

# judgment

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## RIGHT IN FIRST INSTANCE OF SINT MAARTEN

Case number: SXM202301123

Judgment in summary proceedings dated

November 24, 2023 concerning

Silveria **Elfrieda JACOBS**,  
residing in St. Maarten, plaintiff,  
Agent: mr. M.N. Hoeve, against

Olivier Emmanuel ARRINDELL,  
residing in Sint Maarten,  
defendant,  
Agent: mr. Hatzmann.

The parties will hereinafter be referred to as Jacobs and Arrindell.

### 1. Proceedings

1.1. Jacobs filed a petition on October 18, 2023. The oral hearing was then held on November 3, 2023, at which the parties (Arrindell by videoconference) and the agents appeared and spoke. Minutes were taken of the hearing, which are attached to the documents.

1.2. Judgment is set for today.

### 2. The facts

2.1. Jacobs is the Miriister-President of St. Maarten.

### 3. The dispute

3.1. Jacobs claims - after deed of claim increase/change - by judgment enforceable:

- i) Order Arrindell, within 24 hours of service of the judgment, to

to publish on one of the first three pages of The Daily Herald, in a format, font and size customary for that newspaper, the following text, or at least such text as the Court of First Instance may in good justice find and deem fit for rectification: "I, Olivier Emmanuel Arrindell, would like to announce the following: I have called Ms. Arrindell.

Silveria Jacobs corrupt repeatedly and publicly. This serious accusation and/or allegation is unfounded as I do not have any proof to substantiate this serious accusation and/or allegation. Consequently I herewith retract the accusation and/or allegation in question," under penalty of forfeiture of a penalty of US\$5,000 per day with a maximum of US\$1,000,000.

- ii) Order Arrindell, within 24 hours of service of the judgment, to record and provide to Jacobs' agent a video and/or audio recording with the following content, or at least such content as the Court in good justice shall determine and deem appropriate for rectification: "I, Olivier Emmanuel Arrindell, would like to announce the following: I have called Ms. Silveria Jacobs corrupt repeatedly and publicly. This serious accusation and/or allegation is unfounded as I do not have any proof to substantiate this serious accusation and/or allegation. Consequently I herewith retract the accusation and/or allegation in question", under penalty of forfeiture of a penalty of US\$ 5,000 per day with a maximum of US\$ 1,000,000.
- iii) Order Arrindell to publish, within 24 hours of service of the judgment, on one of the first pages of The Daily Herald, in the layout, typeface and size customary for that newspaper, the following text in its entirety, or at least such text as the Court of First Instance may deem fit to rectify: "I, Olivier Emmanuel Arrindell, would like to announce the following: I have called Ms. Silveria Jacobs corrupt repeatedly and publicly and have claimed that she has direct or indirect involvement in business arrangements with Mr. Dwain Carbon/Carbon Acquisition Group. Silveria Jacobs corrupt repeatedly and publicly and have claimed that she has direct or indirect involvement in business arrangements with Mr. Dwain Carbon/Carbon Acquisition Group from which arrangements she has financially benefitted. This serious accusation and/or allegation is unfounded as I do not have any proof to substantiate this serious accusation and/or allegation. Consequently I herewith retract the accusation and/or allegation in question," under penalty of forfeiture of a penalty of US\$5,000 per day with a maximum of US\$1,000,000.
- iv) Order Arrindell, within 24 hours of service of the judgment, to record and deliver to Agent Jacobs a video and/or audio recording with the following content, or at least such content as the Tribunal shall determine in good justice and deem fit for rectification: "I, Olivier Emmanuel Arrindell, would like to announce the following: I have called Ms. Silveria Jacobs corrupt repeatedly and publicly and have claimed that she has direct or indirect involvement in business arrangements with Mr. Dwain Carbon/Carbon Acquisition Group from which arrangements she has financially benefitted. This serious accusation and/or allegation is unfounded as I do not have any

- proof to substantiate this serious accusation and/or allegation.  
Consequently I herewith retract the accusation in question," under penalty of forfeiture of a penalty of US\$5,000 per day with a maximum of US\$1,000,000.
- v) Order Arrindell, within 24 hours of service of the judgment, to publish on one of the first three pages of The Daily Herald, in ecu format, typeface and font size customary for that newspaper, the following text in its entirety, or at least in such content as the Court in good judgement shall determine and deem fit for rectification: "I, Olivier Emmanuel Arrindell, would like to announce the following: I have repeatedly and publicly said that there is sexual harassment in Ms. Arrindell. Silveria Jacobs' cabinet caused by here which led to several of her female staff members quitting. This serious accusation and/or allegation is unfounded as I do not have any proof to substantiate this serious accusation and/or allegation. Consequently I herewith retract the accusation in question," under penalty of forfeiture of a penalty of US\$5,000 per day with a maximum of US\$1,000,000.
- vi) Order Arrindell to make a video and/or audio recording within 24 hours of service of the judgment and to provide Jacobs' attorney with the following content, or at least such content as the Court will determine in good faith and as it deems fit to rectify: "I, Olivier Emmanuel Arrindell, would like to announce the following: I have repeatedly and publicly said that there is sexual harassment in Ms. Silveria Jacobs' cabinet caused by here which led to several of her female staff members quitting. This serious accusation and/or allegation is unfounded as I do not have any proof to substantiate this serious accusation and/or allegation. Consequently I herewith retract the accusation in question", under penalty of forfeiture of a penalty of US\$ 5,000 per day with a maximum of US\$ 1,000,000.
- vii) Order Arrindell to publish on one of the first three pages of The Daily Herald, 24 hours after service of the judgment, in a format, type and size customary for that newspaper, the following text, or such other text as the Court in good faith shall determine and deem fit for rectification: "I, Olivier Emmanuel Arrindell, would like to announce the following: I have stated that Ms. Arrindell is a member of the Royal Family of Belgium. Silveria Jacobs was - allegedly - molested as a child and as a result thereof she has psychological problems which have contributed to her lesbianism and/or lack of sound judgement. This serious accusation and/or allegation is unfounded as I do not have any proof to substantiate this serious accusation and/or allegation. Consequently I herewith retract the accusation in question", under penalty of forfeiture of a penalty of US\$ 5,000 per day with a maximum of US\$ 1,000,000.
- viii) Order Arrindell, within 24 hours of service of the judgment, to record and furnish to Jacobs' attorney-in-fact a video and/or audio recording with the following content, or at least such content as the Court shall determine in good court and appropriate for rectification

- eight: "I, Olivier Emmanuel Arrindell, would like to announce the following: I have stated that Ms. Silveria Jacobs was - allegedly - molested as a child and as a result thereof she has psychological problems which have contributed to her lesbianism and/or lack of sound judgement. This serious accusation and/or allegation is unfounded as I do not have any proof to substantiate this serious accusation and/ or allegation in question. Consequently I herewith retract the accusation in question", under penalty of forfeiture of a penalty of US\$ 5,000 per day with a maximum of US\$ 1,000,000.
- ix) To order Arrindell, with immediate effect from this judgment, to publicly refrain in whatever manner from making misleading, inaccurate and/or unsubstantiated and/or unlawful statements about Jacobs, or at least to make unnecessarily hurtful remarks about Jacobs, or at least to make public accusations/accusations about Jacobs that are related to the accusations/accusations already made by him, as described above, under penalty of a dw'ang fine of US\$ 10.000 for each time Arrindell violates the injunction, up to a maximum ven US\$ 1,000,000.
- x) Order Arrindell to pay the costs of the proceedings, plus statutory interest if such costs have not been paid within fourteen days of the date of the judgment, as well as an order to pay the follow-up costs.

3.2. Jacobs bases her claim on the fact that for several weeks now, videos, audio recordings and What's App messages from Arrindell have been circulating almost daily, in which he makes all sorts of u u mprecisions about local government officials, parliamentarians and other politicians and third parties. The commencement of the circulation of cie messages and audio and visual material began in early September. This was just after the Prime Minister's announcement on Aug. 30, 2023, that parliamentary elections would take place on Jan. 11, 2024. Jacobs argues that Arrindell's probable motive is to endorse ("endorse") a candidate or have himself placed on the list of a political parLij. Jacobs argues that Arrindell makes insulting, diffamatory and unnecessarily hurtful remarks about her under the guise that he wil eradicate corruption in St. Maarten. The information is incorrect or at least incomplete or at least misleid, Jacobs said. Arrindell accuses Jacobs of corruption, that she and other members of the Council of Ministers directly or indirectly do business with or at least are business partners of Mr. Dwain Carbon or at least the Carbon Acquisition Group. ) Jacobs allegedly benefited financially from Carbon's allegedly illegal activities, according to Arrindell. This would have enabled them to build a large home behind Emilio Wilson. Arrindell dedicated an entire video to alleged sexual harassment within Jacobs' cabinet. Furthermore, several videos and audio recordings are circulating in which irdormation about Jacobs and her family members, entirely private, is brought forward to discredit Jacobs. In the process

Jacobs' sexual orientation often prominently in the spotlight. He claims that Jacobs was sexually abused as a child and experienced psychological problems as a result, which contributed to her being a lesbian.

Arrindell thinks f Jacobs should apologize to the people of St. Martin for becoming a lesbian.

3.3. Jacobs argues that what is at issue here is a clash between two fundamental rights, namely the right to freedom of expression (Article 10 of the Constitution and Article 10 of the ECHR) and the right to *good* and reputation (Article 5 of the Constitution and Article 8 of the ECHR). Jacobs argues that the answer to the question as to which of these two rights should carry more weight or, in other words, whether Arrindell's statements in this case are unlawful as referred to in Section 6:162 of the Dutch Civil Code rests on all relevant circumstances of the case. Jacobs argues that, although the boundaries of permissible criticism of a public administrator as a public person are broader than in relation to a citizen as a private person, freedom of expression does not have an absolute character even in public debate (cf. HR 11 November 201a, ECLI:NL:HR:2011:BU39I7). Jacobs argues that according to established case law, a distinction must be made between factual statements and value judgments. In the case of factual statements that a f f e c t another person's privacy in a negative sense, these should be provided with a sufficient factual basis to remove any unlawful character, while this does not apply to value judgments, albeit that a value judgment can be found to be excessive if there is an insufficient factual basis for it. Arrindell's accusations are serious and have damaging consequences for Jacobs' credulw'nicity and for her further career. The manner and stelligheidness with which Arrindell proclaims his message renders it as a factual statement that negatively affects Jacobs' personal life touches. Arrindell does not question whether Jacobs is corrupt, but posits it as an established fact. For a derelict factual statement to be true, it must be provided with a sufficient factual basis to eliminate illegality. In none of his videos and sound recordings has Arrindell cited or presented a factual source in which support can be found for his serious accusations against Jacobs. Jacobs claims rectification pursuant to Article 6:167 of the Dutch Civil Code because the accusations are incorrect or at least incomplete or at least misleading and they are also unnecessarily hurtful and excessive. The concept of publication pursuant to Section 6:167 of the Dutch Civil Code is interpreted broadly and may refer to any disclosure, even if it is not made in the press.

3.4. Arrindell argues to his defense that he did not commit a crime and that what Jacobs claims will not stand up both criminally and civilly. Arrindell invokes his freedom of speech, which is a fundamental right that outweighs other civil rights. Arrindell disputes that he made publications. He believes that h e only shared the publications with friends, after which they were somehow

manner have become public. Arrindell argues that he wishes to expose corruption with his remarks. Arrindell is xan opinion that a matter-of-fact and nuanced way of doing so does not work in St. Maarten. By inciting a riot, Arrindell got the public's attention. The fact that Jacobs initiated summary proceedings against him has also had this effect. Arrindell takes the position that corruption has occurred. According to him, it is totally unacceptable for Ministers to issue scarce pieces of land to family members at a buttery soft price or to award zero-million contracts to a shadowy company owned by a convicted brother or cousin who has yet to serve a prison sentence.

Jacobs, as Prime Minister, did not intervene and remove the Minister in question from her government. A Cabinet, according to Arrindell, is one and indivisible. By virtue of the principle of homogeneity, the words and decisions of one Minister are automatically also the utterances and actions of the entire cabinet, By not intervening and looking away, t jacobs gives her consent to the corruption and is herself partly to blame. Arrindell argues that democracy in St. Maarten is rotten; corrupt cabinets are not sent home by parliament, Arrindell said. Arrindell cites two recent scandals: the "Over the Bank" scandal and the "Garbage collection" scandal. Arrindell refers to the Ombudsman's report on the issue "Gaibage collection." The Ombudsman had also launched an investigation into the "Over the Bank" issue, but was unable to complete the investigation because the parties involved went back and forth to the General Court. Both of these scandals, although widely tiitmeated in the press, did not geleicl to sanction or dismiss officials and administrators. Both issues, according to Arrindell, show that administrators Ottley, Doran and Irion conspired to benefit friends and family and thus ultimately themselves through straw men with public funds. Arrindell argues that his statements did not come out of the Inch t, but are based on true facts that occurred.

Within the St. Maarten political milieu, the misdeeds of many administrators as the most normal thing in the world, and these corrupt practices are all covered up by Jacobs. Doran gives land to family and friends, as evidenced tiit the "Over the Bank" issue. Doran's brother also received land in Cul-de-Sac and the mother of his children received land in South Reward. For his brother's land, Irion signed for approval. Ottley's brother received a million-dollar contract for "waste management." This brother has yet to serve a sentence for assault along with his friends Stevanus and Dante. Finally, Arrindell cites the Carbon scandal. This issue, according to Arrindell, involves a so-called Ponzi scheme, in which the rogue developer Dwaine Carbon defrauded more than a hundred people of several million dollars. Carbon has built very little and very poorly. do the ground Li Sint Maarten became too hot for him he fled to Orlando. Arrindell blames the government of St. Maarten (Minister Doran and Jacobs) for not intervening and letting this rogue project developer financially run its course for years.

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Building permits were granted that should never have been granted. Finally, Arrindell argues that imposing a penalty is unnecessary and that the claim for rectification by publication in the Daily Herald and inclusion of the rectification by video message is duplicative and disproportionate.

3.5. The parties' contentions are discussed in more detail below, to the extent relevant.

#### 4. The review

4.1. In assessing whether a publication or a statement in the press is unlawful, a balancing of interests must take place between, on the one hand, the right of Minister President Jacobs to respect for (her private life and) her good name guaranteed by Art. 5 of the Constitution and Art. 8 of the ECHR. On the other hand, Arrindell has the right under art. 10 State regulation and art. 40 EVI/M to freedom of expression, i.e. the right to express thoughts and feelings. It is established jurisprudence that the answer to the question as to which interest should be decisive depends on the circumstances of the case, in which the following circumstances can play a role: a. the nature of the published statements and the seriousness of the expected consequences for the person to whom the statements relate; b. the seriousness, viewed from the general interest, of the wrongdoing that the publication seeks to expose; c. the extent to which the publication is intended to expose the wrongdoing; d. the nature of the public interest.

in which at the time of publication (negative) statements found support in the then available factual material; d. the framing of the (negative) statements, seen in relation to the factors mentioned under a through c. As the Supreme Court has ruled in paragraph 5.14 of the Parool judgment (HR 4 October 2013, ECLI:NL:HR:2013:831), the right to freedom of expression guaranteed by art. 10 ECHR does not in principle prevail in this weighing. The same applies to the rights protected by Article 8 ECHR. This means that this is not a two-stage test (so that first it is determined on the basis of the circumstances which of the two rights carries more weight, after which it must still be assessed whether the necessity test as set out in art. 8 (2) or 10 (2) ECHR, respectively, opposes the result of that balancing), but that this test must be carried out in one go, whereby the judgment that one of the two rights, in view of all relevant circumstances, outweighs the other right, means that the infringement of the other right meets the necessity test of the second paragraph in question.

4.2. A distinction should be made between factual statements (factual judgment) and value judgments. A (value) judgment is about another person's behavior; an opinion whether something is good or bad. In an actual publication, factual statements and value judgments may be intertwined. The judge

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assesses, in the light of all the circumstances of the case, which elements are decisive. Value judgments are in principle free, but as the ECtHR has ruled, even in the case of a (mere) value judgment, the proportionality of the infringement of rights protected by Art. 8 ECHR may depend on whether a sufficient factual basis existed for the expression in question, because even a value judgment may be excessive and therefore unlawful if any factual basis for it is lacking (cf., inter alia, ECtHR 19 December 2006, no. 18235/02). Value judgments that offend someone may not be "devoid of any factual basis."

4.3. Most providing Arrindell's defense is that they were not public utterances because the video clips were distributed within a closed What's App group. This defense fails. Pursuant to Article 6:167 of the Dutch Civil Code, an order for rectification can be pronounced if there are incorrect or misleading publications of factual information due to incompleteness. The question whether there is such a publication will have to be judged within the framework in which the publication was made, with an eye for local views and circumstances and the other context. The concept of publication is interpreted broadly in this context and may refer to any disclosure, even if not made in the press. In the Court's view, Arrindell's expressions on social media fall within the concept of publication. Although What's App is a closed group, by Arrindell's own admission, he has 10,000 friends in this What's App group. His reach is thus large, especially since it is plausible or not excluded that his friends in the What's App group spread the video clips further by forwarding *these* video recordings to people outside this What's App group.

4.4. Jacobs focused on four statements made by Arrindell: 1. Jacobs is corrupt; 2. Jacobs does business, directly or indirectly, with Dwain Carbon or the Carbon Acquisition Group, or at least is a business partner of Dwain Carbon and as a result has profited financially from Carbon's unlawful activities; 3. within the Cabinet there is sexual harassment on the work floor and as a result the female staff terminate their employment; 4. Jacobs was sexually abused as a child and as a result she experiences psychological problems, which has contributed to her becoming a lesbian. The Court will assess whether these are unlawful against Jacobs on a per utterance basis.

*Corruptie*

4.5. The challenged statements regarding the alleged corruption the Tribunal labels as predominantly a value judgment. They are a subjective assessment by Arrindell of the actions of what he calls corrupt Ministers. In that regard, he cites the "Over the Bank," "Carbon" and "Garbage collection" scandals and Jacobs' failure to intervene in those issues. The Ministers, according to Arrindell, gave away land to



family members and friends, issued building permits to a rogue developer and signed million-dollar contracts with a company owned by a brother of one of the Ministers. Arrindell further accuses Jacobs of being corrupt because she extended the contract of MER, an Israeli company commissioned by Telem to install fiber optics in St. Maarten. According to Arrindell, there was a conflict of interest between the CEO of MER and Telem. Arrindell states that MER has initiated legal proceedings against Telem with a claim of 3.7 mio and that the residents of St. Maarten must pay it. Other statements include "But I didn't know that this was the law firm (the Court: Hoeve & Rogers, which is assisting Jacobs in these proceedings) that is representing 8 one of the most corrupt politicians in Saint Martin." Arrindell goes on to say that Jacobs does not care about the people who live in Dutch Quarter live because Jacobs is building a big house behind the Emilio Wilson Park and again he insinuates corruption. Arrindell, through his video clips, makes the accusation that Jacobs and her Ministers operate like a gangster group and that they are the biggest gangsters and mafiosos in the world.

4.6. In the opinion of the Court, these statements and allegations made by Arrindell about and to Jacobs infringe Jacobs' privacy. The question to be answered is whether this infringement - in view of Arrindell's freedom of expression - is unlawful towards Jacobs. It is. Jacobs does not have to tolerate the statements and accusations about her. Arrindell - if he wishes to bring the corruption of politicians in St. Maarten to the jack - could and should have limited himself to factual matters. Contrary to Arrindell's argument, the Ombudsman's report on the tendering process of the island's waste collection for the period 2021-2026 does not find any leads for Arrindell's very firm statement that Jacobs is corrupt and that there was bribery in the tendering process. The fact that the Ombudsman concluded that the procurement process in general was not sufficiently transparent is not sufficient for this purpose. The challenged expressions by Arrindell are thus, contrary to Arrindell's argument, not in the public interest. It is true that public figures in

Although Arrindell may be subject to intense criticism and even a certain amount of invective, there are limits in this respect and, in the opinion of the Court, Arrindell has (largely) exceeded them. Dramatically and fanatically, Arrindell sent numerous video messages endlessly repeating his allegations. In his own words, he has started a war against Jacobs (and her Ministers). It cites the words corruption, gangster and mafia practices, which are serious accusations that should at least be able to be backed up by factual evidence, which is not the case. Needless to say, such qualifications can have serious consequences for a politician's professional practice, especially with elections approaching. In multiple video messages, he repeats the words "Silveria Jacobs, watch your back", "And I am going to say it until I die. You're fucking corrupt" and to

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following the initiation of these legal proceedings by Jacobs "I want to fucking go courts. Bunch of set of dead fucking conchs". Arrindell regularly uses abusive language and makes threats, which are extremely inappropriate and hurtful and not necessary to expose the alleged corruption, nor to attract the attention of the public at least the residents of St. Maarten. In conclusion, the Tribunal finds that Arrindell, with his statements in the video messages, in which there is little or no T space for nuance and discussion, has here transgressed the boundaries of what is legally decent heeH and has expressed himself in an unnecessarily hurtful manner, without giving himself the required degree of consideration to the foreseeable consequences for Jacobs as Minister. Arrindell says he is entitled to protect himself by any means necessary. However, what Arrindell describes as necessary to protect, as the Tribunal understands it, his rights is not a justification for the statements and allegations that qualify as unlawful.

#### *CyYboti*

4.7. Arrindell's statements regarding Carbon predominantly relate to political functioning as Prime Minister. These challenged iitlations are therefore in the political domain and the corresponding broader freedom of expression. With regard to the discussion about Carbon and Jacobs' alleged involvement in it, Arrindell has said in video clips, among other things: "Minister Doran together with Minister of Finance together with the Prime Minister, they are a clique. They are a gang together. They are the ones that has been giving this guy Dwain Carbon protection (. . .) Madam Prime Minister , you should be ashameci of yourself", "Lord they rip the people off 10 million dollars with the help of Jurendy, with the help of Ardwell, with the help of the Prime Minister (. . .) Prime Minister, yes you have nided and abated (. . .) You all are criminals". In the Court's view, the statements about Jacobs' involvement in the Carbon scandal and the allegation that she is a business partner of Carbon can be seen as predominantly a factual opinion or communication. Arrindell has not been able to make it plausible that Jacobs has been guilty of helping Carbon with its fraudulent practices and that it has profited financially as a result. This applies mutatis mutandis to his assertion that Jacobs is or was a business partner of Carbon.

#### *Sexual intiiiii' lntion*

4.8. Regarding the alleged sexual harassment on the work floor, resulting in female employees resigning, Arrindell's statements included the following, " Insite of our own government building, in our own administration we have got people that are uncomfortable to work in government administration because of sexual harassment", " We need to know if it's true if you had sexual relationships with young girls in Sint Maarten under the age of 18", "Keep in mind ladies and gentlemen I need to know if we have a stattitory rapist, a rapist in the government". These statements can be qualified as statements of fact, which find no support in the

factual material. In the Tribunal's view, Arrindell also thereby overstepped the bounds of what was legally permissible and expressed himself in an *unnecessarily* hurtful and defamatory manner, without giving the requisite degree of consideration to the foreseeable consequences for Jacobs as Prime Minister.

*Sexually niisbr!iik*

4.9. About the sexual misconduct, Arrindell's statements included, "Olivier Arrindell will never bow-down to no lesbians, dread", "So Silveria Jacobs and her girlfriend, both of them could do kiss they motherscunt", "I don't apologize to no, to no lesbians", "So Ms. Jacobs, this is allegedly yet to be proven by a therapist or psychologist it is alleged that you as well were molested when you were a child. No wonder why you have that psychological problem and became a lesbian deep down inside inside the psychological problem had to come out and you became gay and you lash out at men", "It is not like you were born a lesbian", " But you have become. And when you become that is a sign of a molestation that has happened to you. (. . .), but you did not apologize to Sint Maarten for that", "But you see you want to open a can of worms with me Madam Prime Minister whereby in your DNA you have pedophilia DNA in you and that lesbianness you have in you it becomes a sickness over you", "Pedophilia runs into your DNA", "Who still have the video of this young lady physically abusing Silveria Jacobs. I need that video please, whoever have that video of that lady Richardson, the girlfriend of Silveria Jacobs beating her please send it to me". These are insults that are in the private sphere of Jacobs and predominantly confidential communication. In the opinion of the Court, the framing of these statements and the word *ketize ronci* used in them is distasteful and inappropriate. Although Arrindell has argued that he must use this wording because it allows him to attract the attention of the public, this argument in no way justifies the defamatory tone of the expressions. Moreover, the Tribunal does not see why these remarks, which are strictly aimed at Jacobs' private life, and their insulting tone are necessary to denounce the alleged corruption of the Country of St. Maarten, which Arrindell claims is the main purpose of his remarks in the video recordings. The aforementioned remarks, the use of swear words, apparently with the sole purpose of offending and hurting Jacobs, exceed, in the opinion of the Tribunal, the socially acceptable bounds and thus qualify as unlawful towards Jacobs.

4.10. It follows from the foregoing that all four statements have been deemed unlawful. The purpose of the rectification is to repair the stain cast on Jacobs' reputation as much as possible. If the court, in particular the court in preliminary relief proceedings, attaches the consequence to unlawful publications such as the one in question that the person responsible for those publications is ordered to publish rectifications, it is at the discretion of that court in what manner that publication must take place and what content those rectifications must have.

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have. In doing so, a rectification will generally have to be made public in the same way as the original publication; however, this is not necessary. Furthermore, the measures that the court *treh*, taken as a whole, will generally not be disproportionate to the original publications and their already proven or expected consequences. The judge will have to take into account all relevant circumstances and make his decision accordingly. In doing so, he may also, in whole or in part, refrain from certain measures because they do not seem appropriate to him in the circumstances. In summary proceedings, moreover, a weighing of interests must be made. The order for rectification, interpreted according to its purpose and purport, therefore implies by its nature a certain restriction of the right to freedom of expression guaranteed in Article 10 of the Constitution and Article 10 of the ECHR. This limitation is provided by law (in view of articles 3:296, 6:162 and 6:167 BW), and it is necessary in a democratic society in the interest of protecting the good name of others. In view of the importance to be attached in a democratic society to the right to freedom of speech, the requirement contained in art. 10 (2) ECHR applies that a restriction thereof must be proportionate to the purpose it pursues. For that reason as well as because Arrindell distributes his uidatations by means of video tapes and The Daily Herald will undoubtedly report on the present judgment and the rectification and prohibition imposed therein, the Court will not grant a du bbele rectification, but only the video tapes in which Arrindell has to communicate that his statements are unfounded and unjustified and hereby withdraws them.

4.11. With respect to the claim, order Arrindell, with immediate effect from the von nis, to refrain publicly in any way from making misleading, false and/or unsubstantiated and/or unlawful u tions about Jacobs, the Court *considers* as follows. The nature of the interlocutory proceedings means that, if in the preliminary opinion of the judge hearing the interlocutory proceedings the defendant is obliged to refrain from certain conduct, the granting of an application for an injunction in this respect depends on a weighing of interests in which account must be taken, inter alia, of the preliminary nature of the court's ruling in interlocutory proceedings and the far-reaching consequences of a possible injunction for the defendant and the extent of the damage which, also in connection with the fear of repetition, would be threatened for the plaintiff if an injunction were not granted. Furthermore, the nature of the interlocutory proceedings means that detailed reasons are not required in this respect. In the opinion of the Court, Jacobs' interest - also in view of the seriousness of the (unlawful) statements, the damage this entails for Jacobs and the likelihood of repetition - outweighs the far-reaching consequences of the injunction for Arrindell. Accordingly, the claim will be granted.

4.12. Arrindell's argument that periodic penalty payments need not be

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imposed fails. The Court does not consider it plausible that Arrindell will voluntarily comply with the convictions without the imposition of (high) periodic penalty payments. It is thus deemed necessary as an incentive to comply with the convictions and the injunction.

4.13. Arrindell shall be ordered, as the unsuccessful party, to pay the costs of the proceedings. These costs are assessed on the side of Jacobs to date at:

court costs	NAf 249,50
court fee	NAf450 .00
attorney's salary	<u>NAf 3,000.00 +</u>
total:	NAf 3,699.50

## 5. The decision

The Ge'echt:

Judge on interlocutory appeal:

5.1. orders Arrindell to record and provide a video and/or gel uids recording to Jacobs' attorney within 24 hours of service of the judgment with the following content: "I, Olivier Emmanuel Arrindell, would like to *announce* the following: I have called Ms. Silveria Jacobs corrupt repeatedly and publicly. This serious accusation and/ or allegation is unfounded as I do not have any proof to substantiate this serious accusation and/ or allegation. Consequently I herewith retrnct the accusation and/or allegation in question", under penalty of forfeiture of a penalty of US\$ 5,000 per day with a maximum of US\$ 1,000,000;

5.2. orders Arrinrlell to record and provide a video and/or audio recording to Agent Jacobs within 24 hours of service of the judgment with the following inhoucl: "I, Olivier Emmanuel Arrindell, would like to announce the following: I have called Ms. Silveria Jacobs corrupt repeatedly and publicly and have claimed that she has direct or indirect involvement in business arrangements with Mr. Dwain Carbon/ Carbon Acquisition Group from which arrangements she has financially benefitted. This serious accusation and/or allegaLion is unfounded as I do not have any proof to substantiate this serious accusation and/ or allegation. Consequently I herewith retract the accusation in question", under penalty of forfeiture of a penalty of US\$ 5,000 per day with a maximum of US\$ 1,000,000;

5.3. orders Arrindell to record and provide a video and/or audio recording to Jacobs' agent within 24 hours of service of the judgment with the following content: "I, Olivier Emmanuel Arrindell, would like to

announce the following: I have repeatedly and publicly said that there is sexual harassment in Ms. Silveria Jacobs' cabinet caused by here which led to several of her female staff members quitting. This serious accusation and/or allegation is unfounded as I do not have any proof to substantiate this serious accusation and/or allegation. Consequently I herewith retract the accusation in question," under penalty of forfeiture of a penalty of US\$5,000 per day with a maximum of US\$1,000,000;

5.4. orders Arrindell to record and provide a video and/or audio recording to Jacobs' agent within 24 hours of service of the judgment with the following content: "I, Olivier Emmanuel Arrindell, would like to announce the following: I have stated that Ms. Silveria Jacobs was - allegedly - molested as a child and as a result thereof she has psychological problems which have contributed to her lesbianism and/or lack of sound judgement. This serious accusation and/ or allegation is iinfounded as I do not have any proof to substantiate this serious accusation and/ or allegation in question. Consequently I herewith retract the accusation in question", under penalty of forfeiture of a penalty of US\$ 5,000 per day with a maximum of US\$ 1,000,000;

5.5. orders Arrindell, with immediate effect of the judgment, to refrain publicly in any manner whatsoever from making misleading, inaccurate and/or unsubstantiated and/or unlawful statements about Jacobs or at least to make unnecessarily hurtful statements about Jacobs or at least to make public accusations/ accusations against Jacobs related to the reec4sations/accusations made by him, as omclared above, under penalty of a fine of US\$ 10.000 for each time Arrindell violates the injunction, up to a maximum of US\$ 1,000,000;

5.6. orders Arrindell to pay the costs of the proceedings, assessed to date at NAF 3,699.50 on the part of Jacobs, as well as the costs still accruing after the judgment in respect of the attorney's after-sales fee, calculated as a lump sum at an amount of NAF 250.00 without service, and increased by NAF 150.00 in the event of service, to be increased by statutory interest if these costs have not been p a i d within fourteen days from the date of the judgment;

o".7. Declares this judgment provisionally enforceable to this extent;

5.8. Dismisses the more or otherwise claimed.

This judgment was rendered by Mr. Th.G. Lautenbach, Judge, assisted by J.F.M. Becker, Registrar, and pronounced in public on November 24, 2023.

