EASTERN CARIBBEAN SUPREME COURT

IN THE COURT OF APPEAL

SAINT LUCIA

SLUHCVAP2015/0016

BETWEEN:

THE ATTORNEY GENERAL

Appellant

and

[1] ALLEN CHASTANET
[2] KENNETH CAZAUBON

Respondents

Before:

The Hon. Mr. Davidson Kelvin Baptiste	Justice of Appeal
The Hon. Mde. Louise Esther Blenman	Justice of Appeal
The Hon. Mr. Paul Webster	Justice of Appeal [Ag.]

Appearances:

Mr. Anthony Astaphan SC, with him, Mr. Leslie Mondesir and instructed by Mr. Dwight Lay, Senior Crown Counsel for the Appellant
Mr. Garth Patterson QC, with him, Mrs. Petra Jeffrey-Nelson for the First Respondent
Mr. Alberton Richelieu for the Second Respondent

2015: October 29.
2016: July 4.

Civil Appeal – Locus standi – Jurisdiction – Breach of trust – Misfeasance in public office – Ownership of funds – Whether the learned judge erred in deciding the issue of locus standi as a preliminary issue based on pleadings without benefit of full trial – Whether learned judge erred in striking out amended statement of claim which had been overtaken by further amended statement of claim.

On 10th December 2013, the Attorney General filed a claim, which was amended on 21st January 2014, against former Government minister, Mr. Allen Chastanet and former

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Chairman of the Soufriere Town Council, Mr. Kenneth Cazaubon in which several allegations were made. Chief among those were that Mr. Chastanet, while a minister of Government and a candidate for the United Workers Party ("UWP") requested, advised, received, permitted or acquiesced in the expenditure of the sum of $38,119.00 of public funds of the Council for the unlawful purpose of a campaign and political event for his personal and the political benefit of his political party, the UWP. Those funds were raised by the Government of Saint Lucia for specific community projects from the Government of the Republic of China (Taiwan). It was also alleged that Mr. Chastanet knew or ought to have known or was recklessly indifferent to the fact that the conduct in question was unlawful and that as a consequence, he acted in a manner that amounted to a breach of his fiduciary duties as a minister of Government, bad faith and/or misfeasance in public office. It was further alleged that Mr. Cazaubon, as Chairman of the Council, abdicated his authority and acted in breach of his fiduciary duties when he acted on the request, instruction or direction of Mr. Chastanet and gave instructions to pay or caused the Council to pay public funds for the unlawful purpose of meeting expenses of a campaign and political event. It is notable that the funds were deposited into the Council's account and were paid out of that account. Of significance is the fact that there was no clear pleading that the monies expended belonged to the Government of Saint Lucia and as a result ownership of the funds was in issue. In light of this, Mr. Chastanet, on 7th January 2014, filed an application to strike out the entire claim filed by the appellant on the basis that the Court lacked jurisdiction to hear the claim in so far as the appellant lacked standing to pursue the claim. Mr. Chastanet then amended his application to strike out the claim. That application came on for hearing on 5th December 2014 and on the same date the appellant sought and obtained leave to further amend its pleadings. Pursuant to the leave granted, the appellant further amended the statement of claim on 23rd April 2015 so as to assert the Government of Saint Lucia's ownership of the monies. No defence or amended defence or additional affidavits were ever filed in reply to the further amended statement of claim.

There is no indication that the learned judge was aware of the further amended statement of claim before he rendered his judgment. The learned judge focused exclusively on the amended claim and made several findings of fact based on those pleadings notwithstanding that the further amended statement of claim had overtaken the amended statement of claim. It is important to note that the learned judge made those findings before any evidence was taken in the trial. The learned judge found that the Attorney General did not have locus standi to bring the claim and struck it out on that basis and also ordered costs against the Attorney General. The Attorney General, dissatisfied with the decision, has appealed on several grounds. The central issue in this appeal is whether the learned judge erred in striking out the amended statement of claim on the basis that the Attorney General had no standing to bring the claim in view of the fact that the amended claim had been overtaken by the further amended statement of claim. The Attorney General argues that there was no basis to strike out the claim on the ground of jurisdiction. She argues that by virtue of the Crown Proceedings Act she can institute civil proceedings on behalf of the Crown and thus has legal standing to bring a claim to recover Government's property. The respondents strenuously resist the appeal and argue among other things that the learned judge was correct in striking out the claim on the basis that

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Attorney General lacked standing to bring the claim and relies on provisions of the Local Authorities Ordinance to show that the Council is a separate legal entity.

Held: allowing the appeal, setting aside the judgment of the learned judge, remitting the further amended claim to be case managed by a different judge and ordering each party bear its own costs, that:

1. **Per Blenman JA, Baptiste JA:**

   Where pleadings, having been further amended are filed and served, the issue of whether or not a cause of action arises on the amended pleadings is not a live one. The filing of a further amended statement of claim would effectively bring an end to an application to strike out the amended claim. In view of the fact that there is no indication that the learned judge was aware that the further amended statement of claim had been filed, his decision on the strike out application in relation to the amended claim cannot be sustained.

   Per Webster JA (dissenting):

   In this case, the further amended statement of claim was filed and was therefore before the learned judge when he was preparing his judgment even though he did not refer to it in his judgment. Accordingly, it cannot be said that the judge did not consider the new pleadings. In any event, based on the way that the judge dealt with the issue of the ownership of the sum of $38,119.00 and his findings in the judgment, the new pleadings did not make a difference to his consideration of the issue.

2. A court which has to hear and determine a case must satisfy itself that it has jurisdiction so to do. The term jurisdiction is wide in meaning and encompasses not only the territorial context but whether the court is clothed with the power and authority to pronounce on a dispute between the parties. The court has the inherent jurisdiction to ensure the proper parties are before it whether or not the matter that is engaging its attention is one of public or private law. The jurisdiction of the court and the standing of a claimant are therefore inextricably linked.

   Garthwaite v Garthwaite [1964] 2 All ER 233 applied; **Broadmoor Hospital Authority and another v R** [1999] All ER (D) 1466 applied; **Re S(Hospital Patient) Courts Jurisdiction** [1996] Fam.1 applied.

3. A statement of claim is not suitable for striking out if it raises a serious issue of fact which can only be properly determined by hearing oral evidence. The remedy of striking out is a nuclear option and should only be utilised in cases where the pleadings are incurably bad. Where there are pleadings by the claimant that monies belonged to the Crown and the defendant takes issue with that allegation, the matter can only be properly resolved after a full ventilation of the issue at trial.

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4. As a general rule, it is unsuitable for a court to make a determination on complex issues of mixed fact and law solely on pleadings where witness statements have not been filed, disclosure has not been completed and the persons who provided the witness statement have not been subjected to cross examination to seek their credibility or test the veracity of their statements. It was therefore not open to the learned judge to conclude that that he was not required to look at witness statements or wait to see the evidence that would emerge during the trial but instead could have determined the issue of the ownership of the funds based entirely on the pleadings. In any event the application was inappropriate for the exercise of the court's power to strike out under Part 26 of the **Civil Procedure Rules 2000**.

   Ian Peters v Robert George Spencer ANUHCVAP2009/0016 (delivered 22nd December 2009, unreported) followed; **East Caribbean Flour Mills Limited v Ormiston Ken Boyea** and **Eastern Caribbean Flour Mills Limited and Hudson William** SVGHCVAP2006/0012 (delivered 16th July 2007, unreported) followed; **McPhilemy v Times Newspapers Ltd and others** [1999] 3 All ER 775 applied;

5. **Per Webster JA:**

   Where a serious justiciable issue is brought before the court by a party with a genuine and legitimate interest in obtaining a decision against an adverse party, the court will not allow legal niceties to bar such a party from seeking relief. The present case concerns serious issues of public importance; accordingly, the Government's standing to challenge the conduct of the respondents should not be determined on a preliminary objection to the court's jurisdiction.

   Re S. (Hospital Patient) Courts Jurisdiction [1996] Fam.1 applied.

JUDGMENT

Introduction

[1] **BLENMAN JA**: This is an appeal by the Attorney General against the written judgment of the learned judge dated 26th May 2015. In that judgment the learned judge struck out the amended claim form and amended statement of claim brought by the Attorney General against former Government minister, Mr. Allen Chastanet and former Chairman of the Soufriere Town Council ("The Council"), Mr. Kenneth Cazaubon, on the ground that the Attorney General had no locus standi to bring the action. The learned judge also ordered costs against the Attorney General. However, of significance is the fact that, prior to rendering his judgment on the

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strike out application, the learned judge had granted leave to the Attorney General to further amend the amended statement of claim. Acting pursuant to the leave granted, the Attorney General filed and served a further amended statement of claim before the judgment on the strike out application was rendered. However, there is no indication that the learned judge had sight of the further amended statement of claim before he rendered his judgment. Nor is there anything to indicate that either side brought the relevant documents to the learned judge's attention. Indeed, the learned judge did not refer to the fact that the amended statement of claim had been overtaken by the further amended statement of claim. The learned judge focused exclusively on the amended claim form and the amended statement of claim and proceeded to give judgment on those earlier pleadings which had been overtaken by the further amended statement of claim.

[2] The Attorney General is dissatisfied with the judgment and has appealed on several grounds. Mr. Chastanet and Mr. Cazaubon strenuously resist the appeal.

Issues

[3] The issues that arise for determination are as follows:

a) Whether the learned judge erred in deciding the issues of locus standi and jurisdiction based entirely on the pleadings.[1]

b) Whether the learned judge erred in deciding the issues of locus standi and jurisdiction without paying regard to the further amended statement of claim.

c) Whether the learned judge erred in deciding the issues that were joined between the parties based on the pleadings in particular the issues of misfeasance in public office.

d) Whether the learned judge erred in holding that the Attorney General had no locus standi to pursue the alleged tort of misfeasance in public office.

[1] See para. 4 of notice of appeal filed on 8th July 2015.

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e) Whether the learned judge erred in referring to the amended statement of claim in circumstances where it had been overtaken by the further amended statement of claim.

[4] On 10th December 2013, the Attorney General filed a claim form and statement of claim which was amended on 21st January 2014 and on 5th December 2014, against Mr. Allen Chastanet and Mr. Kenneth Cazaubon in which several allegations were made. Chief among those were that Mr. Chastanet, while a minister of Government and a candidate for the United Workers Party ("UWP") requested, advised, received, permitted or acquiesced in the expenditure of the sum of $38,119.00 of public funds of the Council for the unlawful purpose of a campaign and political event for his personal and the political benefit of his political party, the UWP. It was further alleged that Mr. Chastanet knew or ought to have known or was recklessly indifferent to the fact that the conduct in question was unlawful. Consequently, he acted in a manner that amounted to a breach of his fiduciary duties as a minister of Government, bad faith and/or misfeasance in public office.

[5] The claim in relation to Mr. Cazaubon was that he, while Chairman of the Council at the request of, or on the advice of, or with the express knowledge or acquiescence of Mr. Chastanet, caused the Council to pay public funds for the unlawful purpose of a campaign and political events for the personal and political benefit of Mr. Chastanet and/or the benefit of his political party.

[6] Against that backdrop, the Attorney General sought the following reliefs:-

a) A declaration that Mr. Chastanet's and Mr. Cazaubon's actions amounted to breach of fiduciary duty, bad faith and/or misfeasance in public office;

b) Damages for breach of fiduciary duty, bad faith and/or misfeasance in public office;

c) An order that they account for and repay the sum of $38,119.00.

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[7] In the statement of claim, the Attorney General averred that the Cabinet of the Government of Saint Lucia for the period 2007 to 28th November 2011 chaired by the then Prime Minister, Honourable Mr. Stephenson King decided and implemented a policy of seeking funding from the Government of the Republic of China (Taiwan) whereby funds were distributed directly or indirectly to the various village, town or district councils or development foundations or committees. The policy and practice required that funds be requested from the Government of the Republic of China (Taiwan) by Honourable Mr. Stephenson King.

[8] Mr. Chastanet filed an application to strike out the claim form and the statement of claim on the basis that the High Court lacked the jurisdiction to hear the claim since the Attorney General had no locus standi.

[9] The Attorney General therefore caused the claim form and the statement of claim to be amended on 21st January 2014. The material aspects of the claim form and statement of claim that were amended were that Mr. Chastanet requested, advised, received, permitted or acquiesced in the expenditure of public funds, in particular the sum of $38,119.00 for the unlawful purpose of a campaign and political benefit or the benefit of his party, the UWP and that he knew or ought to have known that the money was given to the Council by or on behalf of the Government of Saint Lucia for the execution of specific community projects. It was also averred that Mr. Chastanet knew or ought to have known or acted with wilful blindness or reckless disregard as to whether his conduct in question was unlawful and would likely cause the improper and unlawful expenditure and loss of public funds.

[10] In the amended claim form and statement of claim, it was alleged that Mr. Cazaubon, as Chairman of the Council, abdicated his authority and acted in breach of his fiduciary duties when he acted on the request, instruction or direction of Mr. Chastanet and gave instructions to pay or caused the Council or Town clerk (acting) to pay public funds, which Mr. Cazaubon knew or ought to have known was given to the Council by or on behalf of the Government of Saint Lucia for

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community projects, for the unlawful purpose of meeting expenses of a campaign and political event for a personal and political benefit of Mr. Chastanet and/or for the benefit of the UWP.

[11] The reliefs claimed were also amended and in so far as they are material, they are:

a) A declaration that the defendant's actions were in bad faith and/or constitute misfeasance in public office;

b) Damages for breach of fiduciary duty, bad faith and/or misfeasance in public office.

[12] The amended statement of claim contained substantial amendments. However, I do not think that any useful purpose will be served if I were to chronicle the amendments for the reason which will become apparent shortly. Suffice it to say that Mr. Chastanet amended his application to strike out the claim and statement of claim and further affidavit in support of his application.

[13] Mr. Cazaubon filed a defence to the claim against him. He subsequently also filed an application to strike out.

[14] In the amended notice of application to strike out the claim, Mr. Chastanet sought the following orders:[2]

a) A declaration pursuant to rule 9.7 of the Civil Procedure Rules 2000 ("CPR") that this Honourable Court has no jurisdiction to hear and determine the claimant's claim against the first defendant (him).

b) An order pursuant to CPR 26.3 that the claimant's claim against the first defendant be struck out in its entirety, and that the claim form and statement of claim filed herein be amended accordingly.

[2] Amended notice of application filed on 13th January 2014.

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c) An order that summary judgment be entered against the claimant dismissing the claim as it pertains to the first defendant.

d) Alternatively, in the event that the claim form and/or statement of claim is not struck out in its entirety, an order that (i) the proceedings herein be stayed so as to enable the first defendant to make an application, within 28 days of the order, for leave to apply for judicial review of the claimant's decision to institute those proceedings against the first defendant on the grounds that the decision was unreasonable, in excess of the jurisdiction of the claimant and or amounted to an abuse of the claimant's powers as Attorney General; and (ii) the time limited for the first defendant to file and serve its defence to the claimant's claim be extended to 28 days after the date of the hearing and determination of this application to strike out the claimant's claim or 28 days after the date of the hearing and determination of any application made by the first Defendant for judicial review, and

e) An order that the claimant do pay the first defendant costs of and incidental to this application.

I propose now to address the application to strike out.

Application to strike out

[15] On 10th October 2014, the application to strike out the claim was heard by the learned judge and the transcript of the proceedings is very helpful in this regard. The main thrust of Mr. Chastanet's complaint was that the first claim had asserted that the monies were the Council's monies. He complained that the amended claim form and amended statement of claim do not state that the monies belonged to the Crown but rather they posit that the monies in issue were public monies. Queen's Counsel, Mr. Garth Patterson, who appeared both at first instance and on appeal, argued that the amended claim form and the amended statement of claim are equivocal since they did not state categorically that the monies belonged to the Crown. He argued that unless the Crown can prove that the monies belonged to it and it has suffered loss, the Attorney General had no right to sue on behalf of

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the Crown. Once the Attorney General had no locus standi, it is axiomatic that the court had no jurisdiction to hear the amended claim and it should have been struck out.

[16] Mr. Astaphan SC, who appeared before the learned judge and in this appeal, argued that the money belonged to the Crown and that the Crown had made the money available to Council and that this latter fact could not in any way change the character of the money (Mr. Patterson QC objected to these submissions, on the basis that it was not pleaded). There was quite a bit of exchanges between Mr. Anthony Astaphan SC and the court with the former arguing that if the pleadings were untidy they could have still been tidied up by amendments since the first case management conference had not been held. Mr. Astaphan SC advanced several other arguments as to why the claim should not have been struck out, however they are not germane.

[17] The learned judge pointed out to Mr. Astaphan SC at page 82 of the transcript[3] that there was no clear pleading that the money belonged to the Government of Saint Lucia. Mr. Astaphan SC agreed that it was not clearly pleaded.[4] Mr. Astaphan SC proceeded to make submissions to the learned judge to the effect that the funds belonged to the Government of Saint Lucia. Mr. Patterson QC objected on the ground that this was not pleaded. However, Mr. Astaphan SC reiterated that case management conference had not been held so that they could have amended the pleadings yet again so as to make it clear that the funds belonged to the Government.

[18] After much discussion the learned judge adjourned with the consent of Queen's Counsel and Senior Counsel to 5th December 2014.

[19] The application to strike out came on for hearing on 5th December 2014 and thereafter the judgment was reserved.

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[3] Transcript of proceedings dated 10th October 2014.
[4] See p. 82 of transcript of Proceedings dated 10th October 2014, lines 21-25.

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[20] On 23rd April 2015, the Attorney General filed a further amended statement of claim. At paragraph 7 of the further amended statement of claim, it was pleaded that the funds were public monies which belonged to the Crown/Government of Saint Lucia (hereinafter "public funds or monies").

[21] For the sake of convenience, I will delve more in detail into the relevant amendments when the appeal is dealt with. It is sufficient however to indicate that there were substantial amendments to the particulars of the claim aimed at establishing that the monies allegedly used on Mr. Chastanet's behalf for this political purpose belonged to the Government of Saint Lucia.

[22] The learned judge rendered his judgment after the amended claim form and amended statement of claim had been further amended as to assert the Government's ownership of the monies. In fairness to the learned judge there is no indication as to whether the further amended statement of claim were brought to the his attention, but be that as it may, the judge in his decision made a number of findings of fact based on the pleadings and having heard submissions from learned Queen's Counsel and Senior Counsel. It is important to note that the claim had not reached the stage of the case management conference and there was no evidence taken in the trial – in a word the witness had not testified. In spite of this, the learned judge made findings of fact on the pleadings.[5]

[23] I will now look at the further amended statement of claim in some detail.

[24] The further amended statement of claim states that the public funds were intended to be used for projects identified or approved by the Prime Minister.

[25] At paragraph 16 it is states that

> "between 2007 and 2011 the Soufriere Town Council received significant funds from the Central Government and the Government of the Republic of China (Taiwan) purportedly for the implementation and execution of various public and community projects in various constituencies."

[5] Several of the findings of fact that the judge made are challenged on this appeal. In the interest of maintaining the coherence of the judgment they are not treated with any specificity.

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[26] Paragraph 17 states that 'these funds, which were public monies, were not deposited in funds or accounts under the control of the Financial Secretary and Accountant General required by 30 (1) of the Local Authorities Ordinance.'

[27] Paragraph 19 states that 'the general election in Saint Lucia was held on the 28th day of November 2011.'

[28] Paragraph 20 indicates that Mr. Chastanet and the UWP of which Mr. Chastanet is an integral part, organised a rally or event in Soufriere on 1st November 2011 for his benefit. The main purpose of the event or rally was to promote or launch Mr. Chastanet as a candidate and/or to promote his campaign in order to assist him in winning the constituency of Soufriere so as to be elected as a Member of Parliament.

[29] Paragraph 20 provides extensive amended particulars from i to xi which purport to indicate substantially that the purpose of the rally was to launch Mr. Chastanet as a candidate and to support the Attorney General's contention that the monies used were public monies[6]. It is sufficient to indicate that the particulars speak to the nature of the event or rally that was held and states that even though it was supposed to be in relation to the light ceremony, it was in fact an integral part of a political event - the introduction of a political event which was followed immediately by another political event for Mr. Chastanet.

[30] The particulars further indicate that at the rally members of the cabinet wore their party colour and t-shirts bore the symbol and name of the UWP.

[31] Paragraph 22 indicates that a committee of public officers commissioned by the Cabinet of Saint Lucia conducted a review of the financial operations of the Town, village and rural councils which indicated improper and unlawful conduct on the part of ministers or Members of Parliament.

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[6] In my view nothing would be famed from repeating verbatim these very extensive paragraphs of alleged misuse of funds.

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[32] Paragraph 26 states that Mr. Cazaubon was interviewed during the review and that reliance will be placed on the statements and admissions that he made.

[33] Paragraph 27 says that the Council expended significant public funds for this event. More specifically, the sum of $38,119.00 of public funds was expended for the benefit and advice of Mr. Chastanet.

[34] Paragraph 28 provides particulars of the way in which the alleged sum of $38,119.00 was utilised.

[35] Paragraph 31 purports to provide extensive particulars of the alleged breach of fiduciary duty, bad faith and misfeasance by Mr. Chastanet.

[36] Paragraph 33 details the alleged acts of misfeasance, bad faith of trust by Mr. Cazaubon.

I turn now to the judgment.

Judgment Below

[37] By way of emphasis there is nothing to indicate that Queen's Counsel or Senior Counsel adverted the court's attention to the fact that a further amended statement of claim had been filed.

[38] The court identified one of the issues to be resolved as whether it should have entertained the application to strike out at this stage of the proceedings. In so doing the court examined the issue of jurisdiction. At paragraph 21 of the judgment the learned judge stated:

> "Where there is an application that the Claimant has no locus standi the court may adopt the view that the application may be heard to establish locus standi. The courts in this region have dealt with locus standi at trial or conversely as a preliminary application. In this case the preliminary issue has been raised. In my view in this case it is properly raised as a preliminary issue because the matter as argued can be determined on the pleadings and the law."

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[39] The learned judge said this at paragraph 22 of the judgment:

> "In my view there is no need to wait for case management in circumstances such as this because the entire disposition can be determined on the law and the pleadings. I therefore do not agree that the court should not hear and determine this application at this stage of the pleadings. Indeed the same pleadings and arguments would be before the court at trial.

[40] At paragraph 33 of the judgment the learned judge said this:

> "It is therefore evident that even though there is agreement between three of the judges of the CCJ that the Attorney General can sue in tort on the behalf of the Crown as a corporation emanation, there is no majority agreement on the issue of the crown's right to sue pursuant to its parens patriae powers and there is strong dissent as to the right to sue for misfeasance in public office."

[41] The learned judge said the following at paragraph 35:

> "The Caribbean Court of Justice (CCJ) extended the known jurisprudence on misfeasance in public office in the case of **Marin** and no doubt this is highly persuasive. But this court is not bound by this decision. Indeed if one follows the argument in the case of two of the judges were of the view that the only other case in which the AG was seen to act in this manner was the decision in **Southern Developers Ltd v AG of Antigua and Barbuda** (2007) HCVAP 2006/020A where the court and counsel involved took it for granted that the attorney general had the right to pursue such a case."

[42] In paragraph 36 the learned judge said the following:

> "I conclude that in spite of **Marin** there is no binding authority on this court which states that the Attorney General has the authority to sue the Applicant for the tort of misfeasance in public office. However if there is such authority in my view, the issue would turn on the matter of the ownership of the money spent for the November 1st rally."

[43] In paragraph 51 the learned judge stated:

> "Having outlined the pleadings above, I will explain my conclusion that the pleadings do not make out a case that the funds used by the 1st Defendant were public funds."

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[44] The learned judge at paragraph 52 said:

> Firstly the pleadings allege that the Ministry of Finance gave the Town Councils and Committees etc. sums of money. In the case of the Soufriere Town Council it was alleged that the Town Council opened a bank account. At no time do the pleadings allege that the source of the funds which entered the bank account were known to the Claimant and the expenditure on the rally was from the account."

[45] At paragraph 54 the learned judge opined:

> There is an allegation that the policy of the UWP was to permit Ministers, Town Councils and Committees and others to indulge in unauthorized expenditure. But there is no linkage to this general policy and the rally in question other than by broad allegations of the funds being public funds. In other words the justification for the factual allegations that the money spent was taken from a fund of monies donated by the Government of the Republic of China (Taiwan) was the sweeping painting of all funds in the possession of the Town Councils as Public Funds even though the pleadings refer to money received from The Government of the Republic of China (Taiwan) and "others"."

[46] The learned judge stated at paragraph 56 as follows:

> "But it is evident that the policy outlined specifically circumvented the statutory provisions referred to in the pleadings. The money was given to the Councils etc. and not to the Treasurer (Financial Secretary and Accountant General). Someone must have concluded that the Treasurer was not entitled to it. The intention of the policy was to give the money received to certain persons. Why is money received and handled in that way to be described as public funds? And how does it remain public funds when it is not deposited in any fund recognised by law as a public fund?"

[47] At paragraph 57 the learned judge stated:

> "When linked with the fact that the pleadings do not disclose a specific allegation related to the source of the funds spent on the rally, it is evident that there is no pleading which show how this money could have been considered funds of any person or entity other than that who had possession of it and who spent it."

[48] The learned judge said this at paragraph 58:

> "In making these points I am not making a statement as to the morality or legality of the policy of the United Workers Party (UWP) Government. I am simply saying that the allegation that the funds were public is stated in

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declaratory terms but all of the specific allegations of facts point to a different conclusion.

[49] In paragraph 59, of his judgment the learned judge said the following:

> "I am also concerned that the court is being asked to rely on the evidence of an ad hoc review committee report of selected public servants none of whom have the statutory duty of reporting to parliament or reporting any discrepancy to the Director of Public Prosecutions. Based on the pleadings the Director of Audit for example who has such authority is conspicuously absent from the exercise."

[50] In paragraph 60 of his judgment the learned judge stated:

> "I therefore believe that based on the pleadings themselves and the statutory provisions referred to in the pleadings I am justified in saying that the pleadings do not lay down any factual basis for an inference to be adduced that these funds which were spent on the rally were public funds. If these pleadings do not accomplish this necessary goal in accordance with Part 8.7 of the CPR 2000 of presenting all of the facts of the facts relied on in the Claimant's case, future affidavits or witness statements cannot be used to accomplish this feat."

[51] In paragraph 61 the learned judge said:

> "I also conclude that based on the pleadings the monies spent as though they were part of what is colloquially referred to as a "slush fund". Consequently the "slush fund" may have been spent as intended. No doubt this was a vulgar and socially destructive way of going about funding community projects and an election campaign, but that does not make the money spent, public funds."

[52] The learned judge stated at paragraph 62:

> "Finally I am of the view that the driving force behind this claim was not the illegality of the defendant's acts but the fact that the monies were perceived to have been spent in such a way (the Soufriere lighting ceremony being a small part of it) that only persons of political dispensation were allowed to benefit."

[53] At paragraph 63 the learned judge said:

> The public outcry that inspired the action does not appear to have referred to any law being broken but to the largess that was being shared out prior to the general elections to UWP supporters."

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[54] At paragraph 69 the learned judge stated:

> "The result of the aforesaid analysis is that the claimant cannot have locus standi to sue the 1st Defendant for misfeasance in public office. The claimant cannot prove a loss of public funds based on the pleadings because there is nothing pleaded that connects the funds spent on the rally to public funds."

[55] The learned judge stated at paragraph 70 as follows:

> "Indeed it is probably to the Minister of Finance at the time that one should go to fully comprehend this policy that resulted in the expenditure which took place and which forms the basis of this claim. Secondly it is to the Soufriere Town Council that one should go to discover whether there was a loss suffered by sponsorship or support of the rally of 1st November, 2011."

[56] At paragraph 71 the learned judge stated:

> "Consequently I see no reason to find in this case that the Attorney General has the right, under the law by which this court is bound, to sue the Applicants/First and Second Defendants for misfeasance in public office. I hold that the Attorney General has no locus standi to bring this action against the Defendants and the Claim for misfeasance in public office must therefore be dismissed with costs awarded to the Applicants first and second defendants pursuant to Part 65 of the CPR 2000 or to be agreed."

The Appellant's case on appeal

[57] Learned Senior Counsel, Mr. Astaphan, argued that the learned judge erred in not referring to the further amended statement of claim. He, stated that the Attorney General's case on appeal is that:

i. There was no basis to strike out on the ground of jurisdiction;

ii. The learned judge erred when he struck out the claim on non-jurisdictional grounds, and in spite of the pleadings as amended, the evidence on record, the statute and laws of Saint Lucia;

iii. The learned judge's judgment is manifestly wrong, and has short circuited the Attorney General's rights under the CPR 2000, right of access to the High Court and the protection of the law.

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[58] Mr. Astaphan SC told this Court that on 10th October 2014, Mr. Garth Patterson QC, made it clear that the court must first determine the question of jurisdiction before it could proceed to deal with the issue of whether the respondents were entitled to summary judgment or that the claim disclosed no cause of action. Mr. Astaphan SC was specifically asked by the learned judge whether he agreed that the court could not proceed any further until the issue of jurisdiction was decided. He responded that he was 'almost obliged' to agree with Mr. Patterson QC. Thereafter, Mr. Patterson QC proceeded to address the Court on the issue of jurisdiction at considerable length.

[59] Mr. Astaphan SC said that on at least two (2) occasions the application before the learned judge did not raise or concern issues of jurisdiction. He submitted that what the application and submissions did raise, at best, were simply pleadings issues, which could be cured by an amendment.

[60] Mr. Astaphan SC, said that the learned judge disagreed with him. The learned judge made it clear that as far as he was concerned the pleadings did not expressly and clearly state that the monies were owned by the Crown and that the Crown had suffered loss. Senior Counsel accepted that the pleadings did not expressly state the aforementioned matters however he was relying on the inferences of fact or questions of construction and law. The learned judge's position was that as the pleadings were not clear, he could not allow counsel to pursue his submissions that the monies were in fact owned by the Crown and that the Crown had suffered loss.

[61] Following the exchanges with the learned judge, Mr. Astaphan SC requested an adjournment to discuss the way forward as regards further amendment with the Attorney General. The adjournment was granted by the learned judge.

[62] On 27th November 2014, the Attorney General filed an application to further amend the amended statement of claim as follows:

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> "The further amendment of the Amended Claim Form and Amended Statement of Claim is necessary to:
> Specifically describe 'funds' or 'monies as public monies belonging to the Crown and/or Government of Saint Lucia therefore to ensure that the status and ownership of the monies in question in the Claimant's claim is accurately set out and does not create any ambiguity or uncertainty as to the status or ownership of the monies or the nature and basis of the Attorney General's claim;
> Assert that as a matter of law the Soufriere Town Council is an agent or emanation of the State, and that any loss caused to it is loss to the State of Government of Saint Lucia".

[63] On 5th December 2014, the learned judge granted the application to amend. Following the grant of the amendment, on 23rd April 2015, the further amended statement of claim was filed and served on the respondents. No defence or amended defence or additional affidavits were ever filed in reply to the further amended statement of claim. Subsequent to the filing and service of the further amended statement of claim there was a short hearing before the learned judge. .

[64] Mr. Astaphan SC reminded this Court that on 26th May 2015 the learned judge delivered his ruling. Significantly no mention was made of the pleadings or the amendments granted by His Lordship. The Attorney General has appealed the findings of the learned judge set out in paragraph 1 of the draft notice of appeal.

The Issue of jurisdiction

[65] Mr. Astaphan SC posited that there ought to be no question that the application on the jurisdiction ground was misconceived. He stated that the High Court has jurisdiction once the acts and/or loss complained of occurred in Saint Lucia. This Court is a Court of unlimited jurisdiction. Consequently, an allegation of unclear of inadequate pleadings in relation to matters occurring in Saint Lucia does not give rise to an issue of jurisdiction. The High Court has jurisdiction under the Rules to cure pleading defects, if any, by amendments right up to and including case management. This ought especially to be the case where no witness statements, disclosure or case management conference have been filed or taken place.[7]

[7] Real Times Limited v Renwar Investments and Others [2014] UKPC 14.

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[66] Mr. Astaphan SC submitted that the issues of who actually owns the public monies or may have suffered loss, and the status of the Council created under the Local Authorities Ordinance[8] ("LAO"), are not jurisdictional issues. They are issues of fact and law which the High Court is fully armed with jurisdiction to determine on the evidence and law at a trial. However no witness statements had been filed.[9]

Summary of learned judge's significant errors

[67] The learned judge ruled that he was not required to consider or look at witness statements. Consequently, the learned judge did not refer to nor consider the evidence on record, or which may have become available to the Attorney General at trial. In so doing, the learned judge wrongly disregarded very relevant material, and deprived the Attorney General of her right to be heard on the summary judgment application, of her procedural rights under CPR 2000 and the law, and the right to have her claim determined after witness statements, disclosure, and cross-examination at trial.[10] Mr. Astaphan SC also referred to **Swain v Hillman and Another**[11] and **Saint Lucia Motor and General Insurance Co. Limited v Paterson Modeste**.[12]

[68] Mr. Astaphan SC posited that the learned judge purported to conduct what was in substance a mini-trial. He decided the important issue of standing and other issues on an application on jurisdiction and as preliminary issues. These issues including the important issue of standing ought not to have been determined as preliminary issues by the learned judge. His Lordship therefore trespassed

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[8] Cap 239 Saint Lucia Revised Ordinances, 1957 (Now Cap. 17.19 of the Revised Laws of Saint Lucia 2008).
[9] See East Caribbean Flour Mills Limited v Ormiston Ken Boyea & Eastern Caribbean Flour Mills Limited v Hudson Williams SVGHCVAP2006/0012 (delivered 16th July 2007, unreported): a party is entitled to provide further particulars of his or her claim in witness statements.
[10] See the judgment of Lord Carswell in Western Broadcasting Services v Edward Seaga [2007] UKPC 19 at para. 17 and the judgment of Mitchell JA at para. 22 in Tawney Assets Limited v East Pine Management et al (BVIHCVAP2012/0007(Delivered 17th September 2012, unreported) where he said:

> "The exercise of this jurisdiction deprives a party of his right to a trial and of his ability to strengthen his case through the process of disclosure, and other procedures such as requests for further information. The court must therefore be persuaded either that a party is unable to prove the allegations made against the other party; or that the statement of case is incurably bad; or that it discloses no reasonable ground for bringing or defending the case; or that it has no real prospect of succeeding at trial."

[11] (2001) 1 All ER 91.
[12] SLUHCVAP2009/0008 (delivered 11th January 2010, unreported) at paras. 5,16 to 19, 20 to 22.

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beyond the issue before him. Instead of addressing the singular issue of jurisdiction the learned judge proceeded to make 'findings' on the pleadings including that the funds in issue were not public monies raises and/or owned by the State, and that the Soufriere Town Council was not part of the State or agent or emanation of the State. He also sought to distinguish the decision of the CCJ in **Florencio Marin and another v The Attorney General**.[13] In so finding, the learned judge failed to apply the learning that the issue of standing ought not to be determined as a preliminary issue, and the rule of law therefore deprived the Attorney General of her right to be heard, and a fair hearing. Mr. Astaphan SC relied on **Baldwin Spencer v The Attorney General of Antigua and Barbuda et al**,[14] **Elwardo Lynch v Ralph Gonsalves**[15] and **Next Level Engineering v The Attorney General of Antigua and Barbuda et al**[16] in support of this argument.

Specific Submissions

[69] Mr. Astaphan SC made the following specific submissions. He reiterated that following the grant of the application to amend paragraph 7 of the further amended statement of claim the Attorney General specifically stated that the funds in question were public monies belonging to the Crown/Government of Saint Lucia. At paragraph 31 (xi) the Attorney General pleaded that Mr. Chastanet by his conduct and/or omission committed the tort of misfeasance in public office and caused loss to the Crown and Government of Saint Lucia. The pleadings issues raised by Mr. Cazaubon as supporting their application on the pleadings became redundant or meaningless. Nevertheless Mr. Cazaubon insisted, and the learned judge made findings purportedly on the inadequacy of the pleadings.

[70] Mr. Astaphan SC submitted that the learned judge ought not to have done so for a number of reasons including the fact that the Attorney General was merely obliged to set out the general nature of her case, and to flesh it out in her witness

[13] [2011] CCJ 9 (AJ).
[14] ANUHCVAP1997/0020A (delivered 8th April 1998, unreported).
[15] SVGHCVAP2005/0018 (Delivered 18th September 2006, unreported).
[16] ANUHCVAP2007/0017 (delivered 14th July 2008, unreported) at paras 3 and 4.

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statements.[17] But the Attorney General was denied this opportunity when the learned judge ruled that that evidence on record or witness statements were irrelevant and unhelpful.

[71] Mr. Astaphan SC asserted that the learned judge erred and/or misdirected himself when he ruled that the Attorney General's pleadings did not allege that the monies or funds were public funds which belonged to the State, or that Mr. Chastanet knew the source of the funds which were in an account in the name of the Council or were funds from the Government of the Republic of China (Taiwan) and/or there was no connection at the request of Mr. Chastanet to public funds or monies raised by the Government of Saint Lucia from Taiwan when the Attorney General had in fact pleaded that

i. The Council was funded substantially if not solely by the Government of Saint Lucia;

ii. The funds in question were 'public monies belonging to the Crown/Government of Saint Lucia;

iii. The funds were raised by the Government of Saint Lucia from Taiwan for a specific governmental or public purpose to be executed by the Council as part of the Government or agent of the Crown/State and were therefore public funds or monies owned by the Crown/State;

iv. More specifically the Attorney General pleaded that the respondents knew that the monies were public monies raised from and sent by Taiwan at the request of the Government of Saint Lucia, and that Mr. Chastanet had told Mr. Cazaubon that the money had in fact come from Taiwan.

[72] Further, the legislative framework in Saint Lucia including the statutory definition of 'public monies' showed that the Crown or Government raised and owned the funds, and required the Council to account for and the Crown or Government to

[17] See Eastern Caribbean Flour Mills Limited v Ormiston Ken Boyea & Eastern Caribbean Flour Mills Limited v Hudson Williams SVGHCVAP2006/0012 (delivered 16th July 2007, unreported).

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control these monies. This placed the obligation on the Council to account for the expenditure of all of these monies. This control and obligation to account could only lead to one conclusion; these monies were public monies which belonged to the State or Government. Therefore, the fact that the monies were deposited in an account in violation of the laws of Saint Lucia by the Council or some other person was not relevant to the issue of whether the funds were public funds or monies owned by the Crown or Government. In other words, the opening of an account especially in breach of the legislative provisions could not and did not transform the status of the funds from public funds or monies into the private funds of the Council. Consequently, this issue was not a pleading issue but an evidential and legal one. It does not appear that any of this was considered by the learned judge.

[73] Mr. Astaphan SC stated that the learned judge's ruling was wrong for the additional reason that it deprived the learned judge, as shown below, of looking at and considering just how hopeless the respondent's responses to the claim were, and the multiple contradictions in the evidence which demanded further investigation at a trial; for example:

i. Mr. Chastanet's failure to file a defence;

ii. The wholly inadequate defence of the Mr. Cazaubon, and the evidence on record before him;

iii. The fact that Mr. Chastanet had not denied the specific allegations and particulars made against him, and instead crafted his affidavit in support of his application to strike out vague and evasive generalities, which as shown below were contradicted by the evidence and therefore could not possibly be true;

iv. The fact that the Mr. Cazaubon's defence and affidavit were pregnant with admissions and/or incurably bad. He too failed to deny the specific allegations and particulars made against him and

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v. The failure of the respondents to reply to the further amended statement of claim.

[74] Further, the learned judge manifestly failed to properly consider that the respondents have not denied that the monies were requested by the Government and sent by Taiwan to the Council at the request of the Government for a specific purpose; the respondents discussed the expenditure and that Mr. Chastanet requested the expenditure of the monies and the second respondent instructed that the monies be paid for what the Attorney General alleges was a political event; the statements made by former officers of the Council.

[75] Next, Mr. Astaphan SC adverted that the learned judge also failed to properly consider that the first respondent's affidavit evidence was frontally and expressly contradicted by the undisputed affidavit and documentary evidence before him. Regrettably these contradictions were not considered by His Lordship. For example:

a) At paragraph 5 of his affidavit, Mr. Chastanet denied he was launched as a candidate on 15th November 2011. However, this was contradicted by the affidavit evidence of Mr. Charles Joseph. It was also contradicted by the receipts and other documentation of the Council showing that the expenditure of public monies in question was for a 'launch' or 'launching ceremony' and not for a 'Lighting Ceremony' as alleged by the first respondent.

b) At paragraph 8 of the first respondent's affidavit he alleged that a 'political event' followed the 'Lighting Ceremony', this political event was followed immediately by a free concert by Third World, and that he paid 30,000.00 USD for the Third World Band 'and all associated costs associated with the concert were funded by my own personal funds and contributions.' Quite apart from the complete absence of any separation of events, the affidavit evidence of Mr. Charles Joseph, and the public statements of

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then Ambassador Chou of Taiwan, this evidence was flatly contradicted by

i. The statements of Kem Andrew, the Assistant Clerk of the Council, about the purpose of the payments.

ii. The statements or admissions of the second respondent.

iii. The documentary evidence which clearly identified that payment was made by the Council for or for the benefit of the Third World Band.

[76] Mr. Astaphan SC argued that the learned judge seriously erred when he purported to make findings and dismissed the Attorney General's claim without regard to the matters and evidence set out above. More particularly, as the learned judge failed to properly consider that these contradictions on the evidence and record before him raised serious issues of fact which required further investigation at a trial. Therefore, unless the judgment is set aside a grave unfairness or injustice will be caused to the Attorney General and public interest.[18]

The status of the Council; part of the State and Government or Private entity

[77] Mr. Astaphan SC maintained that the status of the Council is not a jurisdictional issue. In any event, he makes the following submissions.

[78] Mr. Astaphan SC brought to the Court's attention the title to the Ordinance which says 'The Ordinance to provide for the Establishment of the Local Authorities for Towns and Villages, and to make Provision in other respects for the Government of Towns and Villages'.[19] In addition, the Ordinance has vested these Local Authorities to make by-laws and levy taxes. Provisions are made for elections. However, the Minister appoints the members of the Council, and the Council is

[18] See Bolton Pharmaceuticals Co 100 Ltd v Doncaster Pharmaceutical Group Ltd (2007) FSR 63 held (1) and (2) and paras. 4 to 18, p. 67 to 69 and S v Gloucestershire County Council; L v Tower Hamlets London Borough Council and another [2003] 3 All ER 346 at held (2) and p. 371 to 373 and JD Wetherspoon plc v Harris and others [2013] 1 WLR 3296 at paras 10 to 14, p. 3299 to 3300.

[19] See sections 4 and 5 of the Local Authorities Ordinance, Cap 239 Saint Lucia Revised Ordinances, 1957.

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funded substantially, if not totally by funds or monies raised by or from the Government. The Town Council had raised no money on its own and was funded substantially, if not exclusively from public monies or funds from the Treasury or raised by the Government for specific purposes to be executed on behalf of the Government. These are all indicia of a State of Government apparatus or agent or emanation of the Crown or State. He stated that none of these provisions were considered by the learned judge.

[79] At the hearing before the learned judge, Mr. Garth Patterson QC relied on a number of authorities on statutory bodies and crown immunity, and sought to interpret **The Barbuda Council v Antigua Aggregates Limited and Sandco Limited**[20] as supporting his position. The authorities relied on dealt with the commercial or non-governmental authorities or commercial functions of statutory boards. None concerned a local government authority or council established by an Act of Parliament and expressly made part of the Government of a State.

[80] Further, Mr. Garth Patterson QC referred His Lordship to paragraphs 19 to 21 of the judgment of Hugh Rawlins JA in **The Barbuda Council v Antigua Aggregates Limited and Sandco Limited**. In these paragraphs His Lordship held that the Barbuda Council was not part of the Crown when exercising its commercial functions in collecting the tonnage for sand shipped from Barbuda. There are no commercial functions or activities in this case. However, Mr. Garth Patterson QC did not go on to refer the learned judge to paragraphs 10 to 17 of the judgment of Rawlins JA where he discussed the test to be applied in determining whether a Council is an agent or part of the Crown. Nor did Queen's Counsel refer the learned judge to paragraphs 24 to 26 of the judgment where Rawlins JA said:

> "[24] The Council is not a local authority in the nature of a docks board or aviation authority whose functions are mainly commercial. In paragraph 12 of this judgment, I stated that I was inclined to think of the Council as an arm of the government of Antigua and Barbuda constituted as it was by section 123(1) of the Constitution of Antigua and Barbuda. The

[20] ANUHCVAP2005/0011 (delivered 14th May 2007, unreported).

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> Constitution has created the Council as an organ of government for Barbuda. Section 3(1) of the Barbuda Act established the Council to administer the system of local government for the island. Paragraphs 19 to 21 of this judgment provide a synopsis of aspects of the functions and responsibilities of the Council. They are uniquely governmental functions. For the purpose of the present case, they include the power, pursuant to section 24(2) of the Barbuda Act, to raise revenue in Barbuda under various national statutes, including the Tonnage Act, to finance the administration of that island.
>
> [25] Although the executive does not control the Council's functions there is a very close governmental facility and working relationship between them, even in financial matters, as section 22 of the Barbuda Act and aspects of paragraph 20 of this judgment indicate. Additionally, while rules 6, 7, 8 and 9 of the regulations made under the Barbuda Act empower the Council to allot, distribute and divide village lands between villagers; to set apart lands for villagers to use as provision grounds, and to reserve lands for highways and paths, these functions may only be carried out with the sanction and approval of the Cabinet of the central government.
>
> [26] It is therefore my view that the Council is a sufficiently intimate "emanation" from the Crown to attract the contagion of the Crown's immunity. Additionally, undoubtedly, the collection of taxes, including tonnage dues, is a transaction that is a Crown purpose. Tonnage dues are collected under the same national statutes pursuant to which the states' revenues are collected. They are expended for the purpose of administering the government of the island of Barbuda. These are purposes with which the central government would normally have been charged if the Constitution and the Barbuda Act did not entrust this duty to the Council."

[81] Mr. Astaphan SC argued that the learned judge did not properly consider any of the above provisions, law or authorities. Instead he held that the Soufriere Town Council was not part of the State or an agent or emanation of the State because it was not made such by the Constitution of Saint Lucia. His Lordship therefore distinguished **The Barbuda Council v Antigua Aggregates Limited and Sandco Limited** on the ground that the Constitution of Saint Lucia did not provide for the Council to be part of the Government or Crown.

[82] Mr. Astaphan SC maintained that the learned judge erred when he failed to properly consider the legislation and authorities and the fact that the Parliament can by ordinary legislation create a local Authority and make it part of the Government, and/or an agent or emanation of the State. This is why the **Finance**

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(Administration) Act[21] and the **Audit Act**[22] (and others) expressly require the Council to account for public monies and expenditure as every other part or body of the Government of Saint Lucia. He posited that the learned judge therefore committed a grave error or serious misdirection when he distinguished **The Barbuda Council v Antigua Aggregates Limited and Sandco Limited** in the manner in which he did, and when he held that the Soufriere Council was not part of the Government of Saint Lucia or an agent or emanation of the Crown or State. He submitted that the Council was in fact made by the Government of Saint Lucia by an Act of Parliament, and there was no permissible or rational basis on which the learned judge could have disregarded the clear terms of LAO and other Acts of Parliament which control and regulate the Council as part of the Government and State of Saint Lucia.

[83] For the reasons set out above, Mr. Astaphan SC submitted that the appeal ought to be allowed with costs.

Respondent's Submissions

[84] Mr. Garth Patterson QC in the court below, raised as a preliminary issue the question of the court's jurisdiction to grant the relief being claimed by the Attorney General and it was agreed by all parties, including the Attorney General, that the jurisdiction point should be dealt with as a preliminary issue. The basis of Mr. Chastanet's jurisdictional challenge was two-fold:

i. The Attorney General's lack of standing to bring the claims, or some of them; and

The wrong procedure had been deployed by the Attorney General if this was, in fact, a claim based in public law.

Locus Standi

[85] Mr. Garth Patterson QC stated that lack of standing is a bar to jurisdiction. If a claimant has no standing to bring a claim, then the court lacks jurisdiction to grant

[21] Cap 15.01 Revised Laws of Saint Lucia 2008.
[22] Cap 15.19 Revised Laws of Saint Lucia 2008.

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him relief. He highlighted that in the case of **In re S. (Hospital Patient: Court's jurisdiction),**[23] where the question of the plaintiff's standing to bring the claim was in issue, Sir Thomas Bingham M.R., at page 8 said:

> "The sole issue before us is a procedural question concerning the standing of the plaintiff to invoke the jurisdiction of the court to grant declaratory relief. This is an important question going to the jurisdiction of the court, for if the plaintiff has no standing to claim declaratory relief the court has no jurisdiction to grant it."

[86] He submitted the case of **The Queen on the Application of Gareth v Coventry City Council**,[24] where the judicial review application of the claimant was dismissed for want of standing. In dismissing the claim, judge Thornton QC said:

> "17. I am clear from all the material that is available to me that the claimant has no claim for judicial review. Judicial review is a badge that is used to describe the process by way of public law in which the court, in appropriate cases, reviews and, if necessary, sets aside or, in rare cases, varies orders, directions or other decisions of public bodies, be those public bodies inferior tribunals or courts inferior is used in its public sense as meaning lesser and lower in status and hierarchy from the Administrative Court - - or public bodies such as Coventry City Council. This court has no power, it had no jurisdiction, to do anything other than in a public law context when an application is made by somebody with standing that is to say somebody who is entitled to challenge a public law decisions.
>
> "18. Now, it is true that Coventry City Council is a public body but it is not a public body that has in this particular case taken any decision that directly affects the claimant, so that the claimant is unable to show that this court has jurisdiction both because there is no decision that he is seeking to quash which has been taken by the local authority that directly affects him and because he has no standing in public law sense to seek to challenge any decision that the council or its social work team had taken in relation to the affairs of other people wo are or may be affected by those decisions."

[87] Mr. Patterson QC said that the Court in **Essence Bars (London) Limited T/as Essence v Wimbledon Magistrates Court and Royal Borough of Kingston upon Thames**[25] also held that the lack of standing affects jurisdiction. Wilkie J said:

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[23] [1996] Fam.1.
[24] [2011] EWHC 3856 (Admin).
[25] [2014] EWHC 4334 (Admin).

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> "As the notice of appeal stood on 3rd November 2014, a legal person, FL, was 'before the court' in the sense that it was the party intending to appeal, but had no standing to do so. The appeal, accordingly, was fundamentally flawed. The court had no jurisdiction to entertain an appeal against the decision sought to be appealed brought by the legal person which was "before the court," in that sense, having given notice of intending to bring it."[26]

[88] A clear statement to this effect was also made in the opinion of Mr. Advocate General Jaaskinen in **Swiss Confederation v European Commission**,[27] delivered on 13th September 2012 where he said:

> "Locus standi, like any other absolute bar to pleadings, is a procedural requirement which, if it is not satisfied, means that the Court has no jurisdiction to deal with the substance of the case."

[89] As to the Attorney General's lack of standing to bring the misfeasance claim, Mr. Chastanet argued this point on two principal bases, namely:

i. The Attorney General of Saint Lucia has no power to bring a private law action in the public interest; and

ii. The Attorney General, acting as legal representative of the Crown, had no standing to institute or maintain the claim for misfeasance in public office against the first respondent, since the funds allegedly misappropriated were not the property of the Crown.

[90] Mr. Patterson QC argued that the Attorney General, in her capacity as legal representative of the Crown, lacks standing to maintain private law claims and to bring the claim for misfeasance. He said that the Attorney General, suing in her nominal capacity, can only institute civil proceedings on behalf of the Crown pursuant to section 13(1) of the **Crown Proceedings Act**.[28] The effect of the provisions of the **Crown Proceedings Act** is to vest in the Attorney General the right to institute civil proceedings on behalf of the State for the recovery of damages or economic loss suffered by the State.

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[26] At para. 49
[27] C-547/10P [2013] 2 CMLR 1472.
[28] Cap 2.05, Revised Laws of Saint Lucia 2008.

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[91] The claims relate entirely to the alleged misuse of funds belonging to the Council, which the Attorney General alleges represented a combination of monies received by the Council from Central Government and the Government of the Republic of China (Taiwan) purportedly for the implementation and execution of various public and community projects in the various constituencies in or about November 2011.[29]

[92] Mr. Patterson QC said that the Attorney General has no legal standing to institute civil proceedings in private law in respect of the misuse of, or to recover, the funds, since the funds were not the property of the Crown. The funds were the property of the Council, despite the Attorney General's assertions to the contrary.

[93] Mr. Patterson QC stated that at all material times in 2011, the Council was a body corporate that had been established under section 4 of the LAO. By virtue of section 11 of the LAO, the Council was entitled 'to make contracts and to sue and be sued in its name to acquire, hold, mortgage and dispose of all property real or personal, moveable or immovable.'

[94] Mr. Patterson QC relied on section 15(1) of the LAO which provides:

> "It shall be the duty of the local authority to provide for the collection and expenditure for the benefit of the urban, village or rural district under its jurisdiction of monies authorised by law to be raised for such purpose; to provide for the good government and improvement of the district; and to enforce the provisions of this or any other Ordinance relative thereto and also all regulations and by-laws made under this or any other Ordinance."

[95] Section 30(1) of the LAO further states:

> "All monies due to a local authority shall be paid to the Treasurer and shall form a part of a fund to be called the Urban, Village or Rural District Fund which shall be kept distinct in the Treasurer's books from all other accounts."

[96] Mr. Patterson QC said that by virtue of section 31(1) of the LAO, the Urban, Village or Rural Fund (the "Fund") was to be composed of monies derived from the

[29] See paragraph 16 of the Further Amended Statement of Claim filed 23rd April 2014.

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various sources mentioned, including, 'all other sources from which the same may lawfully be derived, including any vote or contribution from the general revenue of the Colony.'

[97] Mr. Chastanet, in his affidavit filed on 7th January 2014 in support of the application stated that the Taiwanese Government had donated funds to the Council for the purpose of erecting lights at the stadium in Soufriere. There has been no suggestion by the Attorney General that those funds were not lawfully derived. Consequently, the donated funds became the exclusive property of the Council, and formed part of the Fund, and fell to be administered by the Council in accordance with the applicable provisions of the LAO.

[98] Mr. Chastanet has further deposed that the Council in fact used the proceeds of the Taiwanese donation to erect the lights at the Soufriere Stadium. He stated that:

> "on 15th November 2011 the Soufriere Town Council, in conjunction with the Taiwanese Government, organised and promoted a Lighting Ceremony at the Soufriere Stadium, to officially launch the lights… The Ambassador Tom Chou of the Embassy of the Republic of China/Taiwan attended the event as its co-host. The ceremony consisted of the official launch of the lights and an entertainment package organised by the Soufriere Town Council and others. A stage and tents were erected for the event, and a fireworks display was also commissioned as part of the Lighting Ceremony.[30]

[99] Mr. Patterson QC argued that the expenditure by the Council pertaining to this Lighting Ceremony was made from the Fund. To the extent that the Attorney General is alleging the misuse of those funds, Mr. Chastanet said that, by virtue of the provisions of the LAO, only the Council had the legal standing to sue for the recovery of those funds or to otherwise enforce the provisions of the LAO as it pertained to the use or expenditure of those funds.

[30] Affidavit of Allen Chastanet filed 7th January 2014 at para.7.

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[100] He said that the power of the Attorney General to institute civil proceedings on behalf of the Crown is statutory. Consequently, in that capacity, the Attorney General may do so only to protect the legal and proprietary interests of the State. In its corporate emanation, the Crown, by virtue of the **Crown Proceedings Act**, has the same rights and is subject to the same liabilities as an ordinary citizen.

[101] Mr. Patterson QC submitted the case of **Florencio Marin and another v The Attorney General** where by a majority decision, the Caribbean Court of Justice ("CCJ") ruled that the Attorney General of Belize, on behalf of the State, had the legal standing to sue the Defendants for misfeasance in public office. Wit J stated:

> "[71] It is clear that the State can and does own property, make contracts or suffer damages. It is equally clear that it can and does initiate civil proceedings against others. It can sue these others in tort, in contract and in equity just like anyone else. The State can do this because of its corporate structure sui generis (the State, being the repository of sovereignty, is of course much more than a "corporation"). This corporate structure, however, sometimes limits the State in the actions it can take. For example, the State cannot sue for assault or battery because it has no physical body. And it cannot claim aggravated damages as it has no feelings. But clearly, the State as land owner can claim private law remedies for trespass or nuisance. The State as the owner of assets can sue for negligence and conversion. The State can also suffer economic loss (which it claims it has suffered in this case). And, finally, the State can sue anyone in tort, including its own public officers; for example, if the public officer drives a State–owned car in a reckless manner and causes the car to crash, he can be sued by the State for negligence and when he steals or embezzles the car he can be sued for conversion."

Per Anderson J:

> "[119] As I have earlier alluded, this case is proceeding on the basis that financial loss was sustained by the State of Belize as a result of the tortious abuse of public power by the Appellants. The Attorney General is clearly the proper official to bring civil proceedings to recover loss sustained by the State as a result of tortious conduct. Section 42(5) of the Constitution (Chapter 4) requires that legal proceedings for or against the State must be taken, in the case of civil proceedings, in the name of the Attorney General. Section 19(1) of the Crown Proceedings Act (Chapter 167) confers jurisdiction on the court to make any order and to give appropriate relief in any civil proceedings by or against the Crown as could be made between subjects.

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> [120] The civil proceedings alluded to in the Constitution and legislation clearly include claims in tort. Tort claims are in the legislative language, proceedings to obtain relief by recovery of money or by way of damages: Section 21 of the Crown Proceedings Act (Chapter 167). In the Jamaican case of Attorney-General v Desnoes & Geddes, Ltd[107] [(1970) 15 WIR 492] the competence of the Attorney General to sue in negligence for damage to a State vehicle was stated in very emphatic terms by Fox JA:
>
> > 'The Attorney-General is entitled, and indeed is under a duty, to sue any person whose negligence has caused damage to a vehicle of the public works department. … If the negligence alleged was established, he would be entitled to a judgment.'[108] [1970) 15 WIR 492 at p.496]
>
> [121 Further, the State acting through the Attorney General, clearly has a sufficient interest in the subject-matter of the litigation to found legal standing to sue. The injury was caused to the State by the deliberate and wrongful underselling of State lands. In its corporate aspect the State in Belize is a corporation sole with its own legal personality and with capacity to own land and to sue in contract and in tort in respect of injury to that land. The Attorney General as representative of the State, has standing to sue in respect of damage caused by tortious injury to State lands: See British Columbia v Canadian Forest Products Ltd[109] [(2004) 240 DLR (4th) 1], where the Supreme Court of Canada allowed for recovery of damages in civil proceedings for negligence and public nuisance on the basis that the Crown's entitlement was that of a private landowner of a tract of forest. This case is a clear indication of judicial acceptance that the State, as parens patriae, may sue in tort to recover economic loss for harm cause to State property."

[102] The decision in **Marin** turned on the accepted basis that financial loss was sustained by the State of Belize as a result of the tortious abuse of the public by the appellants. There, the lands that were sold at an undervalue belonged to the State. The loss to the State was sustained as a result of the interference with the proprietary interests of the State. The CCJ held that the Attorney General had a sufficient interest in the matter since the affected property belonged to the State and the resulting loss was sustained by the State.

[103] Mr. Patterson QC stated however that in the present case, there is no interference with the property rights of, or financial loss to, the Crown. The Attorney General is asserting a right to sue for misfeasance based on the alleged loss sustained or expenditure incurred by the Council. The decisions in **Watkins**, **Three Rivers** and

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Marin make it clear that in the absence of proof of interference with the proprietary interests of the State, coupled with material damage, in the form of economic loss, sustained by the State, the tort was not actionable. In this vein, Bernard J in **Marin**, referring to the decision in **Three Rivers** said:

> "[52] Arguments against this have centred around dicta from Lord Hobhouse of Woodborough in the House of Lords to the effect that the tort is not generally actionable by any member of the public, and the plaintiff must have suffered loss specific to him and which is not suffered in common with the public in general. I understand this to mean that the plaintiff as an individual must prove economic loss suffered by him personally even though the public officer's abuse of power resulted in loss to other persons generally. Each plaintiff has to prove his own loss for which he is seeking compensation."

[104] Mr. Patterson QC said that these passages contain a common thread, that the Attorney General exercises the right to institute civil proceedings on behalf of the Crown for the purposes of protecting from infringement, or vindicating, the right of the Crown.

[105] He stated that in the realm of private law, the assertion of a right, or the infringement of legal interest, possessed by a claimant is critical to the success of a claim. It is axiomatic that a person with no sufficient interest in a cause or matter has no legal standing to institute proceedings. He argued that in this regard, the Crown is no different from any other litigant. Its ability to successfully maintain an action in tort or in equity for remedies in private law will be circumscribed by ordinary rules of procedure regarding legal standing.

[106] He submitted that unless, therefore, the Attorney General could establish that the right of the Crown had been infringed, or that there had been an interference with its legal or proprietary interests, then it is submitted the Crown, by the Attorney General, would have no sufficient interest, and no legal standing to bring the claims for private law remedies, and the misfeasance claim in particular. Consequently, the Court would have no jurisdiction to grant the Attorney General the relief being claimed.

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Misfeasance in Public Office

[107] Mr Patterson advocated that the essential ingredients of the tort of misfeasance in public office were stated in the locus classicus of **Three Rivers District Council v Bank of England**[31] as comprising the following:

i. The defendant must be a public officer;

ii. The acts complained of must have been done by the defendant in the exercise of his power as a public officer;

iii. The defendant's state of mind must have been either that of targeted malice, in that he intended by his conduct to injure a person or persons and he exercised his public powers for an ulterior or improper motive) or that of reckless indifference, in that he acted knowing that he has no power to do the act complained of and that the act would probably injure the plaintiff;

iv. The plaintiff must have a sufficient interest to found a legal standing to sue; and

v. The acts complained of must have caused damage to the plaintiff (which is a question of fact).

[108] In addition to this, he stated that it has been held that misfeasance in public office is not actionable without proof of special damage or loss to the plaintiff and the absence of any special damage caused, will be fatal to the claim: **Watkins v Secretary of State for the Home Department**.[32]

[109] Mr. Patterson QC contended that the decision in **Three Rivers** was followed by the Caribbean Court of Justice in **Marin v the Attorney General of Belize**, where the issue for determination was whether the State, acting by the Attorney General, had locus standi to bring an action against two former ministers of the Belize

[31] [2000] 3 All ER 1.
[32] [2006] 2 AC 395.

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government for the tort of misfeasance in public office. In rehearsing the principles expounded in **Three Rivers**, Bernard J said:

> "[61] The abundance of judicial dicta reflected in the cases on the tort of misfeasance demonstrates unequivocally its special nature and characteristics. Strict proof of its ingredients is required, these being establishing that a public officer abused power vested in him by virtue of his office whereby some person or entity with a sufficient interest to sue suffered consequential loss or damage."
>
> [67] …The question of proof of material damage in the tort of misfeasance is one of the main ingredients to ground liability without which no action on the tort can succeed; in fact, this being absent in *Watkins* it was doomed to fail, and was in that instance a fatal objection.
>
> [68] In the instant appeal, the novelty of the State being capable of suing under the tort is by no means fatal, but just widens the category of those entitled to sue for absence of power by a public officer as has been done before provided there is a sufficient interest to found standing, and economic loss has been established. At the end of the day it is the duty of the Attorney General to preserve the patrimony of Belize by recovering financial loss from those allegedly responsible for undervaluing national lands in their quest for personal financial gain."

[110] Bernard J further cautioned against abuse of the tort by the State:

> "[62] On the other hand, this Court must be acutely concerned about the tort being utilised indiscriminately for the settling of scores in a political environment and exposing public officers to actions that cannot be judicially sustained. It will be the duty of the courts to keep a watchful eye on this tort in order to avoid wanton use by a State seeking to combat the executive and administrative abuse of power by public officials."

[111] In examining the pleadings, it is clear that the Attorney General's claim for misfeasance was doomed to fail. Vital ingredients of the tort have not been established by the pleadings, or the evidence, so as to ground standing in the Attorney General to sue. In particular, the elements of sufficient, interest and economic loss sustained by the State, as distinct from the Council, are absent, and represent a fatal defect in the claim for misfeasance.

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Legal Standing and Economic Loss

[112] The decision in **Marin** turned on the accepted basis that financial loss was sustained by the State of Belize as a result of the tortious abuse of public by the appellants. There, the lands that were sold at an undervalue belonged to the State. The loss to the State was sustained as a result of the interference with the proprietary interests of the State. The CCJ held that the Attorney General had a sufficient interest in the matter since the affected property belonged to the State and the resulting loss was sustained by the State.

[113] In the present case, however, there is no interference with the property rights of, or financial loss to, the Crown. The Attorney General is asserting a right to sue for misfeasance based on the alleged loss sustained or expenditure incurred by the Council. The decisions in **Watkins**, **Three Rivers** and **Marin** make it clear that in the absence of proof of interference with the proprietary interests of the State, coupled with material damage, in the form of economic loss, sustained by the State, the tort was not actionable. In this vein, Bernard J in **Marin**, referring to the decision in **Three Rivers** said:

> "[52] Arguments against this have centred around dicta from Lord Hobhouse of Woodborough in the House of Lords to the effect that the tort is not generally actionable by any member of the public, and the plaintiff must have suffered loss specific to him and which is not suffered in common with the public in general. I understand this to mean that the plaintiff as an individual must prove economic loss suffered by him personally even though the public officer's abuse of power resulted in loss to other persons generally. Each plaintiff has to prove his own loss for which he is seeking compensation."

[114] Further, amendments were later made to plead specifically that the funds, which were variously described as "public funds" or "public monies", belonged to the Crown. Specifically, at paragraph 7 of the further amended statement of claim, the Attorney General pleads as follows:

> "The Cabinet of the Government of Saint Lucia for the period 2007 to November 28, 2011 chaired by the then Prime Minister Mr. Stephenson King decided on and implemented a policy of seeking funding from the Government of the Republic of China (Taiwan) whereby funds (being public monies belonging to the Crown/Government of Saint Lucia

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> (hereinafter 'public finds or monies') were distributed directly or indirectly to the various Village, Town or District Councils or Development Foundation or Committees purportedly for 'the implementation of community projects that are not included in the Capital Budget Programme of the Government of Saint Lucia that will be coordinated through the Office of the Prime Minister."

[115] However, no facts were pleaded, nor evidence adduced, to support that conclusion in law. In fact, the pleadings that the Taiwanese funds were distributed directly to the respective village and town councils is consistent with Mr. Chastanet's position that, when the funds were so received by the respective councils, they became the property of the respective councils by virtue of the provisions of the LAO.

Public Funds and Council Property

[116] Mr. Patterson QC submitted that the Attorney General's characterisation of the funds as "public funds" or "public monies" does not change the fact that they were property of the Council. Any assertion by the Attorney General to the contrary is disingenuous. In fact, in a written memorandum from the Attorney General to the Cabinet of ministers dated 22nd July 2012, the subject of which was, "Legal Opinion on Council Operations", the Attorney General confirmed that these funds were public funds that belonged to the Council. At page 2 of that Memorandum the Attorney General stated that:

> "By virtue of section 32(b) of the Constituency Councils Act however all rights, privileges and all liabilities and other obligations to which Councils were entitled under the repealed Acts were transferred to the Councils appointed under the new Act. This in effect preserves the right and entitlements of Councils to any funds to which they were previously entitled …. Any funds received by the Council as a donation or gift would have fallen within section 31(1)(f) of the now repealed Local Authorities Ordinance and would be vested in the Council and form part if the Urban Village or Rural District Fund…".

[117] He said that if the funds are the property of the Council, then, since the Council was a body corporate with a separate and independent existence from the Crown, the loss of the funds was a loss to the Council and not the Crown.

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Public monies not Crown Property

[118] The Attorney General argues that the legislative scheme of the LAO, the **Finance (Administration) Act** and the **Interpretation Ordinance** shows that monies raised by the Council by way of local taxation, or by the Central Government, for the Council are public monies which are subject to the control of the Government. The Attorney General's insistence, however, on characterising the Fund as "public monies" takes the case no further. It is indisputable that the Fund is a public fund that is held for public purposes.

[119] Mr. Patterson QC said that a detailed excursion by the Attorney General into the "legislative framework" is unnecessary and unhelpful, since it at best exposed the mechanics of logistics for accounting for and administering the fund. The fact that the Fund was required to be "paid to" the Accountant General and "kept distinct" from all other accounts in the books of the Accountant General, again, is in no way expositive on the question of ownership. Monies held on trust by a trustee in a trust account, or by an accountant in the accountant's trust account, or by a lawyer in a lawyer's client's account, do not lose their character once deposited to that account – they are trust funds held on the behalf of the true owner. The Accountant General held the Fund in the same capacity. The question, then, is, for whose benefit was the Fund so held? Who is the true owner?

[120] Mr. Patterson QC submitted that the Council was not an emanation or agent of the Crown, nor was it a part of the Government of Saint Lucia.

[121] He stated that the true issue, then, is whether the Council may be said to be an agent or servant of the Crown.

[122] The relationship between statutory corporations such as the Council described in **Halsbury's Laws of England** in the following way:

> "316. **Corporations and Crown status**
> The question whether a corporation is a servant or agent of the Crown depends on the degree of control which the Crown, through its ministers, may exercise over it in the performance of its duties. In the absence of any express statutory provision, the proper inference, at any rate in the

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> case of a commercial corporation, is that it acts in its own behalf, even though it is controlled to some extent by a government department. The fact that a minister of the Crown appoints the members of such a corporation, is entitled to require them to give him information and is entitled to give them directions of a general nature does not make the corporation his agent. The inference that a corporation acts on behalf of the Crown is more readily drawn where its functions are not commercial but are connected with matters such as the defence of the realm, which are essentially the province of government."[33]

[123] He contended that the Council undoubtedly fell within the ambit of the Ministry having responsibility for local government. The Cabinet of Ministers, or the relevant minister, as the case may be, had the right to exercise such powers as were conferred on the Governor in Council or the Governor respectively under the LAO. These included the power to :(i) determine the number of members of the Council; (ii) nominate some of the members of the Council; (iii) appoint the Chairman of the Council (iv) approve borrowing by the Council, (v) approve persons to be appointed by the Council as officers or clerk; (vi) approve the Budget of the Council; and (vii) remit taxes paid to the Council. These powers undoubtedly gave the minister or the Cabinet some degree of control over the Council.

[124] However, Mr. Patterson QC submitted that this degree of control was insufficient to constitute the Council as an agent of the Crown, since it was the members of the Council, not the minister or Cabinet, who were ultimately responsible for making all decisions relative to (a) the operations of the Council, (b) dealings with its priority and funds, (c) the performance and discharge of its statutory duties and functions. Neither the Cabinet nor the minister had the power to direct the Council regarding the use to which its funds were put, the property that it acquired or disposed of, the rates of taxes that it levied, or the works that it undertook or the amenities it provided for the benefit of the district within its jurisdiction.

[125] Mr. Patterson QC told this Court that the decision of the Eastern Caribbean Court of Appeal in **The Barbuda Council v Antigua Aggregates Limited and Sandco**

[33] Halsbury's Laws (5th edn., 2010) vol. 24, para 316.

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Limited, on which the Attorney General relied, is particularly instructive because it supports the position articulated above that the Council was not an agent of the Crown. The Barbuda council was a statutory body incorporated pursuant to section 123(1) of the **Antigua and Barbuda Constitution** to administer the functions of local government in Barbuda. It was clothed with the status of a body corporate with perpetual succession and a common seal and had the power to purchase and otherwise deal with land and other property.

[126] In holding that the Barbuda Council was an agent or servant of the Crown, Rawlins JA said:

> "[18] [Counsel for the Respondent] submitted that the Council is not an agent of the Crown and does not act on behalf of the Crown because, first, the executive exercises no control over the Council, and, second, the Council collects tonnage dues for its own purpose and benefit, rather than for the central government."

[127] Mr. Patterson QC stated that the Court of Appeal in that case went on to hold that the Barbuda Council was 'a sufficiently intimate emanation from the Crown as to attract the contagion of the Crown's immunity.' That ruling must be viewed in the very special and limited context of that case.

Appeal bound to fail even if errors made

[128] Mr. Patterson QC stated that the question of the Attorney General's lack of "locus standi" turned on the issue of ownership of the funds in question. Whether the funds were the property of the Council or the Crown was a question of law to be decided by the Court. The issue of standing is invariably dealt with as a preliminary issue, the parties all agreed that it should be decided as a preliminary issue, and the learned judge was entitled to decide it on the basis of the pleadings and the evidence before him.

[129] Mr. Patterson QC submitted that the pleadings and the evidence established the following uncontroverted facts:

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i. Monies were donated by the Taiwanese Government for the purpose of erecting lights at the stadium at Soufriere.

ii. Those monies were donated to the Council, were received by the Council and were used by the Council to erect lights at the stadium.

iii. At the conclusion of the project, the Council and the Taiwanese Government co-hosted a lighting ceremony held at the playing field.

iv. A stage and tents were erected for the event. The costs of the stage and tents were borne by the Council.

v. At the time Mr. Chastanet was the Minister of Tourism, a candidate for the constituency of Soufriere, and a member of the United Workers Party

vi. The Third World Band also performed that night.

[130] He said that that as a consequence even if the learned judge wrongly confirmed himself to the pleadings in deciding the issue, his conclusion that the funds were the property of the Council was the right one. Even assuming that the funds were in fact requested from the Taiwanese Government by the Government of Saint Lucia, which was specifically pleaded, this does not alter the legal conclusion as to ownership, since it is indisputable that the funds were intended to be paid to, and be administered by, the Council. It would have been no different if the funds had been paid by the Taiwanese Government to the Government of Saint Lucia, and then paid by the Government of Saint Lucia to the Council by way of subvention. The result would be the same, namely, that upon receipt by the Council, the donated funds became the property of the Council by operation of the provisions of the LAO.

[131] He argued that if the learned judge, in the exercise of his discretion, committed errors of law, then the Court of Appeal has the power to exercise its own original discretion in the matter. In **Hadmor Productions Ltd and Others v Hamilton and Others**,[34] Lord Diplock said:

[34] [1982] 1 All ER 1042 at p. 1046.

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> "The function of the appellate court is initially one of review only. It may set aside the judge's exercise of his discretion on the ground that it was based on a misunderstanding of the law or of the evidence before him or on an inference that particular facts existed or did not exist, which, although it was one that might legitimately have been drawn on the evidence that was before the judge, can be demonstrated to be wrong by further evidence that has become available by the time of the appeal, or on the ground that there has been a change of circumstances after the judge made his order that would have justified his acceding to an application to vary it. Since reasons given by judges for granting or refusing interlocutory injunctions may sometimes be sketchy, there may also be occasional cases where even though no erroneous assumption of law or fact can be identified the judge's decision to grant or refuse the injunction is so aberrant that it must be set aside on the ground that no reasonable judge regardful of his duty to act judicially could have reached it. It is only if and after the appellate court has reached the conclusion that the judge's exercise of his discretion must be set aside for one or other of these reasons that it becomes entitled to exercise an original discretion of its own."

[132] Mr. Patterson QC submitted that in the exercise of its own discretion, for all the reasons hereinbefore stated, this Honourable Court is bound to conclude, as the learned judge did, that the subject funds were the property of the Council, not the Crown, that the Attorney General lacked locus standi to maintain the claim against Mr. Chastanet for misfeasance in public office, and accordingly the court below lacked jurisdiction to grant the relief being claimed.

Jurisdiction in the territorial sense

[133] Mr. Patterson QC said that the Attorney General argued that the learned judge erred on the question of jurisdiction, because the court had jurisdiction in the territorial sense, since the acts complained of occurred in Saint Lucia. He stated that this is an irrelevant argument, since it was never posited by Mr. Chastanet that the Court lacked subject matter or in personam jurisdiction. While Mr. Chastanet erroneously referred to CPR 9.8 (which Mr. Chastanet conceded usually applies to the question of the Court's jurisdiction to hear the claim), the preliminary issue that was in fact argued proceeded, and was decided, on the basis of the Attorney General's lack of locus standi, which deprives the Court of jurisdiction to grant the relief being claimed.

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[134] He argued that in any event, it was never argued by the Attorney General in the court below that CPR 9.7 was inapplicable; nor did the learned judge decide the matter by reference to that rule; nor did the Attorney General at any stage of the proceedings in the court below argue that it was inappropriate to deal with the issue of locus standi at that preliminary stage.

[135] Mr. Patterson QC said that it is incompetent for the Attorney General to raise these arguments for the first time on appeal.

[136] As will be seen from the amended notice of application filed by Mr. Chastanet on 13th January 2014 and the transcript, Mr. Chastanet's jurisdictional arguments were not, in fact, grounded on the pleadings filed by the Attorney General. They turned mostly on the Attorney General's lack of standing to bring the claims. The question of standing was clearly a matter affecting the court's jurisdiction, and was not a question of pleadings.

[137] The arguments advanced before the learned judge, as it related to pleadings, were confined to the narrow question, which arose in the course of Mr. Astaphan SC's address in reply to the oral arguments advanced by Mr. Patterson QC, as to whether the Attorney General should be allowed to argue that the funds were the property of the Crown, when the same had never been pleaded.

[138] Mr. Patterson QC said that it is, therefore misleading and false to suggest that Mr. Chastanet's jurisdictional application was based on the defects in the pleadings. The assertion that the learned judge was wrong to strike the claim on non-jurisdictional grounds is also misconceived, since the learned judge's clear ruling was the Attorney General had no locus standi to bring the action, and this was clearly a matter pertaining to the court's jurisdiction.

[139] For the foregoing reasons Mr. Patterson QC submitted that the learned judge's conclusion that the Attorney General lacked standing to bring the claim for misfeasance in public office was correct, and the appeal should accordingly be dismissed.

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Second Respondent Submissions

Learned counsel Mr. Richelieu, on behalf of Mr.Cazaubon adopted the arguments that were advanced by Mr. Patterson QC.

Discussion and conclusion
Ground 1

[140] I propose to make some important general observations before addressing the crux of the arguments that have been ably advanced by Senior Counsel and Queen's Counsel.

[141] It is interesting to say the least that even though on 5th December 2014, the learned judge had granted the Attorney General leave to file and serve a further amended statement of claim that there was only reference to this fact by Mr. Astaphan SC. It is even more curious that notwithstanding the fact that the Attorney General filed and served the further amended claim and the further amended statement of claim on 23rd April 2015, well before the learned judge had rendered his judgment, the learned judge did not make any reference to those further documents in his written judgment.

[142] In the absence of any indication from either side that the learned judge was aware of the fact that the Attorney General had file a further statement of claim, at the very highest, I would have to presume that the learned judge was unaware that the Attorney General had filed the further amended claim and further amended statement of claim in compliance with the leave that the learned judge had granted. I am not prepared to accept that the learned judge having granted the Attorney General leave to file the further statement of claim simply ignored the documents. It seems to me that the learned judge's failure to address these very important pleadings must have been due to inadvertence on his part.

[143] Be that as it may, the mere fact that the further statement of claim was filed before the learned judge had rendered his decision and in the absence of any time limit

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within which the Attorney General ought to have filed the relevant documents, the learned judge would have been obliged to consider the further amended statement of claim had he been aware that it had been filed. It is evident that the further amended statement of claim had overtaken the amended pleadings that were filed.

[144] This state of events in my view serves to raise the issue of the usefulness of the learned judge having proceeded to render his judgment bearing in mind that he had granted the Attorney General leave to correct any defects in the pleadings as a consequence of the arguments that were made in the strike out application. It must be borne in mind that the application that engaged the learned judge's attention was an amended application by Mr. Chastanet to strike out the amended claim form and the amended statement of claim. In my view, the learned judge ought not to have granted leave to amend the pleadings which were the subject to a strike out application while at the same time proceeding to determine the strike out application. These two procedures cannot co-exist peaceably. By way of emphasis, there is no indication that the learned judge was even aware that the amended statement of claim had been further amended before he rendered his judgment. What was required was for the learned judge to have determined whether he was amenable to granting the Attorney General permission to further amend its claim and thereafter if permission was granted and the further amendment effected, it may well have been necessary for Mr. Chastanet to advise himself if he wished to challenge the further amended statement of claim.

[145] I will now address Mr. Astaphan SC's complaint that the learned judge proceeded to determine the amended application to strike out the amended claim form and the amended statement of claim even though the amended statement of claim had been overtaken by the filing of the further amended statement of claim. This approach led the learned judge to fall into error. I accept Mr. Astaphan SC's argument that the learned judge ought to have paid regard to the Attorney General's current pleadings in rendering the judgment.

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[146] In my view, once the latter pleadings had been filed and served in accordance with the leave that was granted by the learned judge, whether or not a cause of action arose on the amended claim and amended statement of claim was no longer a live issue. Indeed, the filing of the further amended statement of claim would have effectively brought an end to the application to strike out the amended claim. Cognisance must be paid to the fact that the attack was directed at the whole of the Attorney General's amended claim on the basis that it could not possibly succeed in law. The effect of the attack was to force the Attorney General to amend the pleadings instead of having it struck out. In so far as the amended statement of claim was further amended, it is clear to me that the application to strike the amended claim as distinct from the further amended statement of claim became otiose.

[147] The further amended statement of claim was filed with the leave of the learned judge. However, there is no indication on the record that the learned judge paid any regard to the further amended statement of claim or that counsel drew his attention to this document. In those peculiar circumstances, it is not open to an appellate court, which is not a court of original jurisdiction, to make any comments on the further amended statement of claim and the further amended claim since the learned judge did not give any consideration to it. The further amended statement of claim would therefore not become at large for an appellate court, as there is nothing on the record, which showed that the learned judge was aware of the extant document. It would be improper for an appellate court to comment on a document which concerned locus standi of the Attorney General when the Court did not have the benefit of the learned judge's views and comments on the further amended statement of claim.

[148] It was not open to the learned judge to pronounce on whether the amended claim and the amended statement of claim disclosed a cause of action in so far as they had been overtaken by the further amended statement of claim. It is unfortunate that the learned judge seemed to have been unaware of the further pleadings before rendering his judgment. In so far as the Attorney General's appeal is

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against the judgment that was rendered based on the amended statement of claim and amended claim as distinct from the further statement of claim and in so far as the complaint is that the learned judge did not refer to the current pleadings which are the further statement of claim, this ground of complaint has merit and the judgment of the learned judge is impeachable. The learned judge proceeded to pronounce on the pleadings that were filed by the Attorney General but were not the current pleadings upon which the issues were joined between the Attorney General, Mr. Chastanet and Mr. Cazaubon. The above conclusion is sufficient for me to dispose of the appeal and to order that the appeal be allowed and remit the further amended claim and the further amended statement of claim to be case managed by a different judge in accordance with the **Civil Procedure Rules 2000**.

[149] However, out of deference to learned Senior Counsel and Queen's Counsel who have addressed the other issues at length, I would briefly treat with the other grounds of appeal.

Ground 2

[150] It is the law that any court that has to hear and determine a case must satisfy itself that it has the jurisdiction to hear the case. Jurisdiction is not restricted to its territorial context but also includes the court's determination of whether or not the proper parties are before the court.[35] I do not for one moment accept Mr. Astaphan QC's argument that CPR 9.7 only speaks to jurisdiction in the territorial sense; neither am I of the view that once the alleged acts or omissions occurred within Saint Lucia that is the end to any issue/question of jurisdiction that can possibly arise in a trial. To the contrary, the term jurisdiction is wider in meaning and encompasses not only the territorial context but also whether the court is clothed with the authority to pronounce on the dispute between the two parties. This of necessity brings into sharp focus the corollary question of whether or not the proper parties are before the court. Indeed, it is axiomatic that a person with

[35] Garthwaite v Garthwaite [1964] 2 All ER 233 at p. 241.

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no sufficient interest in a cause or matter has no legal standing to institute proceedings.[36]

[151] Accordingly, I do not accept the argument proffered by learned Senior Counsel Mr. Astaphan to the effect that the issue of lack of jurisdiction would only have arisen in the territorial sense. Neither do I accept that once the alleged acts complained of occurred within Saint Lucia there could have been no issue of want of jurisdiction. In contradistinction, the arguments that were advanced by learned Queen's Counsel Mr. Patterson on this aspect are more attractive and persuasive. It is trite that if a claimant has no standing to bring a claim, the court will lack jurisdiction to grant him the reliefs claimed. The jurisdiction of the court and the standing of the claimant are inextricably linked to each other.[37]

[152] I accept Mr. Patterson QC's argument that the learned judge was not only required to satisfy himself that the court had jurisdiction in the territorial sense but in addition he was required to ensure that the party was filing the claim had standing to bring the claim. In fact, the law is well settled, the court has the inherent jurisdiction to ensure that the proper parties are before it and this is so whether or not the matter that is engaging its attention is one of public or private law.[38] It is usual to find that the determination of whether or not a court has jurisdiction to hear a particular matter is inextricably bound with the determination of whether or not the party who seeks to bring the claim is the proper party. This does not negate the fact that a court may have jurisdiction in the wider sense to entertain claims of a similar nature to that which is engaging the court's attention, however the particular individual who seeks to file the claim against the defendant has no standing to institute the claim.[39] I agree with Mr. Patterson QC that unless the Attorney General could have established that the rights of the Crown had been infringed or that there had been an interference with its legal or proprietary

[36] Broadmoor Hospital Authority and another v R [1999] All ER (D) 1466.
[37] In re S. (Hospital Patient: Court's jurisdiction) [1996] Fam.1.
[38] Broadmoor Hospital Authority and another v R [1999] All ER (D) 1466.at para. 20.
[39] Tehrani (AP) v Secretary of State for the Home Department (Scotland) [2006] UKHL 47 at para. 66.

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interests then the Attorney General would have no sufficient interest and no legal standing to bring the claim for private law remedies.

Ground 3

[153] I turn next to the learned judge's approach to the question of standing. There is no principle of law that stipulates that it is only in public law cases that the court is well advised to hear and determine before seeking to resolve the question of standing. To the contrary, in cases of contract law where the issue of proper party or standing arises, the court has taken the position in appropriate cases that it will determine whether the correct parties are before the court after the evidence has been adduced in order to be able to resolve the issue of whether the claimant had a contractual relationship with the defendant which is later breached.

[154] In the application before the learned judge, the question to be determined was whether or not the Attorney General had locus standi to institute the claim. This involved the court determining the complex factual matters and making findings of fact on critical questions such as whether or not the funds belonged to the Government of Saint Lucia as distinct from the Council. The critical issue was who owned the monies and whereas in the case below the issues were joined on this important aspect of the case, it simply was not open to the learned judge to make findings of fact on the pleadings. In any event, in the present circumstances where evidence was adduced on affidavit by both sides and the evidence controverted each other, it is impossible for any trier of fact to make any finding of fact as the learned judge purported to do in the absence of any cross-examination of the deponents with the arm of testing the veracity of the statements in the affidavits. The issue of the ownership of the monies could never be properly determined on the pleadings and law.

[155] In any event, where there are pleadings by the claimant that the monies belonged to the Crown and the defendant takes issue with the allegation, in my view an issue of mixed fact and law arises and this can only be properly resolved after a full ventilation of the issue at a trial. This Court in **East Caribbean Flour Mills**

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Limited v Ormiston Ken Boyea and **Eastern Caribbean Flour Mills Limited and Hudson William** enjoined courts not to have extensive pleadings but rather the pleadings must allow the other side to know the case it has to meet.[40] I have no doubt that the learned judge clearly fell into error when he held that he was not required to look at written statements or wait to see the evidence that would emerge during the trial but instead could have determined the issue of the ownership of the funds based entirely on the pleadings.[41] I accept Mr. Astaphan's SC argument that the learned trial judge was ill equipped to determine those critical issues of facts based solely on the pleadings. This was a situation that was imminently suitable for determination after the witness statements had been filed, disclosure had been completed and the persons who provided the witness statement had been subjected to cross examination to seek their credibility or otherwise.

[156] The remedy of striking out is a nuclear option and should only be utilised in cases where the pleadings are incurably bad.[42] I agree with Mr. Astaphan SC that the learned judge went too far and made several findings of fact on matters that were not before him for determination. In fact, several of the statements that were made by the learned judge have no basis and amount to no more than speculation. In addition, I fail to see how on an application to strike out it was possible for the learned judge to make several of the statements that he made both about the previous government and about the Attorney General, some of which seem to be in the nature of findings of fact. In **Ian Peters v Robert George Spencer**[43] George-Creque JA held that a statement of case is not suitable for striking out if it raises a serious live issue of fact which can only be properly

[40] See dicta of Barrow JA at para 43 on the reduced need for extensive pleadings.
[41] See McPhilemy v Times Newspapers Ltd and others [1999] 3 All ER 775.
[42] Real Time Systems Limited v Renraw Investments and Others [2014] UKPC 6 ; Citco Global Custody NV v Y2K Finance Inc BVIHCVAP2008/0022 (delivered 19th October 2009, unreported); Tawney Assets Limited v East Pine Management Limited et al BVIHCVAP2012/0007(delivered 17th September 2012, unreported); Ian Peters v Robert George Spencer ANUHCVAP2009/0016 (delivered 22nd December 2009, unreported).
[43] ANUHCVAP2009/0016 (delivered 22nd December 2009, unreported).

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determined by hearing oral evidence.[44] I have no doubt that the learned judge was in no position to determine whether or not the monies belonged to the Crown at the pleadings stage and should have refrained from doing so.

[157] In **Baldwin Spencer v The Attorney General of Antigua et al**,[45] Byron CJ enunciated the following principles as to the general approach which the court has taken to the issue of locus standi in public law. While I agree that the case which engaged the learned judge's attention was not a public law case, given the nature of the application and the issue that arose before him, I have no doubt that the learned judge could not properly determine the issue of locus standi without the benefit of a full trial. Only after the evidence had been adduced and the witnesses cross-examined could the learned judge be properly placed to determine the ownership of the monies in question. However I am of the view that the approach taken by both Queen's Counsel and Senior Counsel may no doubt have contributed to the learned judge's falling into error. The application before the learned judge was simply not amenable to a proper disposition based solely on the pleadings. In my view, both Queen's Counsel and Senior Counsel unwittingly encouraged the learned judge to embark on an excursion that was clearly impermissible to seek to resolve the issues that were joined on the pleadings.

[158] In the application that engaged the learned judge, the Attorney General's standing was determined by the resolution of the ownership of the funds in question. I am not of the view that the question of whether the funds were the property of the Council or the Crown was a question of law to be decided by the court as argued by Mr. Patterson QC. To the contrary, the question was clearly one of mixed fact and law, which could only have been resolved after a full ventilation of the issues at a trial. I am fortified in this view having examined the number of impermissible findings of fact made by the learned judge on the pleadings alone coupled with the amount of conjecture that the learned judge was forced to make. The learned judge clearly erred in his approach as stated in paragraph 22 of the judgment.

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[44] I am not of the view that any useful purpose will be served by highlighting the factual findings made by the learned judge which were clearly impermissible since most of them were referred to earlier in the judgment.
[45] ANUHCVAP1997/0020A (delivered 8th April 1998, unreported).

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The learned judge clearly erred in his approach to the resolution of the issue of locus standi. In my view for the reasons advanced above, this case is a most inappropriate one for the exercise of the court's power to strike out under CPR 26. I have no doubt that had the learned judge properly applied his mind to the relevant principles and properly applied them he would have concluded that he was in no position to determine the matter at the pleadings stage and based on the strength or otherwise of the evidence which may be adduced in support of the case and in any event should have refrained from so doing on a strike out application of this kind.

[159] Accordingly, even if the learned judge had dealt with the correct pleadings and had dismissed the claim on the basis of the Attorney General's lack of standing at the pleadings stage, this would have been an additional ground upon which I would have allowed the appeal.

Misfeasance

[160] For the sake of completeness, I will briefly examine the matter of misfeasance in public office. The learned judge said that **Marin's** majority decision is highly persuasive, however the learned judge expressed his misgivings as to whether the decision of the court was binding on the High Court. Fortunately, learned Queen's Counsel and Senior Counsel accepted without any reservation that the decision of **Marin** was good law. This obviates the need for me to make any such pronouncement. However and for what it is worth in my respectful view the decision of the majority in **Marin** is forward thinking, progressive, jurisprudentially enlightening, scholarly and highly persuasive. I will have no difficulty in recognising the ability of the Attorney General in an appropriate case to file a claim for the tort of misfeasance based on the principles that were enunciated by the majority in **Marin**.

[161] The tort of misfeasance in public office is the common law response to the bad conduct of public officers and to allow actions by individuals or class of persons seeking recompense against public officers. The raison d'etre of the tort is to

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address "bad faith in the exercise of public powers". In **Three Rivers District Council v Bank of England** the House of Lords expanded the tort. The scope of the tort was clarified by the majority decision of the Caribbean Court of Justice in the case of **Marin v Attorney General.**

[162] The facts of the **Marin** case were straightforward. The Attorney General of Belize filed a claim against two former government ministers alleging that during their tenure in office they had procured the sale of state land to a company beneficially owned and or controlled by one of them. It was accepted in the claim that the ministers had benefitted from the sale which was significantly below the market value of the land. The claim was based on the common law tort misfeasance in public office. The critical question for the CCJ was whether the tort encompassed actions by the Attorney General acting on behalf of the State against its own officers or its former officers. The majority of the CCJ in its erudite and forward thinking judgment held that the Attorney General was competent to bring the action on behalf of the Crown against the former ministers in order to recover compensation for the loss sustained.

[163] Both Mr. Patterson QC and Mr. Astaphan SC have quite properly accepted that the majority position in **Marin** is jurisprudentially sound. It emphasised the increasing important of utilising civil suits to enhance the integrity in public service.[46] As Anderson J eloquently stated, "These developments may well portend the welcome emergence of a new matrix of causes of action hitherto frozen in time in then historical crypts and animated by judicial imprimatur".[47]

[164] It is the law that the Attorney General can institute civil proceedings on behalf of the Crown pursuant to section 13(1) of the **Crown Proceedings Act**. The crux of Mr. Patterson QC's argument was that the Attorney General had no legal standing to institute civil proceedings in respect of the misuse of or to recover the funds since the funds were not the property of the Crown. Mr. Patterson QC insisted

[46] Other common law countries have recognised the tort of misfeasance in public office is further developing.
[47] [2011]CCJ 9 (AJ) at para.152.

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that the learned judge was correct in so holding. The lynchpin of Mr. Astaphan SC's argument is that the monies were the Crown's monies. I have not the slightest doubt that whether or not the monies belong to the Crown could only be determined after a full trial. The learned judge was in no position to conclude as he seemed to have done in paragraph 34 and 51 of the judgment.

Conclusion

[165] In the premises, I would allow the appeal and set aside the judgment of the learned judge and remit the further amended claim to be case managed by a different judge. In view of the totality of circumstances of this appeal, I am of the considered opinion that the justice of this appeal requires that each party should bear its own costs. And I so order.

[166] I gratefully acknowledge the assistance of all learned counsel.

Louise Esther Blenman
Justice of Appeal

I concur.

David Kelvin Baptiste
Justice of Appeal

[167] **Webster, JA [AG.]** I have read the draft judgment of my sister Blenman JA and I agree that the appeal should be allowed but for different reasons. I adopt her summary of the facts and the legal submissions of counsel for the parties and will only repeat or expand them where necessary.

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[168] The application that Mr. Chastanet filed on 7th January 2014 was on three grounds:

(a) for a declaration under CPR 9.7 that the court does not have jurisdiction to hear and determine the Attorney General's claim against him;[48]

(b) an order under CPR 26.3 striking out the claim; and

(c) an order that summary judgment be entered against the Attorney General.

[169] At the commencement of the hearing on 10th October 2014, Mr. Patterson QC submitted that the first limb of the application relating to the court's jurisdiction should be heard and disposed of first, and if the court found that it does not have jurisdiction that would be the end of the case. Both the learned judge and Mr. Astaphan SC agreed. At page 13 of the transcript of the hearing Mr. Astaphan SC said:

> "Well, My Lord, I think, Your Lordship is quite right. Your Lordship, would have to make a decision on the question of jurisdiction first. You may or may not reserve, I don't know, and thereafter if you hold that there is no jurisdiction, there is no sense in proceeding."

[170] The learned judge then proceeded in accordance with the agreed position to hear Mr. Chastanet's challenge to the court's jurisdiction as a preliminary issue. He found that the Attorney General did not have locus standi to bring the claim and dismissed it with costs to the defendants. The Attorney General appealed against the judge's order.

Issues

[171] The central issue in the appeal is whether the Attorney General has standing to bring the claims against the respondents. In my opinion, the resolution of this issue will turn on three main issues, namely:

[48] An application under CPR 9.7 must be supported by evidence on affidavit. Mr. Chastanet's application was supported by evidence on affidavit and the Attorney General filed evidence in reply.

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(a) whether the Attorney General has power to bring claims against the respondents in public law or private law for breach of trust and misfeasance in public office ("the Misfeasance Issue");

(b) who owned the $38,119.00 that was spent on the lighting ceremony of the Soufriere Stadium on 1st November 2011 – was it the Government of Saint Lucia as claimed by the Attorney General or the Soufriere Town Council as claimed by Mr. Chastanet ("the Ownership Issue");

(c) and finally, even if the $38,119.00 was owned by the Soufriere Town Council, does the Government have the power to sue for the recovery of the money if it is found that the Council is an agent or emanation of the Government. ("the Agency Issue").

The Misfeasance Issue

[172] I agree with my sister's analysis of the law relating to misfeasance in public office as set out in paragraphs 160 to 164 of her judgment and adopt her conclusion that the Attorney General has power, following the majority decision in **Marin v Attorney General of Belize,** to bring a private law claim against public officers for misfeasance in public office. I would go one step further and say that the Attorney General must allege and prove that she is seeking to recover damages for loss suffered by the State in order to pursue such a claim. The loss in this case is the $38,119.00. If it were owned by the Council it would be a loss suffered by the Council and the Attorney General would not have had standing to bring the claims for misfeasance in public office or any other claim to recover the money.

The Ownership Issue

[173] Mr. Patterson QC submitted that the $38,119.00 was owned by the Council with the result that the Government had not suffered any loss and the Attorney General did not have standing to bring the claim. Further, the Attorney General's lack of standing means that the court does not have jurisdiction to try the claims. Jurisdiction here is being used in its wider sense of the court's power or authority to try the claims, not in the territorial sense suggested by Mr. Astaphan SC.

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[174] To support his submissions regarding the ownership of the money, Mr. Patterson QC relied on various provisions of the LAO to show that the Council is a separate legal entity from the Government of Saint Lucia. I will examine the more important of these provisions.

[175] The Council was created as a body corporate by section 4 of the LAO. By section 11 it has authority: (1) to make use of an official seal; (2) to make contracts; (3) to sue and be sued in its own name; and (4) to acquire, hold mortgage and dispose of all property real and personal, moveable and immoveable.

[176] By section 15(5) the Council can, with the sanction of the Governor,[49] borrow money for the purpose of carrying out works of public utility.

[177] Section 30 is important. It establishes a fund called the "Urban Village Fund" into which all payments to the Council are to be kept. The section mandates that the fund "…shall be kept distinct in the Treasurer's books from all other accounts." The language used suggests that the Council's funds are to be kept separate from the Government's funds. This is a strong indicator that the Council's funds are not a part of the Government's monies.

[178] Sections 33 to 36 deal with the Council's power to borrow from the Government. Such loans are a first charge on the distinct fund maintained by the Accountant General under section 30. If the monies in this fund belong to the Government it would not be logical for the legislation to give the Government the right to take a charge over its own property. This would be another indicator that the Council's funds are not a part of the Government's monies.

[179] On the other hand, Mr. Astaphan SC emphasised that the fund created under section 30 of the LAO, though not a part of the consolidated fund, is a fund that is kept in the Accountant General's books. As such, the Government has sufficient interest in the fund to sue for monies improperly removed from the fund.

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[49] The reference to the Governor now reads Governor General in the Local Authorities Act, Cap. 17.19 Revised Laws 2008.

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[180] Mr. Astaphan SC also referred to related legislation in Saint Lucia, which he submitted has a bearing on the issue of whether the funds are public funds, and by extension owned by the Government. He referred to section 2 of the **Finance Administration Act** and section 2 of the **Audit Act**, both of which define public monies as including 'all revenues and other monies raised or received for the purpose of the Government.' Since the money from Taiwan was raised and received by the Government to light the stadium it was public money. He also referred to other provisions of the **Finance Administration Act** and the A**udit Act** to show that the Council has to get central Government's approval of its budget and then must spend its funds in accordance with the approved budget, and otherwise has reporting obligations to the Government regarding its financial affairs.

Application of the statutory framework to the facts

[181] The following facts are relevant to the issue of ownership of the $38,119.00:

(d) Funds were raised by the Government of Saint Lucia from the Taiwanese Government to be used for public purposes including the lighting of the stadium at Soufriere.

(e) Funds, including the monies for the lighting of the stadium, were deposited into the Council's account at the Soufriere branch of First Caribbean International Bank

(f) The $38,119.00 was paid out of the Council's bank account.

These are undisputed facts, and, when examined in the context of the legislation, are indicators that the $38,119.00 was owned by the Council. However, I hasten to add that in so saying, I refrain from making such a finding.

[182] On the other hand there is evidence from Mr. John Mathurin, Deputy Director of Finance, that there is a separate bank account established by the Accountant General at the Bank of Saint Lucia into which public funds for the Council were

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deposited over the years. He deposed that the Taiwanese monies should have been deposited into that account but instead they were deposited into an account created by the Council, without the Accountant General's approval, at the Soufriere branch of First Caribbean International Bank.

[183] Mr. Astaphan SC also referred to the further amended statement of claim filed on the 23rd April 2015, a month before the learned judge delivered his decision. The Attorney General amended paragraph 7 of the claim to allege that the $38,119.00 was '…public monies belonging to the Crown/Government of Saint Lucia.' This was followed by averments that the $38,119.00 was public money to be used for a public purpose. I agree with Mr. Patterson QC's submission that this is not pleading a fact but stating an inference or conclusion that the $38,119.00 is public money belonging to the Crown. The effect of the new pleading was to raise the level of the dispute between the parties as to the ownership of the $38,119.00 which must now be assessed on the basis of the new pleading. I do not share the majority view that it is apparent that the judge did not consider the new pleading and that this was reason enough to allow the appeal. The further amended statement of claim was filed and therefore was before the judge when he was preparing his judgment. Undoubtedly he should have referred to it in his judgment. However, based on the way that the learned judge dealt with the issue of the ownership of the $38,119.00 and his findings at paragraph 60 of the judgment I do not think that the new pleading made a difference to his consideration of the issue.

[184] I have considered the legislation referred to by both counsel, the pleadings and the evidence. The indications are that the Council is a separate legal entity that is capable of owning its own property and suing for its recovery. But this case concerns serious issues of public importance and the applicant is seeking to dismiss the entire claim on procedural grounds. In order to grant that application I would have to make a finding of fact that the $38,119.00 belongs to the Council, or that the Government does not have a sufficient proprietary interest in the

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$38,119.00 to sue for its recovery. I am not prepared to make any of these findings on a preliminary objection challenging the jurisdiction of the court to try the claim.

[185] I find some support for this conclusion in the Court of Appeal decision **In re S. (Hospital Patient)** referred to in Mr. Patterson QC's skeleton argument. S., a Norwegian citizen was estranged from his family in Norway and was living with the claimant, an English woman, in England. S. became seriously ill and was incapable of making decisions. His family attempted to return him to Norway but the English High Court, on the claimant's application, granted an injunction to restrain the family from removing S. from England. The family's main objection to the application was that the claimant, not being a spouse or family member, did not have standing to bring the application. The High Court and Court of Appeal rejected this argument. Both courts recognised that they were dealing with the health care of a very sick individual who could not express himself and decided that they would not impose nice tests to determine the claimant's legal standing. She had undertaken the care of S. and she could demonstrate that she had an interest in making the application. On this point Lord Bingham MR said –

> "It cannot of course be suggested that any stranger or officious busybody, however remotely connected with a patient or with the subject matter of proceedings, can properly seek to obtain declaratory or any other relief (in private law any more than public law proceedings). But it can be suggested that where a serious justiciable issue is brought before the court by a party with a genuine and legitimate interest in obtaining a decision against an adverse party the court will not impose nice tests to determine the precise legal standing of the claimant" [50]

[186] The case is distinguishable on the facts in that it deals with medical treatment in extreme circumstances. But it shows that the court will not allow legal niceties to bar a person with a genuine interest from seeking relief.

[187] Although the evidence and the law in this appeal appear in my opinion to point in the direction of a finding that the Government does not have a sufficient interest in

[50] In re S. (Hospital Patient: Court's jurisdiction) [1996] Fam.1.at p.18.

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the disputed monies, the Government's standing to challenge the defendants' conduct should not be determined on a preliminary objection to the court's jurisdiction.

[188] The issue of whether the Council is an agent or emanation of the Government is also relevant to the Attorney General's standing to bring the claim and I will now deal with that issue.

The Agency Issue

[189] The Attorney General's primary position is that she has standing because she is suing to recover the Government's property. Her secondary position, although not pleaded, is that in any event the Council is an agent or emanation of the Government. Mr. Astaphan SC supported this submission by reference to the following:

(a) the funds in issue are public monies raised by the Government of Saint Lucia from the Government of Taiwan for a public purpose;

(b) the Council is funded by the Government and by other public monies;

(c) the Council is a local authority carrying out public functions. It is not engaged in a commercial enterprise as are many other statutory corporations;

(d) the Government exerts high levels of control over the Council especially of its financial affairs.

[190] Mr. Patterson QC's submissions on the point are set out in detail in paragraphs 120 – 127 above. The essence of his response is that the degree of control by the Government in this case is insufficient to constitute the Council an agent or emanation of the State. The authorities referred to by counsel on both sides suggest that the degree of Government control is indeed a significant factor in determining whether a statutory body is an agent or emanation of the State. And it is for the court to make this determination having regard to all the circumstances of the relationship between the Council and the Government. As such it cannot be gainsaid that the court has jurisdiction to determine whether the Council is an

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agent or emanation of the State, and what, if anything, is the consequence of that finding.

Consequences of Agency

[191] Assuming, without finding, that the Council is an agent or emanation of the State, the only other issue is the consequence, if any, of that finding. This issue was not addressed directly by counsel for the parties although it can be inferred that Mr. Astaphan SC was submitting that a finding of agency or emanation would mean that the Attorney General had standing to bring the claim. Therefore, my analysis below is without the benefit of guidance from counsel but in view of my conclusion that case should be remitted to the High Court this is not a serious concern. The parties will have ample opportunity to develop the issue.

[192] Counsel cited the following cases which deal with the relationship between the State and statutory bodies. Insofar as they are relevant they deal with the issue of whether a statutory body can claim immunities that are available to the Crown on the basis that it is an agent or emanation of the State.

[193] In **The Barbuda Council v Antigua Aggregates Limited and Sandco Limited** (cited by both parties) Rawlins JA writing for the Court of Appeal found that the Barbuda Council was a statutory corporation and not an agent of the Crown, but was nonetheless entitled to the Crown's immunity under the Limitation Act because the Council was '…a sufficiently intimate 'emanation' from the Crown to attract the contagion of the Crown's immunity.'

[194] In **Tamlin v Hannaford,**[51] a decision of the Court of Appeal in England, the British Transport Authority was found not to be an agent of the Crown and the Crown's immunity did not apply.

[195] Mr. Astaphan SC referred to the case of **Baccus S.R.L. v Servicio National Del Trigo**,[52] a decision of the English Court of Appeal. The defendant was established

[51] [1949] 2 All ER 327.

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in Spain by decree as a body corporate with power to make contracts and to sue or be sued in its own name. It was not disputed that but for the effect of incorporation the defendant would have been a department of the sovereign State of Spain[53]. An Italian company sued the defendant in England. The defendant claimed sovereign immunity as a department of the sovereign State of Spain. It was held by the majority of the Court of Appeal that the mere incorporation of the defendant was not inconsistent with it being a department of the Spanish State and it was therefore entitled to claim sovereign immunity.

[196] This Court was not referred to any cases where the State brought a claim to recover losses suffered by a statutory corporation such as the Soufriere Town Council on the ground that the corporation is an agent or emanation of the State, or a department of the State as in the **Baccus S.R.L**. case. I regard this as an open issue that goes beyond a claim for sovereign immunity or other immunities available to the State. It should not be resolved on an in limine application to dismiss the claim for want of jurisdiction. The matter should be fully ventilated at trial.

Conclusion

[197] I am satisfied that the Attorney General, like the claimant in the case of **S. (Hospital Patient)** referred to in paragraph 190 above, has a sufficient interest in pursuing this case and the claim should not be struck out for want of standing at this stage. I would allow the appeal and make the same order, including the order for costs, as the order proposed by my sister judge in paragraph 170 of the judgment.

Paul Webster
Justice of Appeal (Ag.)

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[52] [1956] 3 WLR 948.
[53] [1956] 3 WLR 948 per Jenkins, LJ at p. 967.

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