mind.
54. I am not, however, asked to assume that ordinary reasonable readers would necessarily identify completely with this journalist's world view, or voice. Broadsheet journalism characteristically speaks in a range of political voices, even where it locates its editorial sympathies at one recognisable point or another on any political spectrum. I can infer that *Al-Araby*'s sympathies do not in general lie with Israeli foreign policy, but I cannot assume its ordinary, reasonable readership possess no critical perspective on an article of this sort. On the contrary, I am confident

readers would have no difficulty in grasping the partisan rhetorical quality of this piece – they might or might not enjoy being swept along on its polemical tide, but they can see it for what it is.

(c) *Conclusions on natural and ordinary meaning and fact/opinion*

55. This is an exercise in which the yielding of meaning cannot be achieved in a compartmentalised way separate from the understanding of genre, voice, and the piece as a whole. I have found it hard in this context to move very far from my initial impression that what is said about Mr Ismaik's authorship of the *Foreign Policy* article is largely colour for the journalist's political messaging and rhetoric about the content of the article itself. What I think an ordinary reader would take from this piece is that what is said about Mr Ismaik is ancillary, and consequential, to its polemic.
56. It is entirely natural that Mr Ismaik should be preoccupied with what the piece might be saying about him personally. An ordinary reader would in my view be less so. Its critique is undoubtedly personalised (hence the opening paragraphs), but it is a piece at core about the Arab-Israeli issue. The politics of the *Foreign Policy* article are repugnant to the journalist; and to the rhetorical question of what Mr Ismaik, as a Palestinian/Jordanian, was doing in endorsing them, it offers a rhetorical answer.
57. I do not think a reasonable reader would find an imputation of betrayal or disloyalty here *other than* at this purely political and rhetorical level. Mr Ismaik is not positively asserted to have actually *done* anything contrary to Palestinian/Jordanian interests other than express views, by way of paid journalism under his own name, with which the journalist vehemently disagrees. The rest would be taken as rather theatrical extrapolation. In this I consider the case distinguishable from some of the authorities we looked at where there are sober imputations of active working with hostile intelligence agencies to produce covert or insidious propaganda.
58. Here, the flavour is different. Mr Ismaik is accused of openly espousing views with which the journalist is so strongly in disagreement that he classifies them, and him, with the machinations of 'Zionists'. That is an extrapolated or externalised trope of a familiar sort. Of course, the political context is profoundly polarised and issues of national identity are fundamentally at stake. But while a Palestinian/Jordanian advocating something other than a two-state future (or an Israeli advocating it) may be inviting casual dismissal as a 'traitor to the cause' or 'no true Arab/Israeli', that is not in my view the same as an allegation of literal or factual treasonous behaviour – conduct proscribed by law or custom. It simply refers to the expression of a minority view in a highly polarised context, likely to inflame and provoke, as indeed happened here, with the journalist in question adding some fuel to the fire in the form of allegations about Mr Ismaik's past. I do not think a reasonable reader would find an imputation of actual betrayal or disloyalty beyond that. They would certainly understand the political labelling of Mr Ismaik as counter-cultural, but they could readily tell the difference between that and allegations of *literal* 'betrayal'. Literalism is the principal trap to be avoided here, in my view.
59. So then Mr Ismaik is identified as taking or benefiting from 'Zionist' money to express 'Zionist' views in the *Foreign Policy* article. But it is hard to read that in context as going much beyond deprecating an alleged well-financed international

‘Zionist’ PR machine capable of getting articles placed in prestigious magazines (a recognisable anti-‘Zionist’ trope), or that anything real or factual might be being said about the relationship between that machine, the editorial board of *Foreign Policy*, and Mr Ismaik. The article – and the reasonable reader – is simply not concerned with that level of logic or detail. The piece is operating in a different register. The inference invited here is, in my view, the rather airier one that Mr Ismaik must have been paid for the article, it is pro-‘Zionist’, the ‘Zionists’ have a well-funded PR machine - and the rest can readily be left to the anti-‘Zionist’ imagination.

60. The piece refers to ‘those who control’ Mr Ismaik and ‘those who are funding’ him. In context, an ordinary, reasonable reader would readily understand those to be casual tropes for ‘Zionist’ alignment – as the piece says, ‘*the Zionists used him*’. I do not agree it would be understood to be a literal, factual allegation relating to identifiable historical financial transactions or a condition of literal subservience. It is an allegation of being tainted with ‘Zionist’ money – a conspiracy theory, or at least ‘*something which is or can reasonably be inferred to be a deduction, inference, conclusion, criticism, remark, observation, etc*’; that is to say, an expression of opinion.
61. I cannot, however, find any natural and ordinary imputation at all either that Mr Ismaik himself did not genuinely espouse the views expressed in the *Foreign Policy* article, or that, having been in the article ‘*introduced to the world in his capacity as a representative of Jordanians of Palestinian descent*’ that was a pretence or deception. What the piece says is that the views expressed in the *Foreign Policy* article are not *representative* of Palestinian/Jordanian (mainstream) views, and that the journalist disagrees that they are in the best interests of Palestinians/Jordanians as a whole. That is something different.
62. In my view the ordinary reader would have to be unreasonably ‘avid for scandal’ to extrapolate that not only was Mr Ismaik a proponent of ‘Zionist’ views, he did not even truly believe in them. A reader would clearly understand the journalist’s rhetoric that it was *incredible* that a Palestinian/Jordanian should espouse these views as being just that; I am not persuaded they would understand that therefore Mr Ismaik did not in fact do so. That would be excessively literal and indeed over-interpreted. On the contrary, the general sense of the piece is that Mr Ismaik is indeed in sympathy with the views in the article (a ‘*model for Arab Zionists*’ as one version of the article is headed) rather than an agnostic or a believer in something else. The journalist’s meaning would readily be understood objectively to be that ‘Arab Zionist’ should be regarded from the outset as a political oxymoron, not that Mr Ismaik is a deceiver.
63. My conclusions on the nature and meaning of this allegation are these. The natural and ordinary meaning of the words complained of is that:

The *Foreign Policy* article which appears under Mr Ismaik’s name advances political views which are extremist, right-wing ‘Zionist’ views, and contrary to the best political interests of Palestinians and Jordanians. It is incomprehensible that a Jordanian of Palestinian descent should have advanced them. The article has all the hallmarks of a product of the well-funded international ‘Zionist’ PR machine. So Mr Ismaik can be thought of as an agent of these ‘Zionists’ and as having benefited financially (directly or indirectly) from ‘Zionist’ money.

64. I consider this entirely an expression of opinion, for the reasons set out in this analysis. It is a theory – an exercise in critiquing the *Foreign Policy* article with the rhetorical tropes of anti-‘Zionism’. The contention that there is an underlying imputation of fact here – beyond that Mr Ismaik’s name is on the article and that he benefited financially from that – is in my view something of a category error. This article is a piece of political polemic, and what is said about Mr Ismaik is instrumental to the polemic, not the other way around. Mr Ismaik may well feel the part written for him is salient and unattractive, but determining preliminary issues in defamation proceedings requires a definitively less subjective perspective on the play as a whole. Some of the meanings and imputation he fears it imparts in my view proceed from an over-literal approach to a highly rhetorical genre, and a closer, more anxious, reading, and/or search for personal meaning, than an ordinary, reasonable reader would bring to the consumption of material of this sort.

(d) *Defamatory tendency*

65. As to whether, in the meaning I have found, this is defamatory, I was asked to look at what is said in *Prince Moulay of Morocco v Elaph Publishing* [2017] 4 WLR 28 at [36]. It may or may not be defamatory to suggest that someone is working against the interests of an institution or ruler – or, it may be, a cause or nation. That is a highly fact-sensitive question. The Court in *Prince Moulay* gave weight to whether a meaning suggested someone was acting dishonourably by undermining rules to which he subscribed while pretending to be bound by them; and whether an article was capable of being regarded by the public generally as an attack on a person’s integrity and character such as would tend seriously to harm his reputation in the eyes of reasonable people.
66. In the meaning of the ‘authorship’ allegation I have found, Mr Ismaik’s political stance in the *Foreign Policy* article, as the journalist describes it, is criticised for being an ‘extremist right-wing Zionist view’. Mr Ismaik is criticised for espousing it as such, and also because of the journalist’s view that it is irreconcilable with the national interest of Palestinians and Jordanians. He is further criticised on the one hand for lending it apparent credibility as a Jordanian of Palestinian heritage, and on the other for being a nobody who, in fact, lends it no credibility at all. And he is criticised for being paid for it with ‘Zionist’ money.
67. To call someone a political extremist is to put them outside the political mainstream. In a highly polarised political context, to ascribe to someone extreme political views opposed to your own, may also be to ascribe to them support for and sympathy with a whole history of causes of deep grievance about which you feel profoundly. It may further be to focus and personalise your condemnation of their politics to condemnation of them for espousing them. If you think your political opponents are colonialists or worse, then that is harsh and bitter criticism indeed.
68. But whether a critique of this sort is also defamatory depends on whether it crosses a line between vehement partisan political critique (not excluding name-calling), and imputations of transgressing the common shared values of our society – an attack on personal integrity and character in itself. The word ‘values’ is important here. We live in a plural cultural and political democracy in which diversity of opinion and belief is itself valued. There is no ‘value’ in our society which is incontestably allied to one position or another in that most tragic of problems, the Arab-Israeli conflict, or

which is transgressed if someone from either heritage expresses a political view more typical of the other. So the question comes down to what this allegation says about Mr Ismaik's character and integrity more generally.

69. The opinion expressed about Mr Ismaik in the 'authorship' allegations, in the meaning I have determined, is certainly *intended* to make opponents of the views expressed in the *Foreign Policy* article (as described in the piece complained of) think ill of Mr Ismaik. It is certainly intended to incite what it perceives to be mainstream Palestinian/Jordanian public opinion against him. It thoroughly deprecates his politics. But an invitation to existing partisans to despise not only the politics of an article but the person under whose name it appears is not the test for defamatory tendency. Nor is the likely reaction of any particular segment of society who might be politically predisposed to accept that invitation. I have to look at the meaning of the words, not the political intent behind them. And I have to look at common values and standards and assess the meaning against them.
70. I cannot find, shorn of their political objectives and focusing on their meaning, that the 'authorship' allegations suggest Mr Ismaik has transgressed our *shared values* or that reasonable people's judgment of his integrity would be significantly adverse as a result. An ordinary, reasonable reader would recognise the judgment they were being invited to make about his association with the *Foreign Policy* article as depending wholly on their own political outlook. If they agreed with the journalist's general polemic, they might join him in thinking ill of Mr Ismaik. If they did not, they might consider this an unpleasant piece of journalism not content with making political argument unadorned with personal sneering and conspiracy theory, and which says more about the writer than it does about Mr Ismaik.
71. Either way, I do not recognise in the meaning I have determined either hypocrisy, dishonesty or a failure of personal integrity or character tending to produce a damaging effect to his reputation in society generally, or substantially affecting in an adverse manner the attitude of (fair-minded) others towards him. I find highly-flavoured political critique, which appropriates Mr Ismaik into its rhetorical tropes. Those tropes are sufficiently recognisable and dominant in this article as effectively to subsume the forming of distinct judgment about Mr Ismaik personally. He is being called a 'Zionist' or fellow-traveller as an intended and freighted term of political insult, embellished with those tropes. I do not recognise that, in our society, as a generally accepted term of *personal* insult, or an adverse imputation going to morals or character, or a label suggesting he has transgressed our shared values. So I do not consider it defamatory. I am not persuaded Mr Ismaik need fear for his reputation in the kind or degree with which defamation law is exclusively concerned.

Decision

72. The defamatory content of this article is that Mr Ismaik was convicted in Jordan in financial cases involving petty sums of money; and that he was prosecuted in a major money laundering case. These are allegations of fact, the former at Chase level 1 and the latter at Chase level 2. The article is not otherwise defamatory.

ANNEX

Al-Arabi al-Jadid journal – web page (21 October 2021) -Yasser Abuhilala column ('Perspectives')

Hasan Ismaik, a model for Arab Zionists

Yasser Abuhilala

1. Hasan Ismaik reveals the true face of an Arab Zionist, and no attempts to varnish his image can hide his true persona. After being convicted in Jordan in financial cases involving petty sums of money, he fled to the UAE and returned as a person controlling tens of millions under his own name or in the name of those who control him. He caused the resignation of the Governor of the Central Bank of Jordan, Faris Sharaf, after he was prosecuted in a major money laundering case. Although Ismaik is not known to have been active in politics or the media, he had a prominent role in major events, such as his meeting with Egyptian president Abdel Fattah El-Sisi, and his announcement of a major real-estate project, which, however, never saw the light of day.
2. Naturally, he was busy reshaping his image through donations to the poor and to students, and by supporting foundations. He also used the paid search facilities of Google for the purposes of self-promotion and to hide court rulings and prosecutions he had been subject to. All of this is understandable from someone who has acquired great wealth and is attempting to create a new image. However, what is incomprehensible is how the Zionists used him so crassly by putting his name to an article that promotes the extremist right-wing Zionist view that the Arab-Israeli conflict will be resolved by ending the Jordanian state and preventing the creation of a Palestinian state.
3. It is certain that Ismaik is not an author, either in Arabic, or in English. His writing talents only manifested themselves after the 'Deal of the Century' and subsequent strategic alliance agreements – known as the Abraham Accords -- with the Occupying State (Israel). He then started promoting rhetoric about the peace process until he finally dropped a bombshell in Foreign Policy magazine, with an audacity previously unseen, except in the well-known Zionist Mudar Zahran. However, Ismaik's words were not made public in a tweet or in the Clubhouse room, but in a prestigious English- language magazine, where he was introduced to the world in his capacity as a representative of Jordanians of Palestinian descent. This is the work of states that provide millions in funding to PR companies for the publication of an article by a convicted nobody promoting Zionist policies at the expense of his own country. Fortunately, the Zionists were unable to find any notable Palestinian or Jordanian figure to put his name to the article. The Zionist proposal was roundly rejected by the Jordanian and Palestinian public opinion, who expressed themselves in very strong and violent terms through articles, tweets, and publications on social media platforms, which centred on the author and his background. This compelled Ismaik to publish an explanation, which amounted to an apology for his article.

4. The article is insignificant, and the 'author' only relayed the views of those who are funding him. However, this does not detract from the seriousness of the Zionist project expressed in the article as this does not stop at theory; rather it involves sustained practical efforts on the ground. Now we are confronted with the implementation of the 'Deal of the Century', which denies Palestinians their historical rights and rejects international resolutions without any official announcement. The Palestinian cause is considered nothing more than relief work aimed at the destitute and poor in Gaza, and economic development on the West Bank that achieves prosperity and well-being for the people. In turn, these people are nothing more than a demographic burden that should be sent to Jordan after Israel seizes the rest of the land by annexation and settlement, with the Jordanian state disintegrating and being headed by a king with no more than a symbolic role playing the part of a mayor of a village under occupation.
5. This is not the first time that the Zionists have promoted their vision, nor will it be the last. In order to combat them, Jordanians and Palestinians must work together on all levels, both official and popular. The Zionist narrative that is being promoted in the article transforms Jordanian Palestinian unity into a union with the occupation, its annexation, its settlement, and Judaization. In reality, that unity was born out of confrontation with aggression. The Arab army entered the West Bank, fought at the walls of Jerusalem, and was able to liberate the Old City, including the Jewish Quarter; it remained there as an Arab army devoted to supporting the Palestinian people. Two years later, the unity was established in recognition of the fait accompli. However, the resolution stipulated the Arab rights in Palestine would not be abandoned, which is something Ismaik ignored in his article. The King's call for a return to the unity resolution does not simply mean liberating Jerusalem but liberating all of Palestine and the return of Palestinian refugees.
6. The unity has not faced any serious Jordanian or Palestinian opposition, and despite the soundness of the proposal put forward by the West Bank representatives to drop the word 'Palestine' from the name of the kingdom, they accepted that 'Jordan is part of the Arab nation', as stipulated in the constitution. However, after Palestine is liberated, the form and name of the state should be decided. All national forces, including those who opposed the Hashemites, joined the union. In the union parliament, the National Socialist Party and its allies, the Baath party and the Communist party won by a majority, while Hizb ul-Tahrir, the Muslim Brotherhood, as well as traditional and tribal forces also won seats.
7. The occupation failed to end the successful experience of unity. When Ahmed Obeidat's government re-established the House of Representatives in 1984, members were elected to replace those who had died in the West Bank, despite the 1973 Rabat Summit resolution, because including the Palestine Liberation Organization does not mean the end of unity. Quite the contrary. In 1965, it was King Hussein who opened the first session of the Palestinian National Council in Jerusalem, and the 1988 decision to disengage the legal and administrative relation with the West Bank did not affect Jordanians of Palestinian descent in Jordan. The Jordanians and Palestinians do not need an ignoramus to falsify their past and present, not even in a magazine like Foreign Policy. They are perfectly capable of forging a future relationship, just as they did before, in the context of combating the occupation, not identifying with it.