IN THE SUPREME COURT OF BELIZE, A.D. 2007

CLAIM NO. 292 OF 2007

(BELIZE TELECOM LIMITED	**1ST Claimant**
(JEFFREY PROSSER	**2ND Claimant**
(BOBBY LUBANA	**3RD Claimant**
(PUBLIC SERVICE UNION	**4TH Claimant**
(BELIZE NATIONAL TEACHERS UNION	**5TH Claimant**
(	
(AND	
(	
(THE ATTORNEY GENERAL OF BELIZE	**Defendant**
(AND	
(BELIZE TELEMEDIA LIMITED	**Interest Party**

Coram: Hon. Justice Sir John Muria

7th December 2007

Mrs. Lois Young S.C. **for Claimants**
Mr. Edwin Flowers S.C. **for the Defendant**
Mr. Eamon Courtenay S.C. **for the Interested Party**

JUDGMENT

JUDICIAL REVIEW – Claim under Part 56, Civil Procedure Rules (CPR) – claim in public law – alleged violations of constitutionally protected rights – challenge to constitutional validity of Vesting Act 2007 – application to strike out claim – legal standing or locus standi – test under Part II, Constitution and test of "sufficient interest" – whether issues before the Court academic or moot or of no practical benefits – whether live controversy between parties – whether commercial law claim dressed up in constitutional challenge – new Civil Procedure Rules embrace modern development on legal standing – test of "real prospect of success"

applicable at leave stage in judicial review – legitimate expectation to be heard – basis for claim unchanged – summary judgment not applicable in constitutional claim for redress – Rule 15.3, CPR – validity of the Vesting Act a live controversy between the parties

Muria J.: By their applications issued and filed in this court, Belize Telemedia Limited (Interested Party) and the Attorney General of Belize (Defendant) respectively, on 7th and 12th September 2007, seek orders striking out and dismissing the Claimants' claim pursuant to Rule 26.1(2) (j) and 26.3(1)(b) and (c) of the Supreme Court (Civil Procedure) Rules 2005 (CPR). The grounds upon which the Interested Party relies in support of its application are:

1. ***The issues which the First to Third Claimants are asking this court to decide are academic and the dispute between the First to Third Claimants and the Defendant has ceased to be of any practical significance;***
2. ***The constitutional rights of the Fourth and Fifth Claimants have been contravened by the Vesting Act. Further, in the alternative, there is no practical***

significance to the claims of the Fourth and Fifth Claimants; and

3. ***The Claimants have not demonstrated that they have suffered any loss as a result of the vesting Act, and not that the Defendant acted in a way which would justify the award of exemplary damages against it and they are therefore not entitled to any damages, exemplary or otherwise.***

Similarly, the Defendant relies on the following grounds as sets out in his application:

1. ***The 1st, 2nd and 3rd Claimants are not the owners of the property in respect of which they claim violations of their constitutional rights, and thus have no legal standing to bring this application for constitutional redress or to receive any of the orders claimed.***
2. ***The presence of the 2nd and 3rd Claimants is required to settle the crucial issue of whether the 1st, 2nd and 3rd Claimants own the shares.***

3. ***The constitutional rights of the 4th and 5th Defendants have not been violated by the Vesting Act.***

4. ***An affidavit in support sworn by Andrea McSweaney-McKoy accompanies this application.***

Both applications are heard together and they are dealt with together in this judgment. Before I proceed to do so, I feel it would be very helpful to set out the background circumstances of the case first.

Back ground Circumstances

The background to this application presents a somewhat interesting and remarkable story of the relationship between the parties in this case. In this regard, the cases referred by Ms. Lois Young S. C. are indeed useful to help us understand the genesis of the somewhat continuing disputes between the claimants and defendant and Belize Telecommunications Limited (BTL), now replaced by Belize Telemedia Limited (BTML). The cases are: ***Belize Telecom Ltd, Innovative Communication Co. LLC v Attorney General, Ecom Ltd, Belize Telecommunications Ltd,*** Civil Appeal No. 6 of 2005; ***Attorney General and Ecom Limited v Belize Telecom Ltd, Innovative Communication Co. LLC, and Belize Telecommunications Limited,*** Claims Nos. 179 and 190 of 2005

(Consolidated); and ***Jeffrey Prosser, Bobby Lubana et al v The Attorney General, The Minister of Public Utilities et al,*** Claim No. 338 of 2005.

As observed by Carey JA in the Civil Appeal No. 6 of 2005 (above) –

> ***"Belize Telecommunications Ltd. (BTL) is the principal provider of telecommunications in Belize but all is not well with the company; there are ensuing fights for control and management of the company. There is much litigation, not only before the court in Belize but also in Miami, Florida, USA."***

The disputes between the parties in Claims Nos. 179 and 190 of 2005 were about the construction of the Articles of Association and appointment and removal of directors of the company, BTL. The cases came about because defendant and one ECOM LTD sought to dispossess the First Claimant and Innovative Communication Company LLC (ICC) of their rights and shares in BTL. The case went to the Court of Appeal in Civil Appeal No. 6 of 2005. The Court of Appeal found in favour of the appellant (the first claimant) by holding that only the first claimant who holds the Special Shares and having appointed its directors could remove them.

In Claim No. 338 of 2005 the Supreme Court held unlawful another attempt at dispossessing the first, second and third claimants of their rights and shares in BTL. This time it was by way of legislative enactment. The Government of Belize put through the National Assembly, an amendment to the Public Utilities Commission (Cap. 223) and was passed by the National Assembly on 13 August 2005 as the ***Public Utilities Commission (Amendment) Act, 2005 – Act No. 30 of 2005***. Pursuant to this Amendment, the Minister of Public Utilities, on 27 August 2005, made and issued two Statutory Instruments, namely, Statutory Instruments Nos. 108 and 109 of 2005. Under Statutory Instrument No. 109, made pursuant to section 22A of the Act, the Minister was given power and did use the said power to make order declaring, *inter alia*, the Special Shares held by the first claimant in BTL unlawful and removed the directors appointed by the first claimant in BTL. By the same Statutory Instrument the Minister made new Articles and Memorandum of Association for BTL. Under the powers conferred by section 23A, the Minister made Statutory Instrument No. 108 of 2005 pursuant to which the Minister ordered an inspection into BTL.

The first, second and third claimants issued Claim No. 338 of 2005 challenging the validity of sections 22A and 23A, as well as the validity of the two Statutory

Instruments. The Supreme Court on 19 September 2006 struck down the two Statutory Instruments and declared the actions of the Minister invalid and unlawful.

Then we have Claim No. 185 of 2007. That case was brought by the first three claimants to enforce the orders of the court made in Claim No. 338 of 2005 as well as those of the Court of Appeal in Civil Appeal No. 6 of 2005. The judgment of the Supreme Court (CJ) in Claim 185 of 2007 was delivered on 31 May 2007 with the following orders made:

> ***"(i) An interim injunction restraining the defendant, including their purported directors, officers, servants, agents or others purporting to act on their behalf from preventing in any manner, including the threatening to arrest or detain the claimants from holding of the meeting of the Board of Director of Belize Telecommunications Ltd.***
>
> ***(ii) I order that the Board of Directors may meet at BTL Headquarters, St. Thomas Street, Belize City, or hold any meeting of the Board of Directors, that may be called anywhere in Belize.***

(iii) The defendant shall deliver to the claimants before the next Board Meeting of BTL the following:

(a) The share register of BTL, which in accordance with section 26 of the Companies Act must include the names and addresses of the members and the occupations, if any, and a statement of the share held by each member, distinguishing each share by its number, the date on which each person was entered on the register as a member and the date at which any member ceased to be a member,

(b) The Annual list of members and summary as required under section 27 of the Companies Act.

(c) All of BTL's accounting and financial records for the period February 9th 2005 to the date of this order.

(d) All bank statements of BTL for the period February 9th 2005 to date.

(e) All of BTL's management reports ft the period February 9th 2005 to date.

(f) All prospectuses and valuation reports regarding BTL as provided to BTL from February 9th 2005 to present."

That case was brought because, as Ms Lois Young, S.C. Counsel for claimants put it, despite their apparent successes in the previous cases the claimants still could not proceed with their business activities.

The judgment in Claim No. 185 of 2007 was delivered on 31 May 2007, two days after the ***Telecommunications Undertaking (Belize Telecommunications Limited Operations) Vesting Act No. 10 of 2007*** (the Vesting Act 2007), was signed into law, thereby dissolving BTL.

We now come to the present claim. The first three claimants were again dispossessed of their shares, rights and interest in BTL by virtue of the operation of the Vesting Act 2007. They have instituted these proceedings because they say that not only are their rights and shares have been taken away from them, but they were given to another body, the Interested Party, in this case. Like in Claim No. 338 of 2005, the claimants in the present are challenging the validity of the law which purportedly takes away their rights, shares and interest in BTL.

A long with the first three claimants, the fourth and fifth claimants have also joined in this challenge against the defendant and Interested Party. They were added as parties on 3/8/07. Unlike, the first claimant, the fourth and fifth claimants held onto their shares in BTL and now continue to hold the same in BTML.

With those background facts surrounding the case now before the court, I turn now to briefly outline the claimants' claim in the present case.

The Claimants' Claim

Having been granted leave to bring judicial review proceedings against the actions of the defendant, the claimants' claim against the defendants and Interested Party are for:

> ***"1. A Declaration that Act No. 10 of 2007 dated the 29th day of May 2007 and entitled "Telecommunications Undertaking (Belize Telecommunications Limited Operations) Vesting Act 2007" (hereinafter called "Act No. 10 of 2007") is a violation of the first***

Claimant's constitutional right to freedom of association enshrined in section 3(b) and section 13 of the Belize Constitution and is unlawful and void.

2. ***A Declaration that Act No. 10 of 2007 is a violation of the Claimants' constitutional rights to protection from unlawful and arbitrary deprivation of property enshrined in sections 3(d) and 17(1) of the Belize Constitution and is unlawful and void.***
3. ***A Declaration that Act No. 10 of 2007 is in violation of the principle of separation of powers as between the Legislature and the Judiciary and as between the Legislature and the Executive, and is unlawful and void.***
4. ***A Declaration that Act No. 10 of 2007 ultra vires and inconsistent with the Belize Constitution and void.***
5. ***Damages, including exemplary damages, for the breaches of the Claimants' constitutional rights.***
6. ***That the Defendant pays the costs of this claim.***
7. ***Further or other relief as the Court deems just."***

Against the claimants' claim, the defendant and Interested Party raised objections and now ask the court to strike out the claimant's claim. I have set out at the

beginning of this judgment the nature of the applications to strike out and grounds relied upon by both the defendant and Interested Party. I need not repeat them here. I need only say here, that the determination of the declaratory orders sought by the claimants is not a matter which I need to concern myself in these proceedings.

Defendant's Argument

The learned Solicitor General, Mr. Edwin Flowers S.C., putting his arguments for asking the court to strike out the first, second and third claimants' claim, submitted that the claimants have no legal standing to bring these proceedings since they do not own the shares in respect of which they claim violations of their constitutional rights. Secondly, the Vesting Act does not violate their constitutional rights. Thirdly, in respect of the fourth and fifth claimants, Mr. Flowers urged the court so reject their claim of violation of their constitutional rights because they have not been deprived of their rights to the shares issued to them and which they still hold.

In support the defendant's application, Mr. Flowers rely on the affidavit of Mrs. Andrea McSweanie Mckoy sworn to on 11 September 2007. As this affidavit encompasses the thrust of the defendant's case for asking the court to strike out

the claimant's claim, I feel it would be useful to set out the main parts of the affidavit:

> ***"3. Due to the default on the 1st, 2nd and 3rd Claimants in the financing arrangements for the purchase from the Government of Belize of certain shares I the Belize Telecommunications Limited (BTL), the said shares have been sold privately by the RBTT Merchant Bank Limited ('RBTT'), which held a first and prior security interest in them. In the premises, it is our firm view that the 1st, 2nd and 3rd Claimants have no legal standing to properly bring this application and are not entitled to the orders they claim.***
>
> ***4. In order for the 1st Claimant to finance its purchase from the Government of Belize of shares in BTL, the 1st Claimant, under the directorship of the 2nd and 3rd Claimants, made a Promissory Note dated December 31, 2004 in favor of the RBTT. By a Share Pledge Agreement of even date, the 1st Claimant also pledged to the RBTT the said shares in BTL, including the***

Special Rights Redeemable Preference Share, as security for the Promissory Note.

5. ***The Promissory Note matured on June 30, 2005, and the 1st Claimant defaulted.***

6. ***By a letter dated April 7, 2006 the RBTT sent to the 1st Claimant a Notice of Default, Acceleration and Reservation of its Rights by which it informed the 1st Claimant of its rights to at any time exercise its powers of recovery under the Promissory Note, the Share Pledge Agreement, at law, and in equity. This said letter dated April 7, 2006 is now shown to me and marked "A.M.M.1".***

7. ***The Vesting Act of May 29, 2007 was enacted in an effort to prevent any jeopardy to the vital telecommunications industry of Belize, especially in light of the 1st, 2nd and 3rd Claimants' continuing default and the imminent possibility of a sale by RBTT of the substantial shareholding which had been pledged to RBTT.***

8. By a further letter dated July 10, 2007, the RBTT wrote to the 1st Claimant indicating that the Bank would be disposing of the pledged shares by private sale. This letter of July 10, 2007 is now shown to me and marked "A.M.M.2".

……...

10. The Transfer of Shares was duly executed and lodged with the Belize Companies Registry, Government of Belize, and stamp duty was paid. The Transfer of Shares dated July 10, 2007 is now shown to me and marked "A.M.M.3".

11. Although the very same share certificates are relied upon by the Claimants to establish their property right and their rights to associate with the Belize Telecommunications Limited, the Claimants by their default have lost or surrendered these rights, and have further failed to disclose their loss to this Honourable Court.

…….

13. ***Indeed, even without the Vesting Act, the 1st, 2nd and 3rd Claimants' own default led to the disposition of the special share and the rights appurtenant thereto and consequently impedes their association with the BTL or with Belize Telemedia Limited; seriously impacts the outcome of the Privy Council Appeal No. 19 of 2006 and Civil Appeal No. 7 of 2007; and fully explains the circumstances under which they lost their 'property'***

14. ***Also, the Vesting Act does not force the 1st, 2nd and 3rd Claimants to associate with or invest in Belize Telemedia Limited. In light of the disposition or such shares by the RBTT, which held a first and prior security interest in the said shares, there is no basis for such association.***

15. ***The Vesting Act provides as well for the allotment of consideration shares by Telemedia as reasonable compensation for any deprivation or compulsory acquisition of property engendered by the said Act, and provides recourse to the Supreme Court of Belize for a determination of the same. Thus person including the***

4th and 5th Claimants are not barred from associating and are not deprived of their property under the Vesting Act.

…… ".

The whole tenor of the factual circumstances set out in Ms. McKoy's affidavit is that the first claimant whose directors are the second and third claimants, obtained funds from RBTT to purchase the Government shares in BTL. To secure the fund, the first claimant issued a Promissory Note which matured on 30 June 2005. In addition, the first claimant, pursuant to a Share Pledge Agreement entered into with RBTT, pledged the said shares to RBTT. The first claimant defaulted on maturity of the Promissory Note and RBTT proceeded to enforce its rights under the Promissory Note and Share Pledge Agreement. On 10 July 2007 RBTT sold the pledged shares to Telemedia Investment Limited (a subsidiary of Belize Telemedia Limited). The Vesting Act 2007 was, among other things, to further fortify the transfer of pledged shares to Belize Telemedia Limited having been sold to them by RBTT.

In short the defendant's case is that the first, second and third claimants, by virtue of the Vesting Act 2007, no longer own any shares nor have any rights in the shares and directorship of BTL. As such, do not have any standing or cause for complain against the validity of the Vesting Act 2007.

Interested Party's Argument

Similarly, Mr. Eamon Courtenay SC on behalf of the Interested Party, also pressed the argument that the first, second and third claimants no longer own any shares or have any rights or interest in the shares which had been sold to the Interested Party by RBTT. Consequently, the three claimants do not have any standing to bring these proceedings.

Interested Party says that even without the Vesting Act the first, second and third claimants' own default led to the disposition of the special shares and the rights that went with those shares. This, it is argued by the defendant and Interested Party, is because RBTT's right to sell is independent of the Vesting Act. It is further argued that consequently, the first three claimants no longer own any shares in BTL. Thus it is said, the case brought by the first, second and third claimants should be struck out as disclosing no reasonable grounds for bringing the claim.

As to the fourth and fifth claimants, Mr. Courtenay's contention is that, these claimants have taken up their shares (567,666 Ordinary Shares) in the Interested Party - BTML. They retain their shares. They attended the Annual General Meeting of the company on 28 August 2007, that is, after the passage of the Vesting Act 2007 and the claim had been filed, and even after having been joined as parties in the present claim.

Counsel, therefore, submitted that the fourth and fifth claimants do not have any reasonable cause for bringing any claim against the defendant and Interested Party in this case. Their rights have not been violated and so they do not have standing to sue in this case. In support of his argument, Counsel cited the case of ***Government of Mauritius -v- Union Flacq Sugar Estates Co. Ltd***. [1992] 1 W.L.R. 903; [1993] 1 LRC 616.

The disputes of facts and issues raised in the various affidavits will no doubt be the subject matter to be determined fully at the hearing of the main claim, should the matter gets to that stage. In the present applications, the facts and issues contained in the affidavits serve usefully as a means to demonstrate that there are

real issues at the heart of the disputes between the parties to this litigation. Those issues must be resolved one way or the other.

Legal Standing or Locus Standi

It is important not to lose sight of the fact that the claimants' case is based on alleged violations of the Constitution of Belize. The legal standing or *locus standi* of the claimants must be determined, in the light of the relevant provisions of the Constitution, as well as on the general legal principles as to standing in public law litigation.

When one looks at the orders sought by the claimants in the main claim, it seems clear that they are challenging the constitutionality of the Vesting Act on two fronts. The first allegation is that the Vesting Act 2007 is in breach of the Constitution of Belize because it violates the claimants' rights protected under the Constitution, in particular their rights under sections 3, 13 and 17 of the Constitution. This is obvious from paragraphs 1 and 2 of the Orders sought. The second is that the Vesting Act 2007 violates the constitutional principle of separation of powers and therefore *ultra vires* the Constitution of Belize. This is borne out by paragraphs 3 and 4 of the Orders sought by the claimants.

(i) Legal standing to enforce constitutionally protected rights

The test applicable under the first limb is different from that sought under the second limb. Section 20 of the Belize Constitution is the provision for enforcement of breaches of the protective provisions of the Constitution. Subsection (1) of section 20 provides:

> ***"20 – (1) if any person alleges that any of the provisions of section 3 to 19 inclusive of this Constitution has been, is being or is likely to be contravened in relation to him (or, in the case of a person who is detained, if any other person alleges such a contravention in relation to the detained person), then, without prejudice to any other action with respect to the same matter which is lawfully available, that person (or that other person) may apply to the Supreme Court for redress."***

For a claimant to have legal standing to bring a claim based on any provisions of sections 3 to 19 of the Constitution, he must show that the alleged contravention is *"in relation to him"* with the exception only when the alleged contravention or

likely contravention is in relation to a person detained. In the case of a detainee, the person making the allegation of contravention on behalf of the detainee, has standing to bring an action to enforce breaches of any of the provisions of sections 3 to 19 of the Constitution.

I do not think that it can be seriously argued by the defendant and Interested Party, against the fact that the first, second and third claimants' shares, rights and interest in those shares, as well as their directorship of BTL have been denied of them by reason of the Vesting Act 2007. The questioned that must be answered is whether that denial contravenes the rights of the first to fifth claimants as protected under sections 3 to 19 of Part II of the Constitution, in particular section 3 (Fundamental rights and Freedoms), section 13 (Protection of Freedom of Assembly and Association) and section 17 (Protection from Deprivation of Property). The test of standing that each of the claimants must satisfy to claim redress for breaches of any of the provisions mentioned, is that the contravention must be "in relation to him." A part from the permitted exception already mentioned, no representative action can be brought to enforce the rights protected in sections 3 to 19 of the Constitution.

The first claimant held shares in BTL to the tune of 11, 382, 999 share which according to Ms. McKoy's affidavit, comprised of 10, 902, 998 "C" ordinary shares, 480, 000 "B" ordinary shares and one (1) Special Rights Redeemable Preference Shares. The fourth and fifth claimants are also shareholders in BTL, holding 567, 666 ordinary shares in the company. The second and third claimants were appointed directors of BTL by virtue of the first claimant's shareholding in BTL. The Vesting Act 2007 complained of in this case, provides for the Vesting in Belize Telemedia Limited of the business in Belize Telecommunications Limited. The schedule to the Act, sets out all the properties, rights, liabilities and obligations of BTL that were transferred to BTML.

Assuming for the moment that the Vesting Act 2007, by vesting all the properties, rights and assets of BTL in BTML, contravenes sections 3, 13, and 17 of the Constitution, can each of the claimants rely on the above sections and bring an action under section 20 of the Constitution? To do so each of the claimants must show that he is directly or personally affected; so that the alleged contravention is "in relation to him." It is not enough to show that contravention of another's right might have adversely affected a claimant's rights. See ***Ulufaalu -v- Attorney General*** (2 August 2004) Court of Appeal of Solomon Islands, Civil Appeal No. 015 of 2001.

Thus on the factual circumstances of the present case, the first claimant, in my judgment satisfies the test of standing under section 20 since the alleged contravention directly affects it as the holder of the shares mentioned which have now been vested in BTML.

In so far as the second and third claimants are concerned, their rights and interest in BTL are depend on the first claimant. However, as I have alluded to earlier, a claimant raising contravention of any of the sections 3 to 19 of the Constitution, cannot rely on someone else's rights even though it might have some adverse effect on him. See ***United Parties -v- Minister of Justice, Legal and Parliamentary Affairs*** [1998] 1 LRC 614(Zimbabwe) where the court said, on section 24(1) [similar to section 20 (1) of the Constitution of Belize]:

> ***"If any person alleges that the Declaration of Rights has been, is being or is likely to be contravened in relation to him ... then, without prejudice to any other action with respect to the same matter which is lawfully available, that person ... may ... apply to the Supreme Court for redress".***

See also *section 18 of the Constitution of Antigua & Barbuda.*

In the present case, the second and third claimants do not satisfy the test set out in section 20 of the Constitution, for they cannot show that the alleged contravention of sections 3, 13 and 17 are in relation to each of them personally. They, therefore, do not have the standing to bring their claim under Part II of the Constitution.

Turning to the fourth and fifth claimants, it is clear that they are the holders of the 567, 666 ordinary shares in BTL and now in BTML, although there is some dispute as to whether those ordinary shares are in class "C" or "B" or both. They would be the persons in relation to whom contraventions may be alleged under sections 3 to 19 of the Constitution. However, there is no evidence before the court that either the fourth or fifth claimant "alleges" a contravention of any of the provisions of sections 3 to 19 of the Constitution. In so far as it can be gleaned from the affidavit evidence. Their concern is that the new Articles of Association of BTML operate against their interests. In my view, the fourth and 5th claimants would have to do more than that to bring a claim base on an alleged contravention of any of the provisions of sections 3 to 19 of the Constitution.

Additionally, it will be noted that having been joined as parties, on 3 August 2007, they continue to retain their shares in BTML. They accepted cash payments in respect of their shares. They attended and participated in BTML's Annual General Meeting on 28 August 2007, even after they were joined as parties against the defendant and BTML. In those circumstances, it would be difficult for the fourth and fifth claimants to assert that they had been deprived of their shares in BTL and now in BTML. On the contrary, they are still in possession of their properties in their shares in BTML. The basis for their standing to assert violations of their constitutional rights under Part II of the Constitution does not exist. Any assertion of a deprivation of proprietary rights stemming from the unfavourable operation of the Articles upon them, cannot give rise to a right in property. See ***Government of Mauritius -v- Union Flacq Sugar Estates Co. Ltd***. (above). I therefore hold that the fourth and fifth claimants also do not have the legal standing to bring a claim under Part II of the Constitution.

(ii) Standing to challenge the validity of the Vesting Act 2007

The controversial issue, however, is the validity of the Vesting Act 2007 and the resultant dispossession of the claimants of their shares, rights and interest in BTL. Can it be argued then that the said five claimants here have standing to challenge the validity of the law which takes away their shares, rights, and interest in BTL?

For the defendant and Interested Party, it has been staunchly maintained that the claimants do not have the standing to do so.

The test for standing to bring an action challenging the validity of a law has been described in many ways by both case law authorities and statutes, depending on the nature of the claims and remedies sought. For example, in a private law claim the test of standing is sometimes pitched against an "*aggrieved person*" or "*a person who is affected*" by the act complained of or that the applicant must show he is a "*person aggrieved*" i.e. a person whose legal right or interest has been affected: ***Sidebotham*** **[**1880] 14 Ch. D 458 and ***Buxon -v- Minister of Housing*** [1960] 3 All ER 408. The courts have moved on and so have propounded the test of "*sufficient interest*" or *locus standi* or legal standing in later cases such as ***R -v- Inland Revenue Commissioner, ex parte National Federation of Self-Employed and Small Businesses Ltd*** [1980] 2 WLR 579 where Lord Denning MR expressed the test as

> ***"...have these self-employed and small shopkeepers, through their federation, a "sufficient interest" to complain of this amnesty? Have they a genuine grievance? Are they genuinely concerned? Or are they mere busy bodies? This matter is to be decided objectively. A "busybody" is one***

who meddles officiously in other in other people's affairs. He convinces himself - subjectively - that there is a cause for grievance when there is none. He should be refused. But a man who is genuinely concerned can point - objectively - to something that has gone wrong and should be put right. He should be heard."

The formulation of "*sufficient interest*" developed following the ***Federation of Self-Employed*** case and has since been adopted in subsequent cases in many other common law jurisdictions, including England itself and has shown a discernible trend away from the restrictive approach to legal standing. See ***Cahill -v- Sutton*** [1980] 1R 269 where the Irish Supreme Court recognized that -

"The primary rule as to standing in constitutional matters is that the person challenging the constitutionality of the statute or some other person for whom he is deemed by the Court entitled to speak, must be able to assert that, because of the alleged unconstitutionality, his or that other persons interests have been adversely affected, or stand in real or imminent danger of being adversely affected by the operation of the statute."

In many jurisdictions with written Constitutions, provisions such as section 119 of the Antigua & Barbuda Constitution, referred to by Counsel for the Claimants, are included in the Constitutions of the Court in constitutional questions. Section 119(1) of the *Constitution* of Antigua & Barbuda provides as follows:

> ***"119(1) subject to the provisions of section 25(2) , 47(6)(b), 56(4), 65(5), 124(7)(b) and 124 of this Constitution, any person who alleges that any provision of this Constitution (other than a provision of Chapter II) has been or is being contravened may, if he has a relevant interest, apply to the High Court for a declaration and for relief under this section."***

Similar provision is found in section 83(1) of the Constitution of Mauritius, section 105(1) of St. Lucia Constitution, section 96(1) of St. Vincent and The Grenadines Constitution, and section 83(1) of Solomon Islands Constitution.

The test in section 119(1) (above) for example, for invoking the jurisdiction of the Court where alleged contraventions of any provisions of the Constitution (other

than Chapter II) is wider in its scope than section 18(1) of the Antigua and Barbuda Constitution [similar to section 20(1) of Belize Constitution]. In the provision I referred to, including section 119(1) of the Antigua and Barbuda Constitution, an applicant has legal standing if he "alleges that any provision of this Constitution (other than Chapter II) has been or is being contravened [and} he has a relevant interest in the alleged contravention. Thus a claim for declaration for breach of the Constitution brought, other than under Chapter II, only requires that an applicant has a "relevant interest" or "sufficient interest" to be shown rather than there should be a contravention in relation to him. See Antigua and Barbuda case of ***Baldwin Spencer –v- The Attorney General of Antigua and Barbuda*** (April 8, 1998) Court of Appeal , Civ. App. 20A of 1997; ***Richard and James –v- Governor General and Attorney General of St. Vincent and Grenadines***,Suit No. 84/1989 and 570/1989. See also ***Ulufaalu -v- Attorney General*** (above).

The Belize Constitution does not have similar provision to section 119 of the Antigua and Barbuda Constitution. However, the position in law that an applicant need only show that he has a "*relevant interest*" or "*sufficient interest*" as expounded in the provisions of other similar constitutions and the case law on

those provisions are applicable to Belize when determining the legal standing of a person to challenge the constitutionality of a law.

To confirm the legal position as just expressed, I need only point to our new Belize Supreme Court (Civil Procedure) Rules (CPR) and the procedure of judicial review now in place. The Rules affirm the liberalization of the principles of legal standing, formerly, ***locus standi*** and more evidently, the language of Rule 56.2 CPR makes this so obvious, which provides:

> ***"56.2 (1) An application for judicial review may be made by any person, group or body which has <u>sufficient interest</u> in the subject matter of the application.***
>
> ***(2) This includes –***
>
> ***(a) any person who has been <u>adversely affected</u> by the decision which is the subject of the application;***
>
> ***(b) any body or group acting at the request of a person or persons who would be entitled to apply under paragraph (a);***

> ***(c) any body or group that represents the views of its members who may have been <u>adversely affected</u> by the decision which is the subject of the application;***
>
> ***(d) any statutory body where the subject matters falls within its statutory ambit;***
>
> ***(e) any body or group that can show that the matter is of public interest and that the body or group possesses expertise in the subject matter of the application; or***
>
> ***(f) any other person or body who has a right to be heard under the terms of any relevant enactment or the Constitution.***

(underlinings are mine)

The Rule evidently, encompasses the modern approach to legal standing in public law litigation engineered by the ***Federation of Self-Employed case*** in 1980 in England. Since then, this salutary principle of "sufficient interest" have been baptized and embedded in the constitutions, statutes, Rules and case laws throughout the common law empire.

Those whose interest have been adversely affected by the actions of the defendant in this case are the five claimants who have alleged that by virtue of the Vesting Act 2007, the first, second and third claimants have now been dispossessed of their shares, rights and interest, including directorship and non-executive chairmanship in BTL, while the fourth and fifth claimants stand to be adversely affected by the new Articles of BTML, in particular Article 26B which has the effect on the minority shareholders being forced to sell their shares at the behest of the majority shareholders.

The point strongly urged by Ms Lois Young S.C. in support of the second limb of the orders sought is that the Vesting Act 2007 effectively decided the Privy Council Appeal No.19/2006 and the Appeal before the Court of Appeal No. 7 of 2007 in favour of the defendant. That is a serious issue of public importance, much more so to the five claimants in this case. It goes to the very fabric of the principle of separation of powers entrenched in the Constitution of Belize. The five claimants here, must surely, in my judgment, have "*sufficient interest*" to come to this Court and ask to be heard on this issue, even if they are not able to invoke the jurisdiction of the Court through the Part II **"gate way"** of the Constitution.

I am convinced and I hold that all the claimants have standing to seek the orders in paragraphs 3 and 4 of the Claim.

Are the issues raised by Claimants academic?

As mentioned earlier in this judgment, it is the defendant's and Interested Party's case that the issues which the claimants are raising in this case are purely academic and the court should exercised its discretion not to deal with them. This argument stems from the contention that the Vesting Act has vested all the properties, shares, rights and interest previously held by BTL in the Interested Party. Reliance is placed on a number of authorities, including – ***Tindall -v- Wright*** (1922) The Times Law Reports 521***; Sun Life Assurance of Canada –v- Jervis*** [1944] A.C. 111***; Russian Commercial and Industrial Bank -v- British Bank for Foreign Trade Ltd*** [1921] 2 AC 438***; Canada (Minster of Justice) -v- Borowski*** (1981) 130 DLR 3rd 588; ***Ainsbury -v- Millington*** [1987] 1 W.L.R. 379; ***Regina v Secretary of State for Home Department, ex parte Salem*** [1999] 2 W.L.R. 483; ***Vision Avant – Garde Inc. v Suprintendent of Financial Institutions (British Columbia)*** (March 8, 2000, British Columbia Supreme Court, 2000 A.C.W.S.J. Lexis 48078; ***Gilbert Smith -v- Belize***

Telecommunications Limited and AG (7 July 2005) Supreme Court of Belize Claim No.116 of 2005.

The affidavit of Ediberto Tesucum sworn to on 7 September 2007 upon which Mr. Courtenay relied, sets out the basis for Interested Party's claim that the 1st, 2nd and 3rd Claimants no longer have any property, shares, rights or interest in BTL. In précis, the basis for the claim is that on 30 December 2004 the 1st Claimant made a Promissory Note in favor of RBTT in the sum of US$26, 258,834.88 to mature on 30 June 2005. A share Pledge Agreement was also entered into on the 3 December 2005. The 1st Claimant failed to honour the Promissory Note when it matured on 30 June 2005. RBTT asserted its rights over the shares in BTL in August 2006. After the passing of the Vesting Act 2007, RBTT again reiterated its rights over the BTL shares as pledged. Subsequently RBTT sold the pledged shares to Telemedia Investments Limited (a subsidiary of Belize Telemedia Limited). Mr. Tesucum concluded in paragraph 40 of his affidavit:

> ***"40. I verily believe therefore that, since 10 July 2007 when the shares were sold by RBTT to Telemedia Investments in accordance with RBTT's powers under the Share Pledge Agreement, neither RBTT nor Belize***

> ***Telecom has any interest whatsoever in any shares in the former undertaking of BTL. I verily believe, therefore, that Belize Telecom has no standing to bring the claims it has purported to in relation to the shares in these proceedings."***

Mr. Courtenay thus submitted that the sale of the shares means that whatever interest, right or property that the 1st Claimant had in those shares (including the right to appoint directors) passed to Telemedia Investments Limited. The 1st Claimant no longer holds any rights of interest in the said shares, it cannot come to this court to enforce the relief he is seeking. It would be of no practical significance to them as they have nothing to seek to enforce, Counsel urged.

The cases cited by Counsel for the Interested Party are helpful in ascertaining the principle that the Court has discretion to refuse to hear a matter where there is no live issue between the parties for the Court to determine. See the case of ***Tindall –v- Wright*** which decided that the Court will not deal with a point of law that has became academic, even if both parties agreed to have it determined. See also ***Sun Life Assurance Company of Canada - v – Jervis*** and ***Ainsbury - v- Millington***. In the former case, the Court stated at pages 113 – 114:

> ***"I do not think that it would be a proper exercise of the authority which this House possesses to hear appeals if it occupies time in this case in deciding an academic question, the answer to which cannot affect the respondent in any way . . . I think it is an essential quality of an appeal fit to be disposed of by this House that there should exist between the parties a matter in actual controversy which the House undertakes to decide as a living issue."***

And in the latter case, the Court went on to say:

> ***"In the instant case neither party can have any interest at all in the outcome of the appeal. Their joint tenancy of property which was the subject matter of the dispute no longer exists. Thus, even if the House thought that the judge and the Court of Appeal had been wrong to decline jurisdiction, there would be no order which could now be made to give effect to that view. It has always been a fundamental feature of our judicial system that the courts decide disputes between the parties before them; they do not pronounce on abstract questions of law when there is no dispute to be resolved.***

The principle is similarly expounded in ***Zamir & Woolf*** in ***The Declaratory Judgment***, (3rd Edition) London, Sweet & Maxwell 2002 at 4.032, page 136, referred to by Counsel for the Interested Party, where the learned Authors stated:

> ***"The primary role of the Courts is, and always has been, to resolve existing disputes between the parties where the courts' decision will have immediate and practical consequences for at least on of the parties. There are more than enough cases of this sort fully to occupy the time of the courts and, not unnaturally, the judges have vigorously objected to attempts made from time to time to divert them from what they regard as their task, that of deciding real issues into deciding theoretical or hypothetical issues. There have, therefore, been a number of cases where the court has refused to grant a remedy because the issues were regarded as being theoretical or hypothetical (both of which types of issue will for convenience be described as hypothetical)."***

Back in our own jurisdiction, in ***Gilbert Smith -v- Belize Telecommunications Limited & Attorney General***, this Court reiterated the principle stated above that ***"it is not the inclination of the Courts in Belize to respond to hypothetical questions or issues or give advisory opinions - they pronounce on live issues***

supported by admissible evidence." Thus where there is no ***lis*** between the disputing parties, the Court can refuse to hear them.

Another case closer to home is that of ***C.O. Williams Construction Ltd –v- Donald George Blackman & Another*** [1995] I.W.L.R. 102, a case from Barbados that went all the way to the Privy Council. In that case, a judicial review was taken against the Minister of Transport & Works and Attorney General of Barbados over a government contract for a large scale works on the highway improvement. An application to strike out proceedings against the Attorney General was made. The issue of whether proceedings against the Attorney General should be struck out went to the Court of Appeal of Barbados and then to the Privy Council. By the time the appeal reached the Privy Council, construction works on the highway had finished or near completion under the construction work of another company. The Privy Council concluded that the issue had become academic and refused to determine it.

Let me say at once, that there can be no quarrel on the principles decided in the cases mentioned above and other cases that followed them. One however, has to distinguish between public law proceedings and private law proceedings. In the former, the Courts have taken a more liberalized approach when it comes to

determining issues which have become academic as between the disputing parties. The qualifications or exception to the general rule have been applied by the Courts to determine questions, which, although academic, are in the public interest that they ought to be dealt with and for good reasons.

The case in point referred to by Counsel for the Interested Party is that of ***R –v- Secretary of State for the Home Department, ex parte Salem*** [1999] A C 450. In that case the House of Lords was concerned with an appeal by a claimant for asylum. The Home Office dealt with his claim and refused it. Judicial review was sought against the Decision of the Home Office. By the time the appeal came to be dealt with by the House of Lords, the appellant was granted refugee status and his benefits restored. The question was whether the appeal should be allowed to continue. The House of Lords decided, that in the circumstances, the appeal should not be allowed to continue. However, in the course of its decision, the House of Lords (Lord Slynn of Hadley) said:

> ***"My Lords, I accept, as both counsel agree, that in a cause where there is an issue involving a public authority as to a question of public law, your Lordships have a discretion to hear the appeal, even if by the time the appeal reaches the House there is no longer a lis to be decided which will***

> ***directly affect the rights and obligations of the parties inter se. The decisions in the*** *Sun Life* ***case and*** *Ainsbury v. Millington* ***(and the reference to the latter in Rule 42 of the Practice Directions Applicable to Civil Appeals (January 1996) of your Lordships' House) must be read accordingly as limited to disputes concerning private law rights between the parties to the case.***
>
> ***The discretion to hear disputes, even in the area of public law, must, however, be exercised with caution and appeals which are academic between the parties should not be heard unless there is a good reason in the public interest for doing so, as for example (but only by way of example) when a discrete point of statutory construction arises which does not involve detailed consideration of facts and where a large number of similar cases exist or are anticipated so that the issue will most likely need to be resolved in the near future."***

It must be noted that Lord Slynn clearly pointed out that the cases of ***Sun Life*** and ***Ainsbury v. Millington*** are private law proceedings. The former is concerned with the terms of an insurance policy, while the latter is concerned with the parties' rights to the occupation of property originally held under a joint tenancy.

Lord Slynn went on to cite two cases where the Courts continued to deal with, despite the issues that arose had been rendered academic. These cases are ***R –v- Board of Visitors of Dartmoor Prison, ex parte Smith*** [1987] QB 106 where at page 115 the court said:

> ***"It seemed to all the members of this court that the fact that the prisoner was no longer at risk of further disciplinary proceedings did not deprive the court of jurisdiction to hear this appeal; that there were in it questions of general public interest; and that, even if the prisoner is rightly to be regarded as having no interest in the outcome, the court should, in the exercise of its discretion, hear the appeal on the merits."***

and ***R –v- Secretary of State for the Home Department, ex parte Abdi*** [1996] 1W L R 298 where at page 302, Lord Slynn had this to say:

> ***"Following the applications for judicial review the Secretary of State agreed to review their cases on the merits so that the outcome of these appeals will not directly affect the applicants. The appeals do, however,***

raise what counsel for the Secretary of State in the Court of Appeal accepted (per Steyn L.J.) was a question of fundamental importance and a very difficult case."

One of the cases referred to by Counsel for the Interested Party is the Canadian case of ***Minister of Justice (Canada) -v- Borowski*** [1981] 2 J.C.R. 575; (1981) 130 DLR. This case is very helpful in laying down the test for public interest in order to have standing to challenge a law. The test came to be known as the *Borowski test* which Counsel referred to in his submission:

"… a plaintiff seeking a declaration to invalidate a law must show that they are directly affected by it, or have a genuine interest as a citizen and there is no reasonable and effect alternative means to challenge the law."

In that case, Mr. Joseph Borowski (a pro-life activist) sought to challenge the validity of section 251of the Canadian Criminal Code which permits abortion. He was successful in obtaining standing in the public interest to challenge the constitutionality of Section 251of the criminal code. At the trial the Court found that the section 251 was not unconstitutional since the foetus was not protected.

The Court of Appeal agreed with the trial court. Mr. Borowski took the matter further to the Supreme Court of Canada in ***Borowski –v- Canada (Attorney General)*** [1989] 1 SCR 342 to further consider the constitutionality of section 251 of the *Criminal Code*. Before the appeal was heard, the Supreme Court in ***R –v- Morgentaler*** struck down the section 251 as being unconstitutional, since it was too restrictive on abortion, thereby in contravening the Mother's rights. When ***Borowski –v- Canada (AG)*** came on to be argued, the Supreme Court held that the issue was moot. Since the section had been struck down, the "live controversy" between the parties had disappeared. The Supreme Court declined to exercise its discretion to hear the Mr. Borowski's appeal. The holding in the second ***Borowski case*** is that the court must first determine if there is a tangible and concrete dispute which has disappeared, rendering the issues academic, and if so, the court must decide whether it should nonetheless exercise its discretion to hear the case.

In the present case, we are still at the first stage of ***Borowski's case***. There is no moot or academic issue before the Court yet. The mootness of the issues on the ownership of, rights over and interest in the shares in BTL may only arise after the validity of Vesting Act 2007 is determined. We have yet to reach that stage.

Whether the Claimants' case be struck out

In combination, the basis upon which the defendant and Interested Party seek an order to strike out the Claimants' case are that by virtue of the vesting Act 2007, the first, second and third defendants no longer have any shares, rights or interest in BTL and as such the issues now raised in their claim are academic and of no practical significance. Consequently, they do not have the legal standing to substitute these proceedings. As to the fourth and fifth claimants, the case against them in these applications is that their constitutional rights have not been breached since they still continued to hold shares in BTL and now in Belize Telemedia (The Interested Party).

I have in this judgment found that the claimants have the legal standing to bring their claims before the court. I have also found that even if the shares, rights and interest held by first three claimants in BTL have now been taken away from them by virtue of Vesting Act, and the issues raised in the claim are seemingly academic or "moot" to use the expression in ***Borowsky's*** case the court will still proceed t deal with those issues as a matter of public importance. I say "seemingly" moot because in my considered view the constitutionality or validity of the Vesting Act 2007 is very much a "*live controversy*" between the parties.

However, here I emphasize that the question of the validity of the Vesting Act 2007 is a matter of considerable public importance. As the authorities cited by Counsel for both sides show, the Court retains the discretion to deal with issues of public importance even if they are academic. *See the cases cited above*. See also ***Furnell v Whangarei*** [1973] A.C. 660; ***Regina v HorseferryRoad Magistrates Court, ex parte K.*** [1997] Q.B. 23.

I am therefore not able to accede to request by the defendant and Interested Party to strike out the Claimants' claim on that basis.

Then there is Rule 26 of the CPR upon which the applicants ground their applications. They rely on Rule 26.1 (2)(j) and 26.3 (1)(b) and (c) of the CPR. These provisions are as follows:

"26.1 (1) …….

(2) Except where these Rules provide otherwise, the court may –

……

(j) dismiss or give judgment on a claim after a decision on preliminary issues;"

……

"26.3(1) In addition to any other powers under these Rules, the court may strike out a statement of case or part of a statement of case if it appears to the court –

……...

(b) that the statement of case or the part to be struck out is an abuse of the process of the court or is likely to obstruct the just disposal of the proceedings;

(c) that the statement of case or the part to be struck out discloses no reasonable grounds for bringing or defending a claim;

Other additional powers of the court exercisable along with those under Rule 26.3 can be found in Rule 15.2 CPR where the court is given power to give summary judgment on the claim or particular issue if the court considers that -

(a) ***the claimant has no real prospect of succeeding on the claim or the issue; or***

(b) ***the defendant has no real prospect of successfully defending the claim or the issue.***

Under the Rules relied upon by the applicants in these applications, the basis for striking out the Claimants/Respondents' claim is that it discloses no reasonable grounds for bringing the claim or that it has no real prospect of success. I have attempted to set out the test in a private law claim in ***John Diaz -v- Ivo Tzankov, Brent C. Miskuski and Delia Miskuski*** (10 October 2007) Supreme Court of Belize, Claim No. 186 of 2007 where I said:

> ***"It is therefore to my mind fitting that the court, while bearing in mind the overriding objective of the Rules (Rule 1.1 CPR), must be vigilant not to allow hopeless claim to be brought before the court, thereby misusing the court procedures. The onus is, of course, on the defendants to show that the proceedings do not have a real prospect of success, thereby ensuring also that applications for summary orders which have no real prospect of success must be discouraged. See Clark –v- University of Lincolnshire and Humberside*** **[2000] 3All ER 752; [2000]1WLR 1988**.
>
> ***The test of "real prospect of success" has been considered in a number of cases in England, and other jurisdictions which adopted the new approach to civil procedures. The English Court of Appeal in Swain -v- Hillman*** **[2001] 1All ER 91** ***where Lord Woolf MR, at page 92, indicated***

that in order to dispose summarily of a case, the judge must be satisfied that there was no realistic chance of success in the case. No mini-trial should be conducted as the procedure is meant to deal with cases that do not merit trial. The defendants bear the burden of showing that the case brought against the second and third defendants do not merit trial in the present case."

The test of *real prospect of success* in John Diaz, although expressed in the context o a private law claim between parties, equally applies to claim in public law. The distinction in its application is in point of time and onus.

In private law claim, the test is applied when the pleadings are already in place but before trial. There the challenge is made by the defendant upon whom the burden lies. In a public law claim under Part 56 CPR, the test is or should be applied at the time leave to issue judicial review is sought, and the onus is on the claimants to satisfy the court that he has a *real prospect of success* otherwise, there would be no useful purpose served in granting leave to an applicant who cannot demonstrate that he has some realistic chance of success in his claim. The court having been so satisfied, will grant leave to issue judicial review proceedings. See ***Clark –v-***

University of Lincolnshire and Humberside [2000] 3All ER 752; [2000]1WLR 1988.

Once leave has been granted, for judicial review, Rule 26.3 can be applied to strike out statement of case only in a judicial review claim. It would seem that Rule 15.2 prohibits entering summary judgment (dismiss a claim) in a judicial review claim. Rule 15.3, CPR provides:

> ***15.3 The court may give summary judgment in any type of proceedings except -***
>
> ***(a) proceedings for redress under the Constitution;***
>
> ***(b) proceedings by way of fixed date claim;***
>
> **……**
>
> ***(d) claims against the Crown;***

The present claim by the claimants is one such proceeding as specified under Rule 15.3 and this alone would appear to restrict the court's power to strike out and give summary judgment (dismissal of a claim) in the present case. However, the powers of the court can still be exercised in respect of striking out a statement of case or stay of proceedings in public law proceedings under the overriding objection of the Rules.

Is there a real prospect of success in this case? The requirements that in judicial review proceedings, the claimants must satisfy the court that he has a *real prospect of success* in order to be accorded leave to institute judicial review proceedings, goes to fortify the claimants' position that once leave is granted not only that they acquire sufficient interest or legal standing to bring the claim, but that they have a legitimate expectation to have their claim heard by the court. They would have already satisfied the test of *real prospect of success* before leave was granted to institute judicial review proceedings.

Generally it would be impossible for the court to separate the issues of sufficient interest or legal standing of the claimants from the legal and factual circumstances of the case when the court is considering whether or not to grant leave to institute a claim, such as the case with which we are now dealing. See ***Federation of Self-***

Employed and Small Business case. This, of course, does not mean that the court is forever prevented, after leave has been granted, from entertaining the issue of sufficient interest at the hearing of the merits, if the circumstances have changed since leave had been granted. See ***Berenger & Others -v- Goburdhurn and Others*** [1986] LRC (Const.) 707.

In the present case, the basis of the claim for alleged breaches of the claimants' constitutional rights and the alleged invalidity of the Act have not changed. The allegation is that the law passed by the legislature (Vesting Act 2007) has deprived the claimants of their rights and interest in the shares in BTL. The said law is still effective and in force and as such it continues to have those practical and legal effects.

Despite Mr. Courtenay's strong suggestion that this is a commercial claim dressed up in constitutional challenge, I am of the firm view that this is a case properly brought against a public authority, namely the defendant in public law. The issues raised on breaches of the Constitution can only be brought against a public authority. The Claimants cannot ventilate their constitutional challenge in this case against the Interested Party against whom they would not have a cause of action in public law. To do so would be contrary to the tenor of the decisions in

cases such as ***Maharaj v. AG of Trinidad and Tobago No 2*** (1978) 2 All ER 690; ***Thornhill v. AG*** (1978) 31 WLR 498; also ***Loumia v. DPP*** [1985/86] SILR 158; [1986] LRC (Crim) 62. See also ***Ulufaalu -v- Attorney General*** (above).

The claimants may choose to bring a claim in commercial law, if any, against the Interest Party as well as the defendant. That is another matter altogether and is not depended on the present claim before the Court.

Conclusion

Much of the arguments and case law authorities presented to the Court are very relevant to the substantive claim and I do not see the need to traverse them here in this judgment. Those materials may be useful again when we return to attend to the substantive claim.

As noted, there are two frontal challenges to the Vesting Act 2007 in this case, namely under Part II of the Constitution for breaches of constitutionally protected rights and for declaratory orders as to the validity of the said Vesting Act. The test of legal standing in Part II claims is stricter than that required for declaratory orders as demonstrated by the various constitutional provisions referred to and case law authorities.

It is also the Court's view that there is *live controversy* before the Court. That issue is the validity of the Vesting Act 2007 and that must be determined first. Despite the very able and forceful arguments by both Counsel for the defendant and Interested Party, I do not find the issues raised in the claimants' claim in this case academic, as long as the validity of the Vesting Act 2007 remains unresolved. In fact the validity of the Vesting Act 2007 is the very *live controversy* between the parties in the present case.

For all the above reasons the applications for striking out the claimants' claim are refused.

I will hear Counsel on the question of costs.

(Sir John Muria)

[Costs of $25,000.00 has been ordered against both the defendant and Interested Party]