THE EASTERN CARIBBEAN SUPREME COURT
SAINT CHRISTOPHER AND NEVIS

IN THE HIGH COURT OF JUSTICE

CLAIM NO. NEVHCV2016/0046

BETWEEN:

Tamarind Cove Marina Development Ltd.

Claimant

and

Director of Physical Planning
Nevis Island Administration
The Attorney General of St. Christopher and Nevis Island Administration
Hon. Vance Amory
Hon. Troy Liburd
Hon. Timothy Harris
Hon. Mark Brantley

Defendants

Appearances:-

Dr. Browne Q.C with Mr. John Cato and Ms. Barbara Hardtman for the Claimant/Respondent.
Ms. Jean Dyer with Ms. Rhonda Nisbett-Browne for the 1st, 2nd, 4th, 5th and 7th Defendants.
Mrs. Simone Bullen-Thompson for the 3rd and 6th Defendants.

2017: October 27

DECISION

[1] **WILLIAMS, J**.: The Claimants/ Respondents were granted leave to file an application for Judicial Review on the 1st February 2017 against the 1st and 2nd and 3rd Respondents after an inter parties hearing on submissions and affidavit evidence by Counsels representing the Claimants and the 1st and 2nd and 3rd Respondents.

[2] At the application for leave proceedings which was filed on the 28th May 2016 the Attorney General was named as a party to the proceedings and on the 11th May 2016, an affidavit in opposition to the application for leave was filed by Counsel representing the Attorney General.

[3] On the 24th May 2016, a letter was sent to the Solicitor General in the Attorney General's chambers from Counsel for the Claimant Mr. Cato indicating that the proceedings against the 3rd named Respondent- The Attorney General would be withdrawn and discontinued, and that a Notice of Discontinuance would be filed. The Notice of Discontinuance was filed on the 31st May 2017 by the Claimant.

[4] On the 16th February 2017 after leave had been granted to the Claimants to file an application for Judicial Review, the Claimants filed a Fixed Date Claim Form and Affidavit in support wherein the 4th, 5th, 6th and 7th Defendants were joined as parties to the proceedings.

[5] The Fixed Date Claim Form was supported by the Affidavit of Kirtley Gregory Duporte Hardtman filed on the 16th February 2017 who is the Chief Executive Officer and Chairman of the Claimant Company.

[6] At paragraphs 1 to 7 of the Fixed Date Claim Form, the Claimants state the reasons for the joinder of the 4th, 5th, 6th and 7th Defendants to the proceedings.

[7] Mr. Hardtman deposes in his affidavit at paragraphs 9-17 that there is a unique joint venture between the Nevis Island Administration (N.I.A) and the Federal Government in that only the N.I.A can approve a project in Nevis but only the Federal Government can approve a project in Nevis to be a Citizenship by Investment project.

[8] Further Mr. Hardtman states that both the St. Kitts Government and the N.I.A have been involved in the Claimant's development project and owe a duty of care to both the Developer and all the Investors.

[9] Mr. Hardtman deposes that the Federal Government is part of the tripartite arrangement and that the Hon. Dr. Timothy Harris, the Prime Minister is ultimately

responsible for all citizenship by investment projects on Saint Kitts and Nevis. He states further that the Ministry of Nevis Affairs held by the Hon. Vance Amory invests Mr. Amory with a duty of care to protect and advance the interest of the Federal Government in all Federal matters in Nevis.

[10] Mr. Hardtman further deposes that the appointment of the Hon. Vance Amory as Minister of Nevis Affairs in the Federal Government while also holding the position a Premier of Nevis placed the unique responsibility on him to protect and advance the Investments in the project in his dual capacities.

[11] Therefore and according to Mr. Hardtman the Federal Government and the Nevis Island Administration are jointly and severally responsible for the Tamarind Cove Marina Development.

[12] In relation to the 5th Defendant Mr. Hardtman deposes that he was invited to a meeting with Mr. Troy Liburd in November 2015 to discuss the Marina plans and Mr. Liburd indicated that the **N.I.A** would be willing to stamp the Marina plans as approved if the Tamarind Cove Marina Development would agree to completely change the orientation of the approved site plan, and shift from a north side entrance to a south side entrance.

[13] As it relates to the 7th Defendant Hon. Mark Brantley, the references to him are made at paragraphs 78, 79 and 83 of the Hardtman affidavit which feature him as a promoter of the "citizenship by investment" programme as Deputy Premier of Nevis.

[14] The Claimant submits in their written submissions at paragraph 67 that the joinder of the Attorney General in the proceedings is as a result of a Claim for Declarations and Damages arising out of an unlawful exercise of power by the 1st named Defendant an employee of the 2nd Defendant the N.I.A.

[15] The Claimant further contends that the unlawful exercise of power to send the plans to the N.I.A Cabinet for final determination was compounded by the abuse of power exercised by members of the Nevis Cabinet and the Federal Cabinet. Their abuse of power and the failure to give the Respondent/Claimant the opportunity to

make representation as to why plans were being unlawfully withheld constitutes an infraction of his constitutional right to equality before the Law and the protection of Section 3 of the Constitution of St. Kitts and Nevis. As such the Claimant contends that the Attorney General is properly and necessarily joined as a representative of the Nevis Island Administration and the Federal Government.

[16] The Claimant avers that it is apparent from the pleadings that at all material times, the Defendants acted as public servants or as Ministers of the Crown in both the Nevis and the Federal Government as in the case of Mr. Vance Amory, Mr. Mark Brantley and Mr. Troy Liburd as members of the Nevis Cabinet who are complicit in the unlawful conduct of the other named Ministers of Government and whose conduct and contrivance contributed to the injury being suffered by the Claimant.

[17] On the 16th March 2017, the 2nd, 4th, 5th and 7th Defendants/Applicants applied to the Court pursuant to Rule 26.3 (1) (a) (b) of the CPR 2000 for an order directing that the names of the Applicants be struck out from the instant claim, and that all consequential amendments to the Fixed Date Claim Form be made.

[18] The grounds of the application read as follows:

a) Part 26 of the CPR gives the Court the power to strike out a statement of case.

b) Rule 26.3 (1) (a) of the CPR 2000 provides that the Court may strike out a statement of case or part of a statement of case if it appears to the Court that there has been a failure to comply with a rule, practice direction, order or direction given by the Court in the proceedings. Rule 26.3 (1) (b) also empowers the Court to strike out part of a statement of a case which does not disclose any reasonable ground for bringing or defending a claim.

c) The Court granted leave to the Claimants/ Respondents to apply for Judicial Review on the 1st February 2017. However the Court did not grant permission at the "leave stage" to review any decisions it alleged were supposedly made by the 2nd-7th named Defendants.

d) The Claimants/Respondents are precluded at the substantive hearing from relying upon any grounds or seeking any relief other than the relief or grounds set out in their Notice of Application at leave stage.

e) The 7th Respondent has been joined in the Claim without permission of the Court as required by Rule 56.3 of the CPR.

f) The Applicants are not proper/necessary parties to this action and it is just and reasonable that their names be struck out from this Claim.

[19] On the 16th March 2017 the 1st and 2nd Applicants/3rd and 6th Defendants applied to the Court pursuant to Rules 26.3 (1) (b) (c) and 19 (3) of the Civil Procedure Rules and the inherent jurisdiction of the Court seeking an order that;

i. The Claim against the 1st and 2nd Applicants/3rd and 6th Defendants be struck out.

ii. That the Respondent/Claimant pay the costs of the 1st and 2nd Applicants/3rd and 6th Defendants for this application.

iii. Such further relief as the Court deems fit.

[20] The grounds of the application by the 3rd and 6th Defendants to strike out the Claim are as follows;

a) The Claimant did not obtain leave to apply for Judicial Review against the 1st and 2nd Applicants/3rd and 6th Defendants.

b) The Applicants/3rd and 6th Defendants are not necessary or proper parties to this matter.

c) The Claimant's statement of case does not disclose any reasonable grounds for bringing the Claim against the 1st and 2nd Applicants/3rd and 6th Defendants, does not have a realistic prospect of success and is bound to fail.

d) The Claim is an abuse of the process of the Court.

Issues

A. Whether the Claimant's statement of claim should be struck out against the 1st and 2nd Applicants, 3rd and 6th Defendants on the following grounds:

   i. That the Claimant did not obtain leave to apply for Judicial Review against the 1st and 2nd Applicants, 3rd and 6th Defendants.

   ii. That the Applicants/Respondents are not necessary or proper parties to this matter.

   iii. That the Claimant's statement of case does not disclose any reasonable grounds for bringing the Claim, and does not have a realistic prospect of success and is bound to fail.

   iv. The Claim is an abuse of the process of the Court.

B. Whether the Claimant's statement of claim should be struck out against the 2nd, 4th, 5th and 7th Defendants on the following grounds:

   i. That leave was not sought or granted to the Respondent/Claimant to review any decisions made by the 2nd, 4th, 5th, and 7th Defendants.

   ii. That the 7th Defendant was joined in the Claim by the Respondent without leave of the Court as required by Rule 56.3 (1) of the CPR 2000.

   iii. That the Applicants/Respondents are not proper and/or necessary parties to this action and it is just and reasonable that their names be struck from this Claim.

The Law and analysis

Striking out

[21] The principles that are applicable on which the jurisdiction of the Court is exercised when striking out a statement of claim were stated by the Eastern Caribbean Supreme Court of Appeal in the case of:

Baldwin Spencer vs The Attorney General of Antigua and Barbuda.[1]

In that case Byron CJ (as he then was) stated the principles as follows;

"In brief the Court is empowered to dismiss an action in a summary way without a Trial where the Statement of Claim discloses no cause of action or is shown to be frivolous or vexatious or is otherwise an abuse of the process of the Court. This summary procedure should only be used in clear and obvious cases when it can clearly be seen on the face of it, that a claim is obviously unsustainable and cannot succeed or in some other way is an abuse of the process of the Court."

Further at page 8 of the Baldwin Spencer case, the learned Chief Justice stated;

"The operative issue for determination must be whether there is even a scintilla of a cause of action. If the pleadings disclose any viable issue for Trial, then we should order the trial to proceed, but, if there is no cause of action we should be equally resolute in making that declaration and dismiss the appeal."

[22] In the case of **Tawney Assets Limited vs East Pure Management et al** [2] the learned Mitchell JA in dismissing the appeal brought by the Appellants stated that **"the striking out of a party's statement of case, or most of it, is a drastic step which should only be used in clear and obvious cases. When it can clearly be seen on the face of it, that the claim is obviously unsustainable, cannot succeed, or in some other way is an abuse of the process of the Court. 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."**

[1] Civil Appeal No. 20 A of 1997
[2] HCVAP2012/007

[23] In the Court of Appeal decision in **Citco Global Custody NV vs Y2K Finance Inc.**[3] the learned Justice of Appeal Ola Mae Edwards stated at paragraph 13 of her judgment that "on hearing an application made pursuant to CPR 26.3 (1) (b), the trial Judge should assume that the facts alleged in the Statement of case are true; Despite this general approach however, care should be taken to distinguish between primary facts and conclusions or inferences from these facts. Such conclusions or inferences may require to be subjected to closer scrutiny."

[24] The learned Edwards J at paragraph 14 of her Judgment further stated;

> **"Among the governing principles stated in Blackstone's Civil Practice 2009 the following circumstances are identified as providing reasons for not striking out a statement of case; where the argument involves a substantial point of Law which does not admit of a plain and obvious answer or the Law is in a state of development, or where the strength of the case may not be clear because it has not been fully investigated. It is also well settled that the jurisdiction to strike out is to be used sparingly since the exercise of the jurisdiction deprives a party of its right to a fair trial, and its ability to strengthen its case through the process of disclosure and other Court procedures such as requests for Information and the examination and cross-examination of witnesses often change the complexion of a case. Finally the Court should consider in deciding whether to strike out, the effect of the order on any parallel proceedings and the power of the Court in every application must be exercised in accordance with the overriding objective of dealing with cases justly."**

Analysis- Issue 1

[25] On 16th February 2017, a Fixed Date Claim with an affidavit in support deposed to by Kirtley Gregory Duporte-Hardtman was filed by the Claimants. The Fixed Date Claim was preceded by an application for leave to apply for Judicial Review which

[3] HCVAP2008/022

was filed on the 20th April 2016 and an amended application was filed on 4th May 2016.

At this stage of the proceedings, the Attorney General was named as a party to the application. The Prime Minister the Hon. Dr. Timothy Harris was not named as a party to the proceedings.

[26] The 1st Applicant/3rd Defendant posited that he was not a proper party to the proceedings and on the 11th May 2016 an affidavit was filed by the Attorney General in opposition to the application for leave to apply for Judicial Review.

[27] At the hearing for the application for leave to apply for Judicial Review the Claimant's attorney Mr. John Cato informed the Court that the Claimant intended to withdraw and discontinue proceedings against the Attorney General and on the 31st May 2017, the application for leave to apply for Judicial Review against the 1st Applicant/3rd Defendant was withdrawn by the Claimant/Respondent.

[28] The Claimants have filed a Fixed Date Claim Form dated 16th February 2017 which is similar to their Application for leave to apply for Judicial Review save that the Claimant has joined the 3rd and 6th Defendants to the Claim and now seeks Special Damages in the sum of EC$124,572,405.29 and General Damages and asserts in the Affidavit in support of the Fixed Date Claim Form that there is a joint venture between the Nevis Island Administration and the Federal Government and that the 2nd Applicant/6th Defendant is responsible for all projects under the Citizenship by Investment programme.

[29] Counsel for the 1st and 2nd Applicants, Mrs. Simone Bullen Thompson Solicitor General in her submissions argues that the subject matter of the Claimant's Claim falls within the exclusive jurisdiction of the Nevis Island Administration.

The Learned Solicitor General cites Section 103 of the Constitution of Saint Kitts and Nevis which provides as follows;

"The Nevis Island Legislature may make Laws which shall be styled Ordinances, for the peace, order and good government of the Island of Nevis with respect to

specified matters. Also section 106 and schedule 5 of the constitution sets out the matters over which the Nevis Island Administration has exclusive jurisdiction to make Laws. These matters include Economic Planning, Development, Land and buildings other than land and buildings bested in the crown, and specifically appropriated to the use of the Government, including holding of land by persons who are not citizens."

[30] The learned Solicitor-General also cites the **Nevis Physical Planning and Development Control Ordinance**[4]

Section 15 (1) provides:

"Notwithstanding the provisions of any other law to the contrary but subject to Section 17, no person including the crown, the Nevis Island Administration and any statutory undertakers may commence or carry out development of any land in the Island of Nevis without the prior written permission of the Director of Physical Planning."

[31] Learned Counsel Mrs. Bullen-Thompson further cites the **St. Christopher and Nevis Citizenship by Investment Regulations No. 52 of 2011** which defines "approved project" as a Real Estate Development that has been approved by Cabinet as a qualified project for Citizenship by Investment.

Cabinet means the Cabinet of Ministers of St. Kitts and Nevis. Under the CBI programme, citizenship is granted by the Minister responsible for citizenship pursuant to the St. Christopher and Nevis Citizenship Act Cap 1.01.

Learned Counsel therefore contends that the Federal Government and the Nevis Island Administration exercise their constitutional and legislative duties separately in matters concerning the Citizenship by Investment programme.

[32] Therefore and according to the Learned Solicitor General the Applicants have no duty in relation to the consideration of the construction and engineering plans. Every developer has the responsibility to obtain the relevant permission including

[4] Cap 6.09 at Section 2 and 15 (1) of the said ordinance

planning permission from the Authority authorized by Law to issue the same. The Federal Government has in the instant case discharged its responsibilities in relation to the Claimant's development by granting it status as an approved project within the Citizenship by Investment programme.

[33] Learned Counsel for the Claimants Dr. Henry Browne Q.C however disagreed with the submissions of Mrs. Thompson and argued in his submissions that the Attorney General is joined in the proceedings as representative of the state under the **Crown Proceedings Act Cap 5.06 of the Laws of Saint Christopher and Nevis.**

Learned Counsel Dr. Browne Q.C also alleges a breach of the Claimant's right to equality before the law and the protection of the law. He therefore argues that this is a constitutional right provided for under Section 3 (a) of the Constitution and as a result it is mandatory that the Attorney General be named as a party as this is necessary and proper.

Court's Analysis

[34] The Crown Proceedings Act provides under Section 13 (2) that "Civil Proceedings" shall be instituted against the Attorney General.This meaning appears to be clear and simple, but the meaning of Civil Proceedings must be defined in the context of the Civil Procedure Rules. In the case of **Monica Ross vs Minister of Agriculture and Permanent Secretary of Foreign Affairs et al & the Attorney General**[5] where the Claimants sought a declaration to strike out the Minister of Agriculture and the Permanent Secretary as parties, the Court struck out the Minister and Permanent Secretary as parties on the basis that the proper defendant was the Attorney General.

[35] Also in that case at paragraph 9 and 10 of the learned judge's decision, he discusses the provisions of Section 10 (2) of the Crown Proceedings Act and the type of proceedings against the Crown that fall under the Act.

[5] Claim No. 255 of 2001

The learned judge in that case concluded that the general category of proceedings that a person is entitled to bring against the Crown includes Civil Proceedings by virtue of the Crown Proceedings Act as set out in Section 3 of the CPA of Saint Vincent and the Grenadines. That section is similar to Section 3 of the CPA of St. Kitts and Nevis.

[36] The Claimant's claim is for Damages for Breach of Contract, and therefore these proceedings at Bar are included in the proceedings covered by Section 4 of the CPA of St. Kitts and Nevis. They are therefore "civil proceedings" within the meaning of Section 13 of the CPA; therefore making the Attorney General the proper defendant in the matter as the representative of the Government of Saint Kitts and Nevis.

[37] Having made that finding, I now deal with the joinder of the Prime Minister Hon. Dr. Timothy Harris in the proceedings.

On a closer examination of the pleadings the only reference to the Prime Minister's involvement in the matter is contained in the Affidavit of Kirtley Hardtman filed on the 16th February 2017. At paragraph 96 of that Affidavit Mr. Hardtman deposes as follows;

"On March 4th 2016, myself and another Director of Tamarind Cove Marina Development Ltd (TCMD) met with Prime Minister of Saint Christopher and Nevis, the Hon. Dr. Timothy Harris in Saint Kitts. At that meeting the TCMD Directors outlined the plethora of problems that TCMD, a CBI project was encountering. The TCMD Directors also pointed out to the Prime Minister the duty of care that the Government of St. Christopher and Nevis owes to TCMD Ltd and the purchasers of the Dockominiums who had already obtained passports by the CBI programme in Saint Christopher and Nevis. The Prime Minister indicated that he would consult with the Minister of Nevis Affairs, the Hon. Vance Amory in an attempt to find a solution."

[38] Paragraph 97 of the said Hardtman Affidavit states further that;

"There was a follow-up meeting with myself and the other Directors of TCMD with the Prime Minister on September 15th 2016. At that meeting the Prime Minister indicated that he would further consult with the Minister of Nevis Affairs, the Hon. Vance Amory. To date TCMD has received no correspondence or assistance from the Federal Government of St. Christopher and Nevis."

[39] In my considered opinion and in light of the pleadings relating to the Prime Minister, I am of the opinion that the Claim discloses no ground for bringing or defending the Claim by and against the Prime Minister and therefore there was no necessity for his joinder to the proceedings. The Prime Minister as head of the Federal Government has discharged its responsibilities in relation to the Claimant's development when it granted it status as an approved project within the Citizenship by Investment programme. The Essence of this Claim is against the Director of Physical Planning in the Nevis Island Administration and the collective responsibility of the Cabinet of the Nevis Island Administration.

[40] I will therefore order that the Application by the 1st and 2nd Applicants/3rd and 6th Defendants for an order striking out the Claim against them be granted only as it relates to the 1st Applicant/6th Defendant the Hon. Dr. Timothy Harris, Prime Minister and Minister of Finance. The application by the 2nd Defendant to strike out the Hon. Attorney General is denied for reasons already given.

[41] The 1st and 2nd Applicants/3rd and 6th Defendants also contend that the Claimant did **not** obtain leave to apply against them for Judicial Review.

Rule 56.3 (1) provides that;

"A person wishing to apply for Judicial Review must first obtain leave and further Rule 56.4 (7) provides that the Judge may grant leave on such conditions or terms as he or she considers just.

[42] The Claimant submits however that leave was granted by the Court to apply for Judicial Review without limitation or condition on March 21st 2017.

Still further CPR 2000 Rule 19 (2) provides that a Claimant may add a new Defendant to proceedings without permission at any time before the Case Management Conference.

Further Rule 20 provides that the Claimant is not precluded from seeking leave to add necessary and proper parties to these proceedings if necessary.

[43] I am in total agreement with Counsel for the Claimant on this issue as the joinder of the Attorney General and the Prime Minister is pursuant to Part 19 and 20 of the CPR. However I have already dealt with the joinder of the Attorney General as the representative of the Crown and have also made an order that the Prime Minister Hon. Dr. Timothy Harris should be removed from these proceedings as there is no reasonable grounds for bringing the action against him.

Issue 2

[44] Whether the Claimant's Statement of Claim should be struck out against the 2nd, 4th, 5th and 7th Defendants on the basis that Leave was not granted or sought to review any decisions made by the said named Defendants.

[45] Learned Counsel for the Respondents Ms. Jean Dyer submits that the Claimant's Statement of case on its face fails to disclose a sustainable claim against the Applicants and should be struck out.

Further Counsel argues that the allegations made against the said named Defendants do not disclose a cause of action against them for Judicial Review; and that there are insufficient facts to show reasonable grounds for bringing the claim against each of them.

[46] The Claimant by their learned attorney Dr. Browne Q.C in reply to the submissions by learned counsel Jean Dyer refers to the Fixed Date Claim Form and the Hardtman affidavit filed on the 16th February 2017 and submits that the Reliefs sought in the Fixed Date Claim are obviously against all the Defendants against whom the Claim was brought unless a contrary intention appears.

[47] Learned Queen's Counsel Dr. Browne further submits that the named Defendants are those members of the Cabinet whose conduct brought about the inconvenience, loss and damage complained of and they are collectively liable.

Dr. Browne Q.C highlights paragraphs 9-11, 14, 15, 16, 17, 19, 20, 22. 24, 25, 28, 38, 39, 44 and 45 of the Hardtman affidavit in support of the allegations against the Defendants which he claims speak to their abuse of power as stark, highhanded, arbitrary, reckless and highly unconstitutional.

Analysis

[48] CPR 8.7 requires a Claimant to properly set out its case and to plead the factual matrix of the case in the statement of case.

The basic purpose of pleadings is to enable the opposing party to know what case is being made in sufficient detail to enable that party properly to prepare to answer. That principle was established by Saville LJ in **British Airways Pension Trustees Ltd vs Sir Robert McAlpine & Sons Ltd**[6] and was approved in **East Caribbean Flour Mills vs Ormiston Ken Boyea et al**[7] by Barrow JA who cited with approval Lord Woolf MR in **McPhilemy vs Times Newspapers**[8] who stated as follows;

"The need for extensive pleadings including particulars should be reduced by the requirement that witness statements are now exchanged; in the majority of proceedings, identification of the documents upon which a party relies together with copies of that party's witness statement will make the detail of the nature of the case the other side has to meet obvious. In particular they are still critical to identify the issues and the extent of the dispute between parties. **What is important is that the pleadings should make clear the general nature of the case of pleader**." **(My emphasis)**

[6] [1944] 72 BLR 26, 33-34
[7] Civil Appeal No. 12 of 2001
[8] 3 A11 ER 775

[49] On a closer perusal of the Claimant's Fixed Date Claim Form filed on the 16th February 2017 more specifically at paragraphs 5 and 9 the Claimant in my opinion has laid out a cause of action against the 1st and 2nd named Defendants and the Reliefs sought which give rise to live issues to be determined at a substantive hearing of this matter.

[50] However I would agree with learned counsel Jean Dyer that the Claim has not sufficiently delineated the causes of action as against the 4th, 5th and 7th Defendants. The Claimant has relied on its copious written submissions to state their case against the named Defendants instead of filing a properly pleaded case to enable the Defendants to mount a proper defense in response.

In the words of Saville J in the **British Airways Pension Trustees case**

"Pleadings are not a game to be played at the expense of litigants not an end on themselves, but a means to an end and that and is to give each party a fair hearing."

[51] The Court in an application to strike out has a judicial discretion whether or not to make the order to strike out the pleadings. Striking out of a Claim is made in very rare circumstances where the Court is convinced the Claim is unsustainable. The Court in considering an application to strike out has the power to order that the pleadings be amended or that the objectionable matter be struck out, once the defect can be remedied.

[52] The Privy Council in **Real Time Systems Limited vs Renraw International and others**[9] in relation to striking out applications state;

"There is no reason why the Court faced with an application to strike out should not conclude that the Justice of the particular case militates against this nuclear option, and that the appropriate course is to order the Claimant to supply further details or to serve an amended statement of case including such details within a specified period; Having regard to Rule 26.6, the Court might also feel it

[9] [2014] UKPC 6

appropriate to specify the consequences (which might include striking out) if the details or amendment were not duly forthcoming within that period."

[53] The learned Law Lords also stated at paragraph 18 of the Judgment in the **Real Time Case** that "The Centre could in the present case have applied not to strike out but proceed under Rule 26.3 for an "unless" order requiring **Real Time** to serve an amended statement of case or adequate details within a specified period failing which the statement of case would be struck out."

[54] In applying the principles derived from the Privy Council case in **Real Time.** I will accordingly dismiss the application by the 2nd, 4th, 5th and 7th Defendants to strike out the Claim against them and order an amendment of the Fixed Date Claim Form to allow the Claimant to properly particularize its case against the named Defendants within a specified period failing which the Claim will be struck out.

Constitutional Claim

[55] The Claimant in its Fixed Date Claim Form under **Reliefs sought- Declarations** at paragraph 9 (d) has claimed that the Claimant had a legitimate expectation to equal treatment and protection under the Law.

[56] The Claimant has also in written submissions alleged that their right to equal treatment before the Law and the protection of the Law has been breached. The Claimants state that the Government failed to put in place or ensure that the procedures or mechanisms were in place to give effect to its right to equality before the law, and the protection of law as comprehended within the meaning of Section 3 of the Constitution.

[57] Learned Counsel for the 1st and 2nd Applicants/3rd and 6th Defendants Mrs. Simone Bullen-Thompson submits that the Nevis Physical Planning and Development Control Ordinance Cap 6.09 Section 29 provides a mechanism for appeals where planning permission is denied or deemed refused. Consequently the Claimant can avail itself of that remedy and cannot claim that there is a breach of the Claimant's right to protection of the Law.

[58] Mrs. Bullen-Thompson further submits that there is no such case made out in the pleadings before the Court and that the Claimant cannot invoke the Constitutional jurisdiction of the Court as there is an adequate alternative means of redress available to the Claimant.

[59] The Claimant has cited the case **D. Giselle Isaac**[10] where the learned Blenman JA held;

"Under CPR 2000, applications for declarations are regarded as a distinct category from applications for Judicial Review even though they are both applications for Administrative orders. In contrast to an application for Judicial Review when the leave of the court first has to be obtained there is no requirement for a Claimant who wishes to make an application for other types of Administrative orders apart from Judicial Review to seek the leave of the Court. CPR 56.7 is clear in that regard, the rules do not stipulate that a person who wishes to obtain a declaration must first obtain leave of the Court."

The Court concurs with the dicta of Blenman JA.

[60] However the Defendants on the other hand have directed the Court's attention to the learning in the case of **Sam Maharaj vs The Prime Minister et al of Trinidad & Tobago**[11] where the Privy Council at paragraph 41 of their Judgment stated inter alia "But their Lordships agree with the Court of Appeal that it cannot be said that the Appellant was deprived of the protection of the Law when this step was taken against him. It was open to him to challenge the legality of the decision immediately by means of Judicial Review. Taken on its own therefore the complaint is not one that stands up to examination as an infringement of the appellant's constitutional rights. In any event as a remedy by way of Judicial Review was available from the outset a constitutional motion was never the right way of invoking judicial control of the commission's decision to suspend him. The choice of remedy is not simply a matter for the individual to decide upon as and when he pleases."

[10] ANUHCVAP2015/0014
[11] [2016] UKPC 37

As Lord Diplock observed in **Harrikissoon vs Attorney General of Trinidad & Tobago**[12] **"**the value of the safeguard that is provided by Section 14 of the constitution will be diminished if it is allowed to be misused as a general substitute for the normal procedures for invoking judicial control of Administrative action."

[61] Also in the case of **Re Ramanoop** the Privy Council stated that "where there was a parallel remedy constitutional relief should not be sought unless the circumstances of which complaint is made include some feature which makes it appropriate to take that course. To seek constitutional relief in the absence of such a feature would be misuse or abuse of the Court process. A typical, but by no means exclusive example of a special feature would be a case where there has been an arbitrary use of State Power." In this case the Privy Council concluded that the facts exemplified exceptional circumstances which allowed the Claimant to frame his claim as breach of his constitutional rights.

[62] In **Jaroo vs The Attorney General of Trinidad and Tobago**[13] the Privy Council stated that the right to apply to the Court for constitutional redress should be exercised in exceptional circumstances where a parallel remedy exists.

The Privy Council also echoed the caution of Lord Diplock in the case of **Khemray Harrikissoon vs the Attorney General** when he said;

"The mere allegation that the Human rights or a fundamental freedom of a person has been contravened is insufficient to invoke the constitutional jurisdiction of the Court. If it appears to the Court that the allegation which is being made is an abuse of process of the Court which is being instituted solely for the purpose of avoiding the necessity of applying in the normal way for the appropriate judicial remedy for unlawful administrative action."

[63] This Court has observed that in a series of cases where the protection of the Law provision found in constitutions in various Caribbean countries was considered, an expansive approach to its potential application has been taken.

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[12] [1971] 31 WLR 348
[13] [2002] UKPC 5

[64] In **Attorney General of Barbados vs Joseph & Boyce** [14] the Caribbean Court of Justice said as follows;

"The right to the protection of the Law is so broad and pervasive that it would be well-nigh impossible to encapsulate in a section of a Constitution all the ways in which it may be invoked or can be infringed."

[65] In the **Maya Leaders Alliance vs The Attorney General of Belize** [15] the Caribbean Court of Justice took the position that;

"The right to protection of the Law is a multi-dimensional, broad, and pervasive constitutional precept grounded in fundamental notions of Justice and the rule of Law. The right to protection of the Law prohibits acts by the Government which arbitrarily or unfairly deprive individuals of their basic constitutional rights to life, liberty or property. It encompasses the right of every citizen of access to the Courts and other judicial bodies established by Law to prosecute and demand effective relief to remedy any breaches of their constitutional rights.

The right to protection of the Law in appropriate cases require the relevant organs of the state to take positive action in order to secure and ensure the enjoyment of basic constitutional rights… where the citizen's rights have been frustrated by Government's action or omission, there **may** be ample grounds for finding a breach of the protection of the Law for which Damages may be an appropriate remedy.

[66] This Court has quoted at length from these cases although being of persuasive authority because the Claimant has repeatedly complained in its pleadings about the unfairness, misconduct and stark abuse of state power of the Defendants against the Claimant. The Complaint therefore is a live issue in the instant case and must therefore stand up to examination and determination by the Court if there is any infringement of the Claimant's Constitutional rights. I am of the opinion that the learning cited by the learned Solicitor General in the case in **Sam Maharaj**

[14] [2006] CCJ 3
[15] [2015] CCJ 15

vs Prime Minister of Trinidad and Tobago et al at paragraphs 39, 40 and 41 of the Judgment is not applicable to this instant case as the Claimant/Respondent is entitled to seek declarations in a claim for Damages for contractual and tortious breaches alongside a Claim for Judicial Review even though they are both applications for Administrative orders.

See: The Hon. Attorney General vs Hon. Michael Browne & Giselle Isaac

[67] Therefore I am of the considered opinion that the Claimant's case as pleaded allows it to pursue constitutional redress and I am satisfied there are matters to be determined by this Court in a substantive Trial which the Claim requires.

[68] There is a final issue that this Court has to address before concluding this Judgment and that is whether the N.I.A is a component of the Crown.

[69] In the case of **Barbuda Council vs Antigua Aggregates Ltd. and Sandco Ltd**[16] JA Rawlins (as he then was) stated that;

"The Crown is a convenient term in Constitutional Law for the collectivity that now comprises the Sovereign in her governmental capacity. Ministers, Civil Servants and the armed forces. The Crown is very broadly the Central Government and other public authorities."

[70] In the **Barbuda Council case,** Rawlins JA alluded to the difficulty that is sometimes experienced in determining whether and in what circumstances a person or body may be regarded as the Crown. The learned Justice of Appeal reflected on the complexity of the considerations and principles on which a decision will hinge as to whether a body is a crown body. The instant case is no exception and has presented difficulties and complexities in light of the sections of the Constitution that delineate the Nevis Jurisdiction from the Saint Kitts Jurisdiction.

The Constitution of Saint Kitts and Nevis

[16] Civil Appeal No. 11 of 2005

[71] I have already alluded to Chapter X Sections 102-108 of the Constitution which is dedicated to the Island of Nevis.

[72] The foregoing sections of the Constitution confers on the Nevis Island Administration (N.I.A), a substantial measure of authority and control over its affairs as a component of the state or the Federation. What is important for our purposes is that the Nevis Island Administration is vested with administrative and legislative powers with full responsibility in relation to certain matters, listed in Section 106 pertaining to the programme of the N.I.A.

Also of significance is that the N.I.A is given power to legislate in the conduct of Nevis Affairs, and it is entitled to collect and retain the proceeds of any taxes, fees, dues and rates or other charges.

[73] Therefore within the Federal legislative framework, the Nevis Island Administration is an emanation of the Crown which is indivisible. The Ministers who have been joined in the proceedings have been joined in their capacities as Ministers in the Government of Saint Kitts and Nevis according to the submissions of the Claimant.

[74] Therefore the Court would invite submissions from Counsels for the Defendants at the substantive hearing on its opposition to the joinder of those parties in these capacities. There are allegations made by the Claimant in the Fixed Date Claim Form and supporting affidavit against each of the Defendants and this Court considers that these are live issues to be determined at the substantive hearing of this case.

Costs

[75] The general principle is that costs should be awarded to the successful party. The parties have all had some measure of success on the various issues raised in the applications before the Court.

The Court has found partial favor with Counsel for the 3rd and 6th Defendants submissions and has struck out the 6th Defendant the Hon. Timothy Harris from the proceedings for reasons already given.

The Claimant on the other hand has been ordered by the Court to properly particularize its case against the 2nd,3rd, 4th, 5th and 7th Defendants, and this could have been done by the Defendants in lieu of a strike out application.

I accordingly order that all parties bear their own costs.

Order

[76] In summary and in exercising my discretion I order as follows;

1. That the Claimant shall on or before the 30th November 2017 file and serve an Amended Claim Form and Statement of Claim against the 2nd, 3rd, 4th, 5th and 7th Defendants to particularize in detail the causes of action against the respective Defendants.
2. The Defendants shall file a Defense within 28 days of service of the Amended Claim Form and Statement of Claim.
3. The Claimant may serve an amended reply if necessary within 14 days of service of the amended Defense.
4. Thereafter the matter shall be listed for further case management by the Court office.
5. Each party shall bear its own costs.
6. I thank Counsel on both sides for their diligence and research in their submissions and for their patience in awaiting the delivery of this decision.

Lorraine Williams
High Court Judge

By the Court

Registrar