

## COURT OF FIRST INSTANCE OF SINT MAARTEN

Case number: SX:Vf202301139

Summary judgment dated 24 November

2023 on

Omar E.C. OTTLEY,  
living in Sint Maarten,  
plaintiff  
delegate; mr. S.R. Bommel,

against

Olivier Emmanuel ARRINDELL,  
residing in Sint Maarten,  
defendant,  
litigating in person.

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

### 1. Conduct of the procedure

1.1. Ottley filed a petition on October 30, 2023. The hearing will take place on 17 November 2023.; and the parties and Mr Ottley's representative appeared and spoke. An official report of the treatment has been made! that it is among the documents.

L.2. Verdict is set for today.

### 2. The Facts

2:L Ottley is Minister of Health, Social Affairs and Labour (VSA) in Sint Maarten.

### 3. The dispute

3.1, Ottley claims, by way of a provisionally enforceable judgment, the following:

Order L Arrindell to submit the statements within 24 hours of the date of judgment,



deliberately make public messages by sharing them with many people in Sint Maarten. Ottley maintains that these are statements that are in Arrindell's private sphere. In his video messages, he does not speak of "my friends", but of "the people of Sint Maarten". Ottley argues that it is a well-known fact that by sending video clips via social media, the video clips take on a life of their own, Arrindell accuses Ottley of being a criminal, a thief (stealing public funds), committing (serious) sh-afuare offences, being a corrupt politician and being guilty of bribery and money laundering. Now that the material is being distributed very quickly by Arrindell and others, Arrindell wishes to damage Ottley's honour and good name by proclaiming these unsubstantiated and false statements. For example, Arrindell repeated several times that Ottley, in his capacity as Minister, received funds from Arajet (a low-cost airline of the Dominican Republic), Ottley is said to have flown to the Dominican Republic together with Mr. Lacroes and received funds there for signing a permit to fly on the Sint Maarten-Dominican Republic route. Arrindell claims that he saw with his own eyes that a brown envelope was handed over. These serious and serious allegations do not fall within the scope of free speech and are very damaging to Ottley's position as Minister of the USA. Furthermore, Arrindell states in his reports that Ottley would have stolen money from the government to finance his real estate. Furthermore, Arrindell proclaimed in many videos to the people of Sint Maarten that "we have to do the job and eradicate these people for ourselves". With this, Arrindell the months of Sint Maarten to the ... field and publicly threatens Ottley And "I wonder if the judge going to put you in a cell next to your brother. Will you fly to the US as well to try to escape prosecution? You, dirty corrupt buckteeth sorry for an excuse thieving from the same people who voted for you. Aren't you ashamed of yourself. Using the government for your persona! Gain is high treason and the highest level of criminal act KNMVN to man. But you almost as corrupt as the them people up North." Arrindell Ottley is deliberately trying to discredit and tarnish his honour and good name. He also makes threats via social media and scolds Ottley almost daily. This is despite the fact that he has received a letter of demand from the bailiff to refrain from statements *that* were considered to be a slander, libel than we! as unlawful and unnecessarily offensive. According to Ottley, the granting of de\_ claims is necessary in order to cessation of the statements in bewerkstelligen\_ Ottley argues that even for a public administrator as a public person, a judge may impose restrictions on freedom of expression. Arrindell's statements are anything but his own value judgments. Arrindell is convinced that everything he says about Ottley is based on facts. However, Mr Arrindell's statements lack sufficient factual basis and are therefore unlawful. Ottley argues that he has suffered considerable damage privately as a result of the unlawful expressions made by Arrindell as a Minister.

3.3. Mr Arrindell argued that a declaratory judgment could not be made in interlocutory proceedings. In addition, Mr Arrindell disputes the urgency of the case. Arrindell states that Ottley is a Minister and that he did not give him permission to take part in his chat group. He considers this an invasion of his privacy, a fundamental right. Mr Arrindell argues that the claims violate his right to freedom of expression. He states that Dutch politicians have been calling the politicians in Sint Maarten corrupt for many years. A certain politician has called the Sint Maarten politician members of the mafia. Ottley has never sued these politicians for rectification. Arrindell denies threatening Ottley. Arrindell asks whether Ottley physically and mentally abused his girlfriend Shary Brunings and whether his girlfriend reported the incident to the National Criminal Investigation Department (NCID), the federal police. Arrindell denies accusing Ottley of bribery in the flight approval. What he has done is ask questions about his actions. Arrindell states that he saw the envelope in question in the Dominican Republic. The mention of Minister Doran in relation to Ottley is based on a report by the Ombudsman. Arrindell asked questions about the company & Erk Construction, in which company Ottley is (allegedly) a shareholder, his girlfriend managing director. Arrindell wonders if Ottley, as a Minister, has done business for this company. According to Arrindell, Ottley's family was given a fake contract, even though they had neither the tools nor the expertise to carry out this contract. Arrindell states that the people of Sint Maarten want to know if Ottley has three houses (in Saunders, Valley Estate and in Dubai) and whether he has the money to buy all those houses. Arrindell takes the view that it is necessary to examine the matter of Ottley at the same time. According to Arrindell, he asked Ottley to show him the (notarial) deed in order to show him how he paid the money. If Ottley cannot make this deed so, that is a criminal offence according to Arrindell. Arrindell argues that Ottley's father is hiding money in Panama and that his brother is a convicted murderer and that Ottley cannot show how he paid for all his possessions. Arrindell believes that Ottley should insist that he is "clean" and that Ottley constantly fails to clear his honor and good name. Arrindell states that Ottley must prove that he is innocent and that he must give the people of Sint Maarten the requested information. Arrindell also wonders if Ottley paid US\$ 70,000 in cash for a VW SUV for his girlfriend Shary Brunings. Arrindell also opposes a double rectification: one in the newspaper and one via social media. As for the What's App group, Arrindell states that it is not public and that they are not public statements. Statements were made within the relative privacy of the What's App group. The What's App messages are strictly personal. Arrindell states further that the Facebook link (marginal number 11 of the petition) does not work and does not belong to him. He denies that he sends messages via Facebook. Arrindell acknowledges that not all of the comments about Ottley were chiding and to Ottley's liking, but nevertheless Arrindell does not think a correction is necessary or logical for personal conversations with a select group of people.

3.-!. On the The parties' contentions will be dealt with in more detail below, in so far as they are relevant.

#### 4. The Division

4.1. Mr Arrindell argued that there was no urgency. That argument must be rejected for the following reason. Al't. Article 254(1) of the Code of Civil Procedure requires, first of all, urgency in order to be able to obtain an immediate interim measure. In order to determine whether the claimant has a sufficiently urgent interest in the requested relief, the interests of both parties must be weighed against each other (vgL HR 29 november 2002, ECLI:NL:HR:2002:AE4553). In the opinion of the General Court, Ottley 's interest in putting a stop to Arrindel's statements - also in view of the elections in January 2024 - and <these were rectified outweighs the interest of Arrindel, [who, incidentally, has not acknowledged his interest either.

4..2. Bee the assessment of the question or a publication or a statement is unlawful in the press, a balance of interests must be carried out tuss\_en on the one hand the law laid down in Article 5 of the Constitution and Art. 8 ECHR guaranteed by Mr Ottley's right to respect for his private life and) his reputation. On the other hand, Arrindel] has violated art. 10 State Regulations Art.10 EVRivi has the right to freedom of expression, will the right to express thoughts and feelings. HN is established case law tfat the answer to the question of the importance to which the decisive factor should be

The circumstances of the case may be affected by the following circumstances: a. the nature of the published statements and the seriousness of the likely consequences for the person to whom those statements relate; b. the seriousness, from the point of view of the public interest, of the wrongdoing which the publication is intended to denounce; c. the degree to which ,at the time of publication, the (negative) statements were supported by the factual material available at the time; d.. the decoration of the (negative) statements, seen in relation to the factors mentioned under a to c. As the Supreme Court stated in para. 5.11 of the Paroolanest (Supreme Court 4 October 2013, ECLI:NL:HR:2013:851) 1 does not in principle take precedence over the principle laid down in Article 10 of the ECR; v! guaranteed right to liberty. of expression. The same applies to the rights protected by Article 8 of the ECHR. This means that this is not a two-stage review (so that it is first determined on the basis of the circumstances which of the two rights prevails, after which it must then be assessed whether the necessity test laid down in Articles 8(2) and 10(2) of the ECHR respectively precludes the outcome of thethat balancing exercise), but that the assessment must be carried out in one go, in which the finding that one of the two rights outweighs the other in the light of all relevant circumstances, means that the

infringement of the other right satisfies the necessity test of the relevant second paragraph.

4.3. A distinction must be made between factual statements (factual judgments) and value judgments. In a concrete publication, factual assertions and value judgments can be intertwined. The court then 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 when there is a (outer) value judgment, the proportionality of the infringement by Art. 8 of the ECHR depends on whether there was a sufficient factual basis for the expression in question, because even a value judgment can be excessive and therefore unlawful if there is no factual basis for it (cf. inter alia ECHR 19 December 2006, no. 18235/02), Value judgments that offend someone may not be "devoid of any factual basis".

4.4. Arrindell claims that he made public statements because the videos were distributed within a closed What's App group. They are According to him, private conversations. Arrindell further states that he does not have Facebook and that he has therefore not posted any messages or videos on Facebook. Dit venveer fails. Pursuant to Section 6:167 of the Dutch Civil Code, an order for rectification can be imposed in the event of incorrect or misleading publication of information of a factual nature due to incompleteness. The question of whether such publication exists will have to be assessed in the context in which the publication was made, taking into account local views and circumstances and < other context. 1-The term 'publication' is construed broadly and can refer to any publication, even if it has not been made in the press. In the opinion of the General Court, Arrindell's statements on social media fall within the concept of publication. VV11at' s App is a great group, but Arrindell says he has 10,000 friends in this What's App. His range is therefore large, all the more plausible now than we are! It is 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. In addition, Ottley has rightly argued that in the video clips he does not address his friends but "the people of Sint Maarten" and addresses his statements to the "Sint Maarten people", so that it is plausible that Arrindell does not only want to draw attention to the alleged corruption and abuses of Ottley with his friends, but that he wants to reach as many residents of Sint Maarten as possible with his video clips.

4.5. Ottley submitted a total of 17 video clips in support of his claims. The statements that Ottley complains against are accusing Ottley of being criminal, committing criminal offenses, stealing government funds, being corrupt and being guilty of money laundering and bribery. In that context,

In that context, Arrindell made the following statements, inter alia: 'If Omar Ottley is man enough to want to give me a notice via his lawyer toU him to meet me in Santo Domingo, where he sat down with Arajet and other people and Fransisco Lacroes and collect the money. I filed a criminal complaint against Omar Ottley", "That is three houses. So, the man building a house in Saunders, he buys Franklin house cash money, the cement man house cash and he got one in the Valley. This is a serious case of money laundering here. The people of Sint Maarten were these follows getting the money to buy these types of things. Boy Oh God, where are they getting the money to buy these types of things. The man buys Franklin.... You are a corrupt fellow. You are just like your father. Your hands are sticky. You are in Government to make money. Your hands are sticky.( ...) Iviy people this can not be serious business. These guys are in your government ripping you off. I have got an idea how he gets the money. It probably come from EH.AS.(..) Omar Ottley, it has been declared by Olivier Arrinde!! you are a corrupt politician", "I come after \_you and your father", "Your dirty big head split skunk", "Once I get the document, I will rip every single piece of your backbone out of your back body my friend", "Omar Ottley is a gangster. A Minister gangster", "So. Omar Ottley was busy on a boat yesterday full of drugs. A boat that he himself sponsor the party. But they want to be gangsters", " \-11at say Omar Ottley we don't need gangsters in our government", We are going to get you out", "So, lhis guy together with his cousin Jurendy Doran who has rip off Sint Maarten people money and the Sint Maarten people are poor cannot buy a home".

4.6. The statements may be qualified as factual statements. Arrindc.'ll immediately says with great certainty that Ottley is corrupt, a gangster is<sup>committing one</sup> criminal offence, taking money from Arajet and he suggests with his questions where Ottley got the money to buy three houses that Ottley finances these houses with public money. In the opinion of the Court of First Instance, these are serious allegations, which Arrindel! In no way does K-unnen have any evidence to back it up. Even if it is true that Arrinddt himself saw that a brown envelope was exchanged when Ottley visited Arajet, it is not enough to conclude that Ottley received money (in privl2) for signing a license to Arajet to be allowed to fly from the Dominican Republic to Sint Maarten and vice versa. Ook de stelling dat Ottley vermoedelijk zijn (drie) huizen heeft gefinancierd met geld van EHAS heeft Arrindel! plausible. First, Ottley has denied that he owns three houses (he claims to have three houses) and, second, it is an insinuation not supported by facts, which is then concluded with "Ottley, you are a corrupt politician". He accuses Ottley of being a man "ivho rip off the Sint Maarten". It may be the case that, according to established case law, a greater degree of freedom of expression applies in the case of a public figure and that he may be subjected to strong criticism and a certain degree of protection, but freedom of expression is not unlimited. ArrindeU's remarks are serious allegations against Ottley in his

As a Minister as a Minister, an attack on Ottley as a person, and other by saying that Ottley loves to beat women and physically and mentally abuses his girlfriend and "It is going to be personal that I will rip your heart out that you won't even understand because it *is* personal when it comes to me and you. 'With Silveria Jacobs it is business as usual. Your father is a thief. You are a thief.'" To the order of the General Court, the utterances, threats, epithets and accusations are defamatory, unnecessarily offensive and excessive. Also in Seen in the light of the manner of his utterances - the pushiness, the firmness, the tone and the great degree of repetition - Arrindell] has exceeded the bounds of what is morally acceptable and has acted unlawfully towards Ottley. In addition, it must be borne in mind that Arrindell's remarks in the video messages did not in any way interfere with Ottley's position as Minister and the harmful consequences that his remarks on Ottley may have on his position as a Minister, especially now that the parliamentary elections are approaching.

-L7. Arrindell misunderstands with be argument that Ottley must prove his innocence and clear his name that it is precisely Arrindell's statements that must find (some) support in the factual material and that it is therefore up to Arrindell to make it plausible that his statements and allegations are correct, This applies mutatis mutandis to Arrindell's contention that Ottley must prove how he financed his 11Luice. Arrindell's defence that Ottley did not sue a Dutch politician, who called Sint J'vlaarten corrupt and a mafia country, was brought to court by the General Court. It is up to Ottley to choose who he wants to will involve. That takes away the illegality of Arrindell's statements! not gone. In addition, it must be held that the statements of Arrindell relate to Ottley personally; they are not against a country or against an unnamed Named Politician

4.8. The foregoing means that the request for rectification will be granted. Arrindell argued that the claim for rectification is duplicative and that, as the Court understands it, this is disproportionate. This defence succeeds. If the court, in particular the judge hearing an application for interim measures, attaches the consequence to unlawful publications such as that in the present case that the person responsible for those publications is ordered to disclose the corrections, it is for that court to decide on the manner in which that disclosure is to be effected and the content of those rectifications. In general, a corrigendum will have to be published in the same way as the original publication, but this is not necessary. Furthermore, the measures taken by the court, taken as a whole, must not generally be disproportionate to the original publications and their effects already in progress or foreseeable. The court will have to take into account all the relevant circumstances and adjust its decision accordingly. In doing so, he may also refrain from taking certain measures, in whole or in part, because they would not affect him in the



circumstances do not appear appropriate, In interlocutory proceedings, a balance of interests must also be made. The order for rectification, interpreted in terms of its purpose and purpose, therefore implies, by its very nature, a certain limitation of the right laid down in Art. 10 Constitution and Art. 10 ECHR right to freedom of expression. This limitation is provided for by law (in view of Articles 3:296, 6:162 and 6:167 of the Civil Code), and it is necessary in a democratic society to protect the good name of others. In view of the importance attached to the right to freedom of expression in a democratic society, the principle laid down in Art. 10 paragraph 2 of the ECHR, a requirement < a limitation thereof must be proportionate to the objective pursued. For that reason, as well as because Arrindell disseminates his statements via video clips in a (grateful) What's App group and The DaUy Herald will undoubtedly report on the form in question and the rectification and prohibition imposed therein, the Court will not grant a double rectification, but only the rectification via the social media channels, more specifically via \A/hat's App in which Arrindell must state that his statements are unfounded and unjustified, that the accusations are only a matter of fact. to damage Ottley and that he infringes them on this occasion. In addition, the Court will order that Arrindell also provide the rectification via \What's App to Ottley's agent.

4.9. The request for an order requiring Arrindell to remove from the soda! media sites, including \What's App, within 24 hours of the judgment, the statements which are considered to be unlawful is also admissible on the basis of the foregoing (the statements deemed unlawful).

-ll 0. With regard to the para. 3.1 Said claim **m**, In summary, to order Arrindell to refrain from making misleading, incorrect and/or unsubstantiated statements about Ottley with immediate effect from the judgment, the Court of First Instance held as follows: The nature of the proceedings means that, if, according to the preliminary judgment of the judge hearing the application for interim measures, the defendant is obliged to refrain from certain conduct, the granting of an injunction sought in this respect depends on a weighing of interests in which, on the one hand, the provisional nature of the judicial judgment in the case and the far-reaching nature of the consequences of a possible injunction for the defendant must be taken into account too and, on the other hand, the extent of the risk to the plaintiff if an injunction were not granted, partly because of the fear of recurrence. The nature of the interlocutory proceedings means for the time being that no detailed reasoning is required in respect of them. In the opinion of the Court of First Instance, Ottley's interest in the requested injunction outweighs the drastic nature of the (unlawful) statements, the damage they cause to Ottley and the chance of repetition. of the consequences of the order for Arrindel!. The claim will therefore be upheld. The provisions referred to in para. 3.1. The said claim 11 is identical to the claim under III, so that it will be dismissed.

4.11. The Court of First Instance will attach a penalty payment to the convictions and orders, as has been claimed, since it is not plausible that Arrindel! will voluntarily comply with the orders and orders .

4.12. Arrindell will be tested in the wrong! One of the parties was ordered to pay the costs. To date, these costs have been estimated at the following costs on the part of Arrindell:

|                       |                       |
|-----------------------|-----------------------|
| writ costs court fees | Naf 249,50            |
| salaris gemad,tigde   | Naf 450,00            |
| totaal                | <u>NA/ 3.000 00 +</u> |
|                       | Naf 3,699.50.         |

## 5. The decision

The Court of First Instance:

Interim measures as follows:

5.1. Arrindel] within 24 hours of the date of the verdict to declare the defendants, he calls Ottley < corrupt, being a criminal and falsely accuses Ottley of committing criminal acts , Vern all social media online sites, including and in particular What's App and keep it removed, on pain of forfeiture of a penalty of US\$ 5,000 per day up to a maximum of US\$ 500,000;

5.2. Arrindell is hereby ordered by the public authorities ,,to refrain from committing crimes in public in any way whatsoever. , incorrect and/or unsubstantiated statements about Ottley, or at least to make unnecessarily offensive and insulting statements about Ottley, or at least public unsubstantiated remarks in this case. Quo prohibit allegations against Mr Ottley relating to the allegations already made by him, on pain of forfeiture of a penalty payment of US\$ 5,000 per day up to a maximum of US\$ 500,000;

5.3. orders Arrindel] to notify the Court of First Instance within 24 hours of service of the judgment. next teb:t too spread via be Social media Channels, lake in the especial0r via What's App and request Arrindel! to send a copy of this corrigendum to Ottley's agent:

"Rectification:

Recently I have repeatedly made a lot of public statements regarding Omar Ottley being guilty of corruption, money laundering, being a thief and a criminal. I Olivier Arrindel! would like to announce that all these accusations and or allegations are

untrue, false, and unfounded as I do not have any proof to substantiate these serious  
d\.:CUSations and or allegations. I merely-intended to harm :f\ilminster Ottley vvith these  
accusations. I hereby sincerely apologize making these accusations and I ivould like lo  
retract all I have said",

all this under penalty of forfeiture of a divang sum of USS 5,000 per day up to a  
maximum of USS 500,000;

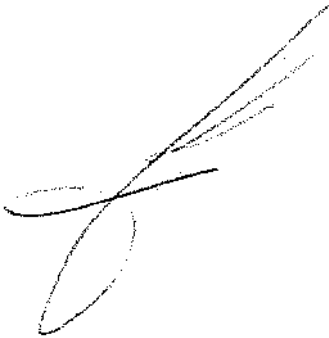
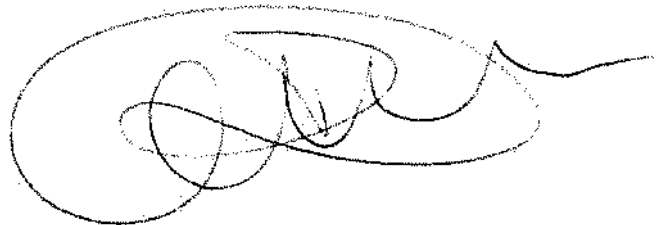
5.. J. orders Arrindell to pay the costs of the proceedings, estimated to date at NAF  
3,699.50 on the part of the Ottley, to be paid in full within fourteen days of the date  
of the judgment if payment is not made within this period, plus statutory interest;

5.5. Orders Mr Arrindell to pay the costs remaining after the judgment in respect  
of the representative's back salary, calculated at a flat rate of NA£250.00 without  
service and increased by NAF 150.00 in the event of service;

5.6. declares this judgment enforceable by forefront;

5.7. Assigns it mecr or else advanced! ready.

This verdict has been handed down by now. Th.G. L:rntenb,Kh, Judge, assisted by  
J.F...vt. Becker, Registrar, and pronounced in public on November 2, 2023,

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.A handwritten signature in black ink, featuring a large, circular loop on the left side and a series of smaller, overlapping loops and a long horizontal stroke extending to the right.