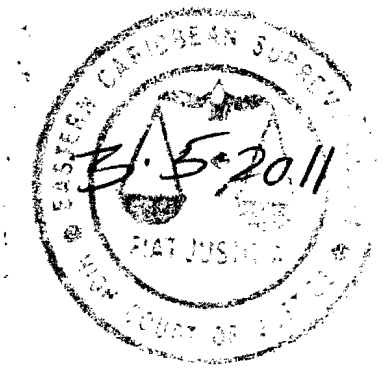

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

SVGHVC 408 OF 2010

IN THE MATTER OF THE CANOUAN RESORTS DEVELOPMENT LIMITED (LEASE RATIFICATION) ACT CAP 100A OF THE LAWS OF SAINT VINCENT AND THE GRENADINES REVISED EDITION 1990

AND
IN THE MATTER OF THE OF SECTIONS 8(8) OF THE CONSTITUTION OF SAINT VINCENT AND THE GRENADINES CHAPTER 2 OF THE LAWS OF SAINT VINCENT AND THE GRENADINES REVISED EDITION 1990

AND
IN THE MATTER OF THE FISHERIES ACT CAP 52 OF THE LAWS OF SAINT VINCENT AND THE GRENADINES REVISED EDITION 1990

AND
IN THE MATTER OF THE WILD LIFE PROTECTION ACT CAP 55 OF THE LAWS OF SAINT VINCENT AND THE GRENADINES REVISED EDITION 1990

IN THE MATTER OF PROTOCOL CONCERNING SPECIALLY PROTECTED AREAS AND WILDLIFE (SPAW) 1990
AND

PAUL LEWIS A NATIVE OF CANOUAN ISLAND
MARLON MILLS OF VILLA
SYLVIA SUTHERLAND OF LOWMANS (LD)
MATTHEW HARVEY OF UNION ISLAND
(Acting as trustees for and Managers of the affairs of the)
FRIENDS OF THE TOBAGO CAYS

Claimants

and

CANOUAN RESORTS DEVELOPMENT LTD

First Defendant

CANOUAN REALITY LTD

Second Defendant

Appearances: Mrs. Kay Bacchus-Browne and Ms. Nicole Sylvester for the Applicant
Mr. Joseph Delves for the First Defendant
Mr. Grahame Bollers for the Second Defendant

2010: November 12th
2011: May 3rd

JUDGMENT

[1] **THOM, J**: On November 5, 2010 on a Without Notice application filed on behalf of the Applicant, the Court granted an interim injunction against the Respondents restraining them from dredging, drilling, excavating or using machinery, equipment or drills to remove, displace or interfere with the seabed at Point De Jour Bay, Godahl Lagoon, Canouan.

[2] On November 12, 2010 the Applicant filed an application to continue the injunction on the ground that if the injunction is not continued the Respondents will continue to dredge and irreparable harm would be done to the area.

BACKGROUND

[3] The Applicant is an unincorporated, non-profit association who made this application by its trustees who are citizens of Saint Vincent and the Grenadines.

[4] The First Respondent is a company incorporated in the Commonwealth of the Bahamas. It entered into a lease agreement with the Government of Saint Vincent and the Grenadines whereby a part of the Island of Canouan was leased to the First Respondents. The lease agreement is included in the Schedule of the Canouan Resorts Development Ltd (Lease Ratification) Act.

[5] Article 23 of the Lease Agreement provides inter alia that the lease shall be governed, interpreted, construed and regulated by the Laws of Saint Vincent and the Grenadines.

[6] The Second Respondent is a company incorporated in the Commonwealth of the Bahamas and is a licensee/agent of the First Respondent.

[7] Article 7 (C) (ii) and (iv) of the Lease Agreement read as follows:

> "7. **Covenants of the Lessee** - The Lessee covenants and agrees with the Lessor:
>
> (ii) not to interfere with the reefs on the eastern side of the premises, or conduct or permit dredging operation therein;
>
> (iv) not to remove sand from any beach on the Island to be transferred else where....."

[8] The Applicant alleges that contrary to Article 7 (C) (ii) and (iv) of the Lease Agreement, the Wild Life Protection Act No. 16, 1987; the National Parks Act No. 30 of 2002 and the SPAW convention, the Respondents on or about the 25th day of October 2010 commenced dredging on the eastern side of the Island of Canouan. The matter was reported to the Minister of Health and the Environment by letter dated October 29, 2010 and copied to other Public Officials.

[9] On November 4 and 19, 2010 Mr. Williams Stephen Price a Marine Ecology Conservationist at the request of the Applicant produced reports in which he stated that dredging in Point de Jour Bay, Godahl Lagoon, Canouan had a negative impact on the reefs ecosystem of the bay and beach area. He gave details of damage done to the Marine Systems - Seagrass beds, Benthic floor, reefs; and Wildlife - birds, fish and sea turtles.

[10] The Respondents urged the Court to discharge the injunction for the following reasons:

(a) The undertaking is unsatisfactory. The affidavit does not state the ability of the Applicant to honour the obligation in damages - see **Commercial Injucntions** by Stephen Gee p. 244 - 9.006.

(b) There was material non-disclosure. It was not disclosed that the Applicant was an unincorporated body.

(c) There was delay in bringing the application. The dredging was in process for approximately 11 days. No reason was given why notice of the

application was not given to the Respondents - **National Commercial Bank Jamaica Ltd v Olit Corporation Limited** P.C. No. 61 of 2008.

(d) The Applicant has no cause of action against the Respondents. The rights alleged to be infringed are public rights and public rights are enforced by the Attorney-General - see **Gouriet and Others v Union of Public Service Workers** [1977] WLR p. 300; **Lonrho Ltd v Shell Petroleum** [No. 2] H.L. [1981] A.C. - p. 173; **John Gumbs v Attorney-General of Anguilla** Civ. Appeal No. 9 of 2005.

[11] Learned Counsel for the Applicant submitted in reply that there was no material non-disclosure. The Applicant agreed that it was not disclosed that the Applicant was an unincorporated body but submitted that the general rule is that an unincorporated association lacks legal capacity to sue or be sued in their own name but the courts have adopted a flexible approach and unincorporated associations have been allowed to bring claims - see **R v Towers Hemlets LBC Exp. Tower Hemlets Combined Traders Association** [1994] C.O.D 325; **R v Ministry of Agriculture Support, Fisheries and Food exp. British Pig City Council Group** [2000] EULR 724; **On the application of West End Street Traders Association v Westminster City Council** [2004] EWHC.

[12] In relation to the issue of delay Learned Counsel submitted that there was no delay in making the application. The report of the Conservationist Dr. Price was received on November 4, 2010 and the application was made the same day 4th November, 2010. There was no time to give notice as the dredging was already in progress - see **National Commercial Bank case.**

[13] Learned Counsel also submitted that the Applicant has locus standi to bring the claim. The Court should adopt a generous approach. The policy should be to encourage and not to discourage public spirited individuals and groups. The Applicant is not a meddlesome busy body. The Applicants constitution at Article 3(a) and on the 29th October 2010, a resolution was passed which clothed the Applicant with power to protect environmental

laws within the State of Saint Vincent and the Grenadines. Further the Fisheries Act, Breach Protection Act and the National Parks Act do not expressly specify the persons who can approach the Court for infarction of the provisions. It does not limit the category of persons to that of the Attorney-General - see **Attorney-General v Blake** [1998] Oh. 439; **Intertrade Corporation v David Cram and Windjammer Landing Company Ltd.** Civil Appeal No. 1 of 1996; **Virgin Island Environmental Council v The Attorney-General and Quorum Island BVI Ltd** Claim No. 185 of 2007. The Court can therefore exercise its discretion as to the proper person entitled to bring this Application. The Court can of its own motion join the fisheries officer and other public officers pursuant to CPR 19.3 - see **In the matter of Bank of Europe Ltd (in Receivership), Financial Services Regulatory Commissions Peter Queeley and Hugh Henry** No. 400 of 2005.

[14] Learned Counsel further submitted that the cases of **Gouriet v Union of Post Office Workers and Lonrho Ltd** are distinguishable from the pursuant case, since in the present case the Applicant's legal position is prejudiced by the dredging. Also the present case falls within the first exception in the **Lonrho Ltd case**. The only remedy provided by the Acts is not that of a criminal sanction. The scope, purpose and object of the Acts is to preserve and protect the Wildlife, fauna etc. The Act was created for the benefit of persons who are conservationists, environmentalists and associations whose objects include protecting the Wildlife of Saint Vincent and the Grenadines such as the Applicant - see **Blackburn v Attorney-General** [1971] 1 WLR p. 37.

[15] Learned Counsel also submitted that the Applicant's right is akin to security of tenure which exists at common law. Tenure rights over natural resources are synonymous with property rights. It covers all the means by which individuals and communities gain legitimate access to and use of natural resources. The absence of full ownership over natural resources does not preclude possibility of tenure rights over natural resources.

LAW AND ANALYSIS

Material Non-Disclosure

[16] Ralph Gibson LJ in **Brink's Mat Ltd v Elcombe et al** [1988] 1 WLR 1350 outlined the principles by which a Court should be guided when considering whether there was material non-disclosure on an application for interlocutory relief. This approach was adopted by the Court of Appeal in **Edy Gay Addari v Enzo Addari** No. 2 of 2005 where the Court said:

> "In considering whether there has been non-disclosure and what consequence the court should attach to any failure to comply with the duty to make full and frank disclosure, the principles relevant to the issues in these appeals appear to me to include the following:
>
> (1) The duty of the applicant is to make "a full and fair disclosure of all the material facts." See **Rex v Kensington Income Tax Commissioners, Ex parte Princes Edward de Poligrac** [1917] 1 KB 486, 514 per Scrutten LJ.
>
> (2) The material facts are those which it is material for the judge to know in dealing with the application as made: materiality is to be decided by the Court and not by the assessment of the applicant or his legal advisors. See **Rex v Kensington Income Tax Commissioners**, per Lord Cozens-Hardy M.R. at p. 504, citing **Dalglish v Jaruie** [1850] 2 Mac G 231, 238 and Browne - Wilkinson J. in **Thermax Ltd. V Schott Industrial Glass Ltd.** [1981] F.S.R. 289,295.
>
> (3) The applicant must make proper inquiries before making the application: see **Bank Mellat v Nikpour** [1985] F.S.R. 87. The duty of disclosure therefore applies not only to material facts known to the applicant but also to any additional facts which he would have known if he made such inquiries.
>
> (4) The extent of the inquiries which will be held to be proper, and therefore necessary, must depend on all circumstances of the case including (a) the nature of the case which the applicant is making when he makes the application; (b) the order for which application is made and the probable effect of the order on the defendant: see for example the examination by Scott J. of the possible effect of an

Anton Pillar Order in **Columbia Picture Industries Inc. v Robinson** [1987] Ch. 38, and (c) the degree of legitimate urgency and the time available for the making of inquiries: see per Slade L.J in **Bank Mellat v Nikpour** p. 92-93.

(5) If material non-disclosure is established the Court will be "astute to ensure that a plaintiff who obtains [an exparte injunction] without full disclosure ... is deprived of any advantage he may have derived by that breach of duty": see per Donaldson L.J in **Bank Mellat v Nikpour**, at p. 91 citing Warrington L.J. in the **Kensington Income Tax Commissioners** case [1917] 1 K.B. 486, 509.

(6) Whether the fact not disclosed is of sufficient materiality to justify or require immediate discharge of the order without examination of the merits depends on the importance of the fact to the issues which were to be decided by the judge on the application. The answer to the question whether the non-disclosure was innocent, in the sense that the fact was not known to the applicant or that its relevance was not perceived, is an important consideration but not decisive by reason of the duty on the applicant to make all proper inquiries and to give careful consideration to the case being presented.

(7) Finally, it is not for every omission that the injunction will be automatically discharged. A locus poenitentiae may sometimes be afforded: per Lord Denning M.R. **Bank Mellat v Nikpour** p. 87, 90. The Court has a discretion, notwithstanding proof of material non-disclosure which justifies or requires the immediate discharge of the exparte order, nevertheless to continue the order, or to make a new order on terms:

> "...when the whole of the facts, including that of the original non-disclosure, are before the Court it may well grant... a second injunction if the original non-disclosure was innocent and if an injunction could properly be granted even had the facts been disclosed": per Glidewell L.J. in **Lloyds Bowmaker Ltd v Britannia Arrow Holdings Plc**;"

[17] I do not find the non-disclosure that the Applicant was an unincorporated body to be a material non-disclosure. I accept the submission that the non-disclosure was innocent.

Whether the Applicant was unincorporated or incorporated was not an important fact to the issues which the Court had to decide in exercising its discretion whether to grant an interim injunction in the particular circumstances of this case. I agree with the submission of the Applicant that an unincorporated association may bring a claim. In **R v London Borough of Tower Hamlets, exp. Tower Hamlets Combined Traders Association**, the Traders Association was an unincorporated association who sought judicial review of the decision of the Council to raise the fees levied on street traders. The Court held that in principle it did not matter that the applicant was an unincorporated association lacking legal personality since out of its constituent associations could be spelt the names of individuals who constituted the association: see **R v London Rent Assessment Panel, exp. Braq Investments Ltd** [1969] 1 WLR. 970. But there were consequential matters, such as the enforcement of costs orders, which made it necessary that an applicant be a legal person, and it was for this reason that the applicant association acted or was represented by the secretary of the Regular Casual Market Traders Association. Similarly in **R v Ministry of Agriculture, Fisheries and Food Exp. British Pig Industry Support Group** Richard J. said:

> "For my part, I do not think that there is any overriding requirement for an applicant for judicial review to have legal personality, but it is important in such a case that adequate provision should be made for the protection of the respondent in costs."

In the other case referred to by Learned Counsel for the Applicant **R (On the Application of the West End Street Traders Association) v Westminster City Council** the Association was an incorporated association. In the present case the application was brought by the trustees of the association pursuant to a resolution of the association. In the event that I am wrong and this was a material non-disclosure, I am of the opinion that the principle stated in the **Bank Mellat** case at paragraph 16 (7) above is applicable in this case. I will therefore not discharge the injunction on this ground.

Undertaking

[18] The four trustees of the Applicant have each given an undertaking in damages. There is therefore no reason to discharge the injunction on this ground.

Delay

[19] I agree with the submission of Learned Counsel for the Applicant that while the activities had been in progress for approximately 11 days, the Applicant on receiving a report on the activities from Dr. Price the conservationist immediately filed the application. I agree with Learned Counsel for the Respondents that the principle outlined in the **National Commercial Bank Jamaica Ltd** case is in keeping with CPR 17:4. On a careful examination, the affidavit filed on behalf of the Applicant at paragraph 13 gives the reason for urgency of the application. In the **National Commercial Bank** case the P.C started at paragraph 13:

> "...there will usually be no reason why the applicant should not have given shorter notice or even made a telephone call. Any notice is better than none."

In the present case the application was filed at 3:30 p.m. on the 4th November 2010 and the matter was heard on the 5th November 2010. It was alleged that the dredging activities were in process and would be completed within three days.

Cause of Action

[20] The approach outlined by Lord Diplock in **American Cyanamid Co v Ethicon Ltd** [1975] 396 has been accepted as the correct approach to be adopted by a Court hearing an application for an interlocutory injunction. Lord Diplock said at p.407.

> "The Court no doubt must be satisfied that the claim is not frivolous or vexatious; in other words, that there is a serious question to be tried. It is no part of the Court's function at this stage of the litigation to try to resolve conflicts of evidence on affidavit as to facts on which claims of either party may ultimately depend nor to decide difficult questions of law which call for detailed argument and mature considerations. These are questions to be dealt with at the trial... so unless the material available to the Court at the hearing of the application for an interlocutory injunction fails to disclose that the plaintiff has any real prospect of succeeding in his claim for a permanent injunction at the trial, the Court should go on to consider whether the balance of convenience lies in favour of granting or refusing the interlocutory injunctive relief that is sought."

[21] It is settled law that a right to obtain an injunction is not a cause of action. In **Siskina (Cargo Owners) v Distos Compania Naviera** S.A. [1979] A.C. 210 Lord Diplock stated the principle as follows:

> "A right to obtain an interlocutory injunction is not a cause of action. It cannot stand on its own. It is dependent upon there being a pre-existing cause of action against the defendant arising out of an invasion, actual or threatened by him, of a legal or equitable right of the plaintiff for the enforcement of which the defendant is amenable to the jurisdiction of the Court. The right to obtain an interlocutory injunction is merely ancillary and incidental to the pre-existing cause of action. It is granted to preserve the status quo pending the ascertainment by the Court of the rights of the parties and the grant to the plaintiff of the relief to which his cause of action entitles him, which may or may not include a final injunction."

[22] The Applicant in its statement of case alleges a breach of it security of tenure of the natural resources by the dredging of the area Point de Jour Bay, Godahl Lagoon, Canouan, contrary to the National Parks Act, Wildlife Protection Act No.16/1987; The Fisheries Act Cap. 52 and infringement of the SPAW Convention, which has resulted in deprivation of its right to use the resources.

[23] The issue for the Court to determine is whether a contravention of the above mentioned Acts by a private individual gives rise to a civil cause of action enforceable by a private individual.

[24] The general rule is that public rights are protected by the Attorney-General acting either on his own initiative or on the relation of a member of the Public – In **Gouriet v Union of Pose Office Workers** [1978] A.C. p. 435, Lord Wilberforce said:

> "It can properly be said to be a fundamental principle of English Law that private rights can be asserted by individuals, but that public rights can only be asserted by the Attorney-General as representing the public."

[25] The approach to be adopted when considering the issue whether breach of a statutory duty gives rise to a civil cause of action for damages at the suit of any person who suffers loss or damage as outlined by the House of Lords in **Cutler v Wandsworth Stadium Ltd** [1949] A.C. P.398, Lord Normand at p.413 said:

> "If there is no penalty and no other special means of enforcement provided by the statute it may be presumed that those who have an interest to enforce one of the statutory duties have an individual right of action otherwise the duty might never be performed. But if there is a penalty clause the right to a civil action must be established by a consideration of the scope and purpose of the statute as a whole."

[26] This also was the approach taken House of Lords in **Lonrho Ltd v Shell Petroleum** (No.2) H.L. p.173 Lord Diplock at p.183 said:

> "My Lords, it is well settled by authority of this House in **Cutler v Wandsworth Stadium Ltd** [1949] A.C.398 that the question whether legislation which makes the doing or omitting to do a particular act a criminal offence renders the person guilty of such offence liable also in a civil action for damages at the suit of any person who thereby suffers loss or damage, is a question of construction of the legislation."

[27] Lord Diplock continued at p.185 as follows:

> "So one starts with the presumption laid down originally by Lord Tenterden C.J. in **Doe d. Murray v Bridges** [1831] 1B. & Ad. 847, 859, where he spoke of the "general rule" that "where an Act creates an obligation, and enforces the performance in a specified manner... that performance cannot be enforced in any other manner" - a statement that has been frequently cited with approval ever since, including on several occasions in speeches in this House.
>
> Where the only manner of enforcing performance for which the Act provides is prosecution for the criminal offence of failure to perform the statutory obligation or for contravening the statutory prohibition which the Act creates, there are two classes of exception to this general rule.
>
> The first is where upon the true construction of the Act it is apparent that the obligation or prohibition was imposed for the benefit or protection of a particular class of individuals.
>
> The second exception is where the statute creates a public right (i.e. a right to be enjoyed by all those of Her Majesty's subjects who wish to avail themselves of it) and a particular member of the public suffers what Brett J. in **Benjamin v Storr** (1874) L.R.9. C.P. 400, 407, described as "particular, direct, and substantial" damage "other and different from that which has common to all the rest of the public."

[28] This issue was further considered by the House of Lords in **X Minors v Bedforshire County Council** [1995] 2 A.C. 633. Lord Browne-Wilkinson said:

> "The basic proposition is that in the ordinary case a breach of statutory duty does not, by itself give rise to any private law cause of action. However a private law cause of action will arise if it can be shown, as a matter of construction of the statute that the statutory duty was imposed for the protection of a limited class of the public and that Parliament intended to confer on members of that class a private right of action for breach of the duty. There is no general rule be reference to which it can be decided whether a statute does create such a right of action but there are a number of indicators. If the statute provides no other remedy of its breach and the parliamentary intention to protect a limited class is shown, that indicates that there may be a private right of action since otherwise there is no method of securing the protection the statute was intended to confer. If the statute

> does provide some other means of enforcing the duty that will normally indicate that the statutory right was intended to be enforceable by those means and not by private right of action. However the mere existence of some other statutory remedy is not decisive. It is still possible to show that on the true construction of the statute the protected class was intended by Parliament to have a private remedy."

[29] It was submitted on behalf of the Applicant that the Applicant fell within the first exception – that upon a true construction of the Legislation it is apparent that the obligation or prohibition was imposed for the benefit or protection of a particular class of individuals such as the Applicant.

[30] I will examine the various legislation referred to by the Applicant.

The National Parks Act

[31] This Act makes provision for the establishment of marine national parks and terrestrial national parks. It also makes provision for the establishment of an Authority who is responsible for the general management of all national parks, streams, springs, swamps, waterfalls, waterpools and beaches. Section 23 (1) prohibits inter alia any person subject to some exception from mining, quarrying, drilling or removing any minerals from a national park, or performing any act or engage in any activity likely to destroy, endanger or disturb wildlife.

[32] Section 23(2) makes contravention of section 23(1) a criminal offence and fixes a penalty of ten thousand dollars or a term of imprisonment of one year. Section 25 provides for any Authorized Officer to enforce the provisions of the Act, an authorized officer being a national park officer or members of the Police Force. Sections 25, 27, and 30 gives an authorized officer the power to arrest without warrant, stop, search and seize any vessel, boat equipment etc, persons suspected of committing an offence under the Act and to prosecute such persons. Section 31 makes provision for the Minister to compound offences.

[33] The purpose of the Act is to protect, preserve and manage the physical and ecological resources of the areas that have be designated as national parks. Even with the most general interpretation of the National Parks Act it cannot be said that the prohibitions in the Act were imposed for the benefit or protection of a particular class of individual who have an interest in preserving the biodiversity and ecological integrity of Saint Vincent and the Grenadines.

[34] Prior to the enactment of the National Parks Act, the Fisheries Act made provision for the management and development of the fishery resources of Saint Vincent and the Grenadines. The Fisheries Act made provision for the establishment of marine reserves and for special conservation measures to be applicable within those reserves. Section 22(2) (b,c) of the Act provides that:

"Any person who in any marine reserve, without permission granted under subsection (3)-:

(b) takes or destroys any flora and fauna other than fish

(c) dredges or extracts sand or gravel, discharges or deposits waste or any other polluting matter, or in any way disturbs, alters or destroys the natural environment;... is guilty of an offence and liable to a fine of one thousand dollars.

[35] Section 32 makes specific provisions for Authorised Officers to enforce the provisions of the Act. Section 33 gives the Authorised Officers power to stop, search and seize vessels, and vehicles believed to have been used in the contravention of the Act.

[36] The Wildlife Protection Act makes provisions for the protection of wildlife in Saint Vincent and the Grenadines. Wildlife is given a very wide meaning, it includes mammals, birds and their eggs, frogs and their eggs, reptiles, fishes, their fry and eggs and crustaceans. Provisions are made for the establishment of wildlife reserves and for the management and protection of the reserves.

[37] Section 11 of the Act creates and creates an offence where a person hunts in a wildlife reserve, the penalty is a fine of two thousand dollars and in the case of a subsequent

offence the fine is four thousand dollars and to imprisonment for one year. Similarly Section 13 creates an offence for hunting a protected wildlife with a similar fine as made in Section 11.

[38] Section 24 makes provisions for enforcement of the Act by Wildlife Protection Officers who are public officers appointed under Section 4 and 5 and Police Officers of the rank of Sergeant and above.

[39] The parties to the SPAW convention and the Protecal agree to take steps to protect, preserve and manage the flora and fauna in their State. These steps include establishment of Protected Areas, implementation of specific protection measures, for the protected areas and planning and management regimes for the protected areas.

[40] Having reviewed the legislation and the SPAW Convention and Protocol, I am of the opinion that the obligation and prohibition of the Legislation and Convention were not imposed for the benefit or protection of a particular class of individuals such as the Applicant but in the general interest of the society. The purpose of the Legislation and Convention is to put in place a legal framework for the protection, preservation and management of the ecosystems and biodiversity of Saint Vincent and the Grenadines for the benefit of the general society of Saint Vincent and the Grenadines. The legislation created prohibitions and fixed a penalty for contravention of the Legislation and provided special means of enforcement by specified persons. It is settled law that the Attorney-General could obtain an injunction to prevent the commission of a criminal offence.

[41] The legislation creates specific provisions for enforcement of any contravention of prohibition of the Legislation. The legislation names the persons who can enforce the Legislation. Provision is made specifically to include the Police Force as persons authorised to enforce the Legislation.

[42] In view of the above I find that the Applicant does not fall within the first exception. The Applicant quite rightly did not submit that it fell within the second exception. I find that the Applicant does not have a cause of action.

[43] The establishment of an association to promote environmental democracy, public participation, conservation and the enforcement of environmental legislation does not give the association tenurial rights over the national resources of the State. No authority to the contrary has been referred to the Court.

[44] It is ordered:

(a) The injunction granted on November 5, 2010 is hereby discharged.

(b) The trustees of the Applicant, Paul Lewis, Marlon Hills, Sylvia Sutherland and Matthew Harvey shall pay each Respondent cost in the sum of $750.00.

.....

Gertel Thom
HIGH COURT JUDGE