IN THE SUPREME COURT OF BELIZE A.D. 2019

CLAIM NO. 304 OF 2019

BETWEEN	(DWAYNE EVELYN	1ST CLAIMANT
	(SHANE HARRIS	2ND CLAIMANT
	(DEJON JOSEPH	3RD CLAIMANT
	(ELWIN POLLARD	4TH CLAIMANT
	(IAN CLARE	5TH CLAIMANT
	(JAMES PALACIO JR	6TH CLAIMANT
	(JAVAN CLARE	7TH CLAIMANT
	(EUSTACE LEWIS	8TH CLAIMANT
	(ERIC MARTINEZ	9TH CLAIMANT
	(AKEEM HUMES	10TH CLAIMANT
	(HUGH THOMAS	11TH CLAIMANT
	(WARREN DAVIS	12TH CLAIMANT
	(TREY GENTLE	13TH CLAIMANT
	(MARK AUGUST	14TH CLAIMANT
	(AVERY BAIN	15TH CLAIMANT
	(TYRICK MCKENZIE	16TH CLAIMANT
	(TEVIN ABRAHAM HERNANDEZ	17TH CLAIMANT
	(CAMERON SCOTT	18TH CLAIMANT
	(GERALD TILLETT	19TH CLAIMANT
	(ADOLPHUS PALACIO	20TH CLAIMANT

	(DUESBURY BOWEN	21ST CLAIMANT
	(ANDREW TATE	22ND CLAIMANT
	(JAHMY BELGRAVE	23RD CLAIMANT
	(SHAKEEM HUMES	24TH CLAIMANT
	(MARK PHILLIPS	25TH CLAIMANT
	(MARVIN PHILLIPS	26TH CLAIMANT
	(DAMION SALDANO	27TH CLAIMANT
	(JAHEIM BENT	28TH CLAIMANT
	(DORIAN DYER	29TH CLAIMANT
	(ADRIAN DYER	30TH CLAIMANT
	(LLOYD LESLIE	31ST CLAIMANT
	(ANDREW TALBERT	32ND CLAIMANT
	(LINCOLN HEMSLEY JR	33RD CLAIMANT
	(EVERON TECK JR	34TH CLAIMANT
	(EDWARD SALDANO	35TH CLAIMANT
AND	(P.C. ABNER ITZA	1ST DEFENDANT
	(SGT. WALTON BANNER	2ND DEFENDANT
	(CPL. IVAN GALVEZ	3RD DEFENDANT
	(SANDRO MCDOUGAL	4TH DEFENDANT
	(CPL. DANIEL FLOWERS SPU	5TH DEFENDANT
	(CPL. ALISTER CASEY	6TH DEFENDANT
	(GANG SUPPRESSION UNIT	7TH DEFENDANT
	(MOBILE INTERDICTION UNIT	8TH DEFENDANT
	(SPECIAL PATROL UNIT	9TH DEFENDANT

(COMMISSIONER OF POLICE 10TH DEFENDANT

(BELIZE POLICE DEPARTMENT 11TH DEFENDANT

(MINISTER OF NATIONAL SECURITY 12TH DEFENDANT

(KOLBE FOUNDATION (Belize Central Prison) 13TH DEFENDANT

(ATTORNEY GENERAL OF BELIZE 14TH DEFENDANT

BEFORE THE HONOURABLE MADAM JUSTICE MICHELLE ARANA

Mr. Leeroy Banner for the 35 Claimants

Mr. Kileru Awich for the 1st to 12th and 14th Defendants

Mr. Philip Zuniga SC for the 13th Defendant

1. This is an Application by the Defendants to Strike Out the Claimants' claim in its entirety. The Applicants seek to strike out the claim on grounds that the pleadings are prolix, that there is no reasonable grounds for bringing the claim and that the claim should be brought as a constitutional claim and not an ordinary claim. The Respondents resist this Application to Strike Out the claim on the basis that the complaints raised by the Applicants can be remedied by way of amendments to the claim. The substantive claim should not be struck out due to procedural flaws or irregularities. The court now determines this application on the written and oral submissions advanced on behalf of each party.

2. Legal Submissions on Behalf of the Applicants

The Defendants filed with the Court Office an Application to strike out in its entirety, the statement of case in Claim 304 of 2019. This Application is being made pursuant to **Rule 26.3(1)(a), (c)** and **(d)** read along with **Rule 1.1** of the Supreme Court (Civil Procedure) Rules 2005 ("CPR") and the inherent jurisdiction of this Honourable Court. The grounds of this application are:

(i) The Claimants have failed to comply with **Rule 8.7(2)** and **Rule 23.2** of the CPR;

(ii) The Claimant's claim against the Defendants discloses no reasonable grounds for bringing this claim;

(iii) The statement of Claim containing 341 paragraphs is prolix.

3. <u>The Rules under which the Application is being brought.</u>

Rule 26.3(1) of the CPR states:

> *'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 -*
>
> *(a) that there has been a failure to comply with a Rule or practice direction or with an order or direction given by the court in the proceedings;'*

(b) that the statement of case or the part to be struck out discloses no reasonable grounds for bringing or defending a claim;
(c) that the statement of case or the part to be struck out is prolix or does not comply with the requirements of Parts 8 or 10.'

Rule 1.1 *of the CPR states:*

'(1) The overriding objective of these Rules is to enable the court to deal with cases justly.
(2) Dealing justly with the case includes –
(a) ensuring, so far as is practicable, that the parties are on an equal footing;
(b) saving expense;
(c) dealing with the case in ways which are proportionate to-
(i) the amount of money involved;
(ii) the importance of the case;
(iii) the complexity of the issues; and
(iv) the financial position of each party;
(d) ensuring that the case is dealt with expeditiously; and
(e) allotting to the case an appropriate share of the court's resources, while taking into account the need to allot resources to other cases.'

Ground 1: Claimants have failed to comply with Rule 8.7(2)

Rule 8.7(2) of the CPR states the following:

'(1) The claimant must include in the claim form or in the Statement of Claim a statement of all the facts on which the claimant relies.
(2) Such statement must be as short as practicable.'

Ground 1 - Submission 1:

The Claimants have filed and served with their claim form a Statement of Claim which is 341 paragraphs long. It is humbly submitted that the Claimants' statement of Claim is in breach of **Rule 8.7(2)** of the CPR notwithstanding the fact that there are 35 Claimants, each with specific factual allegations on which their respective claims are based. The Defendants' humble submission is that the Claimants' Statement of Claim is in breach of **Rule 8.7(2)** of the CPR because it includes matters which should properly be expressed and dealt with in witness statements in support of the Claim as opposed to the Statement of Claim itself. This failure to comply with **Rule 8.7(2)** of the CPR is the reason why the Claimants' Statement of Claim lacks brevity and runs 341 paragraphs in length. It is further submitted that the Claimants' failure to comply with **Rule 8.7(2)** of the CPR has the effect of making the Claimants' Statement of Claim prolix as it is not short as practicable as required by that rule.

4. Guidance on what constitutes a Statement of Claim which is not as short as practicable can be gleaned from the Jamaican Supreme Court case of ***Desmond Kinlock v Denny McFarlane Etal*** Claim No. 2013 HCV01350 **[TAB 1]** at paragraph 30 of the judgment where the Court states:

> *'The most fundamental rule is that pleadings must contain the statement of the material facts upon which the claim rests but not the evidence which is to be relied upon. Therefore, it can be discerned that only relevant facts must be pleaded. The Bahamian case of* ***Mitchell et al v Finance Corporation of the Bahamas Limited*** *(RBC FINCO) et al BS 2014 SC 036, which is distinguished by the fact that they are not governed by Civil Procedure Rules but very similar rules under the Rules of the Supreme Court, states –*
> *"Every pleading must contain, and contain only, a statement in a summary form of material facts on which the party pleading relies for his claim or defence as the case may be, but not the evidence by which those facts are to be proved, and the statement must be as brief as the nature of the claim admits.'*

5. The Jamaican approach to what constitutes a Statement of Claim which is not as short as practicable, or rather one which is prolix does not differ from the approach taken by English Courts. In ***Tchenguiz and Others v Grant Thornton LLP and Others*** **[2015] EWHC 405 (Comm) [TAB 2]** Legatt J at paragraph 1 of his judgment says the following in relation to statements of case:

> *'Statements of case must be concise. They must plead only material facts, meaning those necessary for the purpose of formulating a cause of action or defence, and not background facts or evidence. Still less should they contain arguments, reasons or rhetoric. These basic rules were developed*

> *long ago and have stood the test of time because they serve the vital purpose of identifying the matters which each party will need to prove by evidence at trial.*

6. It is respectfully submitted that the paragraphs under the heading *'Arrest & Detention'* in the Claimants' Statement of Claim contain matters which are immaterial or unnecessary for the purpose of formulating the cause or causes of action pleaded in that Statement of Claim. The causes of action pleaded in the Statement of Claim are: (i) unlawful arrest and false imprisonment and (ii) assault and battery. It is humbly submitted that it is unnecessary for the Claimants' Statement of Claim at paragraphs 1 to 141 under the heading *'Arrest & Detention'* to make mention of what each of the Claimants was doing prior to the police entering their addresses and arresting and detaining the Claimants during the State of Emergency in the Southside of Belize City. Those paragraphs include other irrelevant matters such as:

    (i) How the police officers involved were armed;
    (ii) What the police were wearing;
    (iii) Who opened the doors and how the doors to the relevant addresses were opened to allow the police entry into the addresses;
    (iv) That the police officers did not identify themselves;
    (v) Which police officer the Claimants were able to recognise and why;

(vi) How some of the Claimants were dressed;
(vii) How many police officers were involved in arresting and detaining each of the Claimants;
(viii) Which relatives of the respective Claimants were present when the Claimants were arrested and detained at their addresses;
(ix) How many police mobiles were used by the police officers;
(x) That some of the Claimants were allegedly told by the arresting officers that Chester Williams, the 10th Defendant wanted to see them and the responses of the respective Claimants;
(xi) That the Claimants were handcuffed;
(xii) That the 11th Claimant and his girlfriend were sleeping in their underwear when the 11th Claimant was arrested and detained and that the police officers saw the 11th Claimant's girlfriend not dressed and did not give her nor the 11th Claimant any privacy and that the police officers involved allegedly made unwanted and indecent looks with smirks on their faces;
(xiii) That the 11th Claimant was embarrassed when he was being arrested;
(xiv) That the family members of some of the Claimants asked the police why the Claimants were being arrested and detained and that the police allegedly did not give any response to such questions;
(xv) That some of the Claimants' family members became angry at the police;
(xvi) The responses given by the police to some of the Claimants' relatives when

asked why the respective Claimants were bring arrested at their respective addresses;

(xvii) Which Claimants were placed in the same police mobile as other Claimants and other arrested persons;

(xviii) That some of the Claimants requested to put on some clothes when they were being arrested at their respective addresses;

(xix) Where some of the Claimants were allowed to change clothes before being taken to Queen Street Police Station;

(xx) That some of the Claimants were asked by the police officers involved to get dressed before being arrested and taken away to Queen Street Police Station;

(xxi) That the 27th Claimant informed the police officers involved that he would not be going with the police when the 27th Claimant was being arrested;

(xxii) That the 30th Claimant was sagging his pants;

(xxiii) That the 32nd Claimant's home was surrounded by the police with their guns drawn;

(xxiv) That the 32nd Claimant was asked where his boss was and the alleged response of the 32nd Claimant;

(xxv) That the 35th Claimant was ordered to freeze by the police officers involved in his arrest and that the 35th Claimant felt that he was going to be killed;

(xxvi) The conditions of the holding cells where the Claimants were held at Queen Street Police Station in Belize City;

(xxvii) That other persons from the Claimants' neighbourhood were also being held at Queen Street Police

Station when the Claimants were being held there;

(xxviii) The quality of meals provided to the Claimants at Queen Street Police Station;

(xxix) That Chester Williams, who now holds the Office of the 10th Defendant did not meet with any of the Claimants when they were arrested and taken to Queen Street Police Station where they were detained.

7. These 29 matters stated above which appear in the Claimants' Statement of Claim at paragraphs 1 – 141 under the heading *'Arrest & Detention'* are matters which do not establish the pleaded causes of action. These are matters which do not define the matters which the Claimant and the Defendants need to prove or disprove by evidence at trial. These background facts or evidence which appear in the Claimants' statement of Claim under the heading *'Arrest & Detention'* are not part of what the Claimant needs to establish by way of evidence in order for the Claimants to plead their claims of (i) unlawful arrest and false imprisonment and (ii) assault and battery. The Defendants' respectful submission is that the inclusion of such irrelevant matters in the Claimants' statement of Claim has caused the Defendants to be forced to respond by way of Defence, to a Statement of Claim that is not as short as practicable as required by **Rule 8.7(2)** of the CPR. The Claimants' statement of Claim offends the rule against unnecessarily long and prolix pleadings

which is restated in the judgments in ***Desmond Kinlock v Denny McFarlane Etal*** **[TAB 1]** and ***Tchenguiz and Others v Grant Thornton LLP and Others*** **[TAB 2].** It is respectfully submitted that the prohibition against prolix and lengthy pleadings as stated in those cases has the same effect as **Rule 8.7(2)** of the CPR; the breach of which entitles a party to proceedings to make a Strike Out Application under **Rule 26.3(1)(a)** of the CPR.

Ground 1 - Submission 2

8. It is further submitted that the Claimants' Statement of Claim is in breach of **Rule 8.7(2)** due to its inclusion of facts which are relevant to a Constitutional Claim as opposed to a claim for unlawful arrest and false imprisonment and assault and battery as stated in the Claim Form. The Claimants' Statement of Claim at paragraphs 142 to 152 states the manner in which it is alleged that the Claimants' Constitutional Rights had been breached. Having such matters stated in the Claimants' statement of Claim is part of the reason why the Claimants' are in breach of **Rule 8.7(2)** of the CPR. Adding facts relevant to a Constitutional Claim in this claim for unlawful arrest, false imprisonment and assault and battery does not identify the matters which each party will need to prove by evidence at trial in relation to this claim of unlawful arrest, false imprisonment and assault and battery. It only causes the Defendants to

have to answer matters that are irrelevant to the Claim that is before the Court. It has also added 11 unnecessary paragraphs to the Claimants' Amended Statement of Claim.

Ground 1 - Submission 3

9. It is humbly submitted that the Claimants' Statement of Claim is in further breach of **Rule 8.7(2)** of the CPR in that paragraphs 167 to 256 are irrelevant facts which have no bearing on the stated Claim for unlawful arrest, false imprisonment and assault and battery. The matters in those paragraphs deal with:

    (i) The 10th and 14th Claimants' attendance at their brother's funeral;
    (ii) The living conditions at the Queen Street Police Station;
    (iii) The sleeping conditions at the Queen Street Police Station;
    (iv) Meals at the Queen Street Police Station;
    (v) Showering facilities at the Queen Street Police Station;
    (vi) Illnesses allegedly suffered by some of the Claimants whilst detained at Queen Street Police Station;
    (vii) The hospitalization of the 11th Claimant for a condition unrelated to any pleaded cause of action;
    (viii) The manner in which the Claimants were transported to Kolbe Foundation Prison;

(ix) What was allegedly said by a Mr Gladden to some of the Claimants upon their arrival at Kolbe Foundation Prison;
(x) The conditions of the cells at Kolbe Foundation Prison;
(xi) Which Claimants shared cells with other Claimants;
(xii) The showering facilities at Kolbe Foundation Prison;
(xiii) The toilet facilities at Kolbe Foundation Prison;
(xiv) That the Claimants felt depressed and stressed out;
(xv) That the Claimants met with Chester Williams upon their release from Kolbe Foundation Prison and what was allegedly said by Chester Williams in that meeting
(xvi) The quality of meals provided to the Claimants at Kolbe Foundation Prison.

10. Paragraphs 167 to 256 do not define any matters which the Claimants nor the Defendants have to prove or disprove in this Claim for unlawful arrest, false imprisonment and assault and battery. The result of including these irrelevant matters is that the Claimants' Statement of Claim is not as short as practicable notwithstanding the fact that there are 35 different Claimants. Paragraphs 167 to 256 are 90 paragraphs which need not to have been stated in the Statement of Claim as framed by the Claimants. This is a further breach of **Rule 8.7(2)** of the CPR.

Ground 1 – Submission 4: The Claimants have failed to comply with **Rule 23.2** of the CPR.

11. **Part 23** of the CPR makes provision for the commencement of a claim by a claimant who is a minor. The relevant Rules under **Part 23** of the CPR read as follows:

> *'**23.2 (1)** A minor or patient must have a next friend to conduct proceedings on his or her behalf.*
> ***23.3 (1)** A minor or patient must have a next friend in order to issue a claim except where the court has made an order under Rule 23.2(2).*
> ***23.7** (1) If the court has not appointed a next friend, a person who wishes to act as a next friend must follow the procedure set out in this Rule.*
> *(2) A person authorised under the Act must file an official copy of the order or other document which constitutes his authorisation to act.*
> *(3) Any other person must file a certificate that he satisfies the conditions specified in Rule 23.6.*
> *(4) A person who is to act as a next friend for a claimant must file -*
> *(a) the authorisation; or*
> *(b) the certificate under paragraph (3);*
> *at the time when the claim is made.*

12. The 9th, 19th and 28th Claimants are all minors according to the Claimants' Amended Statement of Claim. This Amended Statement of Claim was amended so as to include amongst other things, the insertion of a Next of

Friend for the 9th, 19th and 28th Claimants. The Next of Friends of the 9th, 19th were not appointed by Order of the Court. The Next of Friends of the 9th, 19th and 28th Claimants have not filed and served a certificate under **Rule 23.7(3)** of the CPR stating that those Next of Friends satisfy the provisions of **Rule 23.6** of the CPR. Furthermore, no authorization or certificate has been filed and served by the 9th, 19th and 28th Claimants' intended Next of Friends at the time when the claim was made as required by **Rule 23.7(4)** of the CPR.

13. It is respectfully submitted that the Amended Statement of Claim and the lack of compliance with **Part 23** of the CPR, specifically **Rules 23.2(1), 23.3(1), 23.7(1), 23.7(3)** and **23.7(4)** of the CPR has the effect that the 9th, 19th and 28th Claimants cannot proceed with their respective claims. The 9th, 19th and 28th Claimants do not have the requisite Next of Friend to conduct proceedings on their behalf. The Next of Friends stated in the Amended Claim Form and Amended Statement of Claim are neither properly appointed nor properly authorized to act as the 9th, 19th and 28th Claimants' Next of Friends. This is the basis for humbly submitting that the Amended Statement of Claim does not comply with **Part 23** of the CPR, specifically **Rules 23.2(1), 23.3(1), 23.7(1), 27.3(3)** and **23.7(4)** of the CPR.

Ground 2: *The Claimants claim discloses no reasonable grounds for bringing this claim.*

Ground 2 -Submission 1

14. Each of the 35 Claimants were arrested and detained during the State of Emergency in the Southside of Belize City. The State of Emergency was declared on 4th September 2018 by His Excellency the Governor General of Belize in **Statutory Instrument No. 49 of 2018 [TAB 3]** pursuant to **section 18(2)** read along with **section 18(3)** of the **Belize Constitution** Cap. 4 of the Substantive Laws of Belize. His Excellency the Governor General of Belize on the 7th September 2018 made Regulations for the period of the State of Emergency in the Southside of Belize City. Those Regulations are stated in **Statutory Instrument No. 50 of 2018 [TAB 4]** and were promulgated pursuant to **section 18(9)** of the Belize Constitution.

15. None of the Claimants is challenging the validity of the state of emergency under which all the Claimants were detained. The State of Emergency was proclaimed by His Excellency the Governor General on the 4th September 2018 due to an unprecedented spike in murders and shootings in the South Side of Belize City which occurred over a single weekend. See paragraph 7 of the Affidavit of Kimberly Wallace in support of this Application. These

murders and shootings were reasonably suspected by the Belize Police Department to have been linked to a rivalry between the George Street Gang and the Banak Street Gang. Each of the Claimants admits in their Amended Claim Form and Amended Statement of Claim that their respective addresses are on George Street or Streets adjoining or neighbouring George Street, Belize City.

16. The 35 Claimants were arrested on the 5th September 2018 because they were each reasonably suspected of being likely to be involved in gang activity in the areas proclaimed to be in a State of Emergency. It is humbly submitted that the Claimants' failure to impugn the proclamation of the State of Emergency in the Southside of Belize City has the effect of characterizing this instant claim as one which discloses no reasonable grounds for bringing this claim. The Claimants are claiming that they were unlawfully arrested, falsely imprisoned and assaulted and battered, yet the Claim does not challenge the authority under which the Claimants were arrested and detained. The Claimants would need to show the Court that their respective arrests and detentions were made without any legal authority or legal basis. That is a fact in issue which the Claimants cannot succeed on without properly impugning and challenging the proclamation of the State of Emergency; the State of

Emergency being the authority under which the 11th Defendant and its officers lawfully arrested and detained the Claimants. The fact that each of the Claimants was arrested and detained under the Proclamation of a State of Emergency in the South Side of Belize City means that the Claimants cannot succeed in their claims of unlawful arrest and false imprisonment. The unlawful arrest and false imprisonment aspect of the Claimants' claim therefore discloses no reasonable grounds for bringing this claim.

Ground 2 – Submission 2

17. The Claimants' Claim Form states that the Claimants' claim against the Defendants *'Assault and Battery.'* The Amended Statement of Claim does however, fail to specify and or particularize the allegations of assault and battery and it crucially fails to identify which of the 35 Claimants is claiming assault and battery. It is respectfully submitted that this is a fatal omission in the Amended Statement of Claim. It is a fatal omission because claiming assault and battery without particularizing the Claimant who is claiming under that cause of action means that the Court does not have before it a Claim by an identifiable Claimant which the Court is obliged to resolve at trial. This is the further reason why it is humbly submitted that the Claimants' Amended

Statement of Claim discloses no reasonable grounds for bringing this claim in respect of assault and battery.

Ground 2 - Submission 3

18. The 9th, 19th and 28th Claimants are minors who do not have a properly appointed nor a properly authorized next of Friend to conduct litigation on their behalf. A Next of Friend is a requirement under **Part 23** of the CPR for minors who bring a Claim in the Courts of Belize. These submissions have already addressed the manner in which the 9th, 19th and 28th Claimants are in breach of **Part 23** of the CPR at submission 4 under the Ground 1 of these submissions. **Rule 23.2(1)** of the CPR states that a *'minor or patient must have a Next of Friend to conduct proceedings on his or her behalf.'* **Rule 23.3(1)** of the CPR provides that *'a minor or patient must have a Next of Friend in order to issue a claim except where the Court has made an Order under Rule 23.2(2).'*

Ground 3: The Claimants' statement of Claim containing 341 paragraphs is prolix.

19. It is respectfully submitted that the Claimants' Statement of Claim which is 341 paragraphs in length is prolix. The old case of ***Davy v Garrett*** **(1878) 7**

Ch. D. 473 [TAB 5] provides guidance on what constitutes a prolix statement of case. That guidance is stated in the following terms:

> *'The complaint is that the Statement of Claim is prolix and embarrassing. The word "prolix" may be used to denote two different things; it may refer to the too lengthy statement of necessary facts, or to the statement of facts unnecessary to be stated.'*

20. The Claimants' Statement of Claim is prolix firstly, because it is not as short as practicable. A breach of **Rule 8.7(2)** of the CPR has the effect of making a Statement of Claim prolix. A breach of that Rule would make any Statement of Claim too lengthy in stating necessary facts. It has already been submitted why and how the Claimants' Statement of Claim is in breach of **Rule 8.7(2)** of the CPR in Ground 1 of these submissions.

21. The second reason for the Statement of Claim being prolix is the inclusion of unnecessary facts and matters which should properly be stated in witness statements. This is a Claim for damages for unlawful arrest and false imprisonment and assault and battery and special damages, interest and costs. The Claimants have however, included in their Statement of Claim matters that are irrelevant to the pleaded causes of action in unlawful arrest, false imprisonment and assault and battery. The Amended Statement of Claim

includes at least 30 matters in paragraphs 1 – 141 under the heading *'Arrest & Detention'* which could have properly been included in witness statements.

22. It is humbly submitted that the Claimants' Amended Statement of Claim includes too lengthy a statement of material facts AND the statement of unnecessary facts. The statement of Claim is "prolix" within the definition of that term as stated in ***Davy v Garrett*** **(1878) 7 Ch. D. 473** and as such, the Claimants' Statement of Claim ought to be struck out in its entirety pursuant to **Rule 26.3(1)(d)** of the CPR.

The Court's Power to Strike Out

23. The Court's power to Strike Out a Statement of Claim or a part thereof, is a discretionary case management power. **Rule 26.3(1)** of the CPR makes it clear that the Court *"may"* strike out a statement of case or part of statement of case where any of the conditions in **Rule 26.3(1)(a)** to **(d)** are satisfied. The English Court of Appeal case of ***Biguzzi v Rank Leisure*** **[1999] 4 ALL ER 934 [TAB 6]** which dealt with the corresponding power to strike out contained in the English CPR stated the following which is equally applicable to **Part 26** of the Belize CPR:

> *"The fact that a judge has the power* [to strike out] *does not mean that in applying the overriding objectives the initial approach will be to strike out the statement of the case. The*

> *advantage of the CPR over the previous rules is that the Court's powers are much broader than they were. In many cases there will be alternatives which enable a case to be dealt with justly without taking the draconian step of striking the case out."*

24. In this Application before this Honourable Court there have been cumulative breaches of the CPR. The Claimants have breached **Rule 8.7(2)** and **Part 23 of the CPR**. There has also been an amendment of the Statement of Claim by the Claimants prior to the Strike Out Application being disposed of by the Court. The Claimants' amendment to their Statement of Claim was made after the Notice of Strike Out Application and the grounds for the Application had been filed and served. The Claimants were therefore aware of the Defendants' objection to the Statement of Claim as drafted and that those objections are that there is a breach of **Rule 8.7(2); Part 23** of the CPR; that the Claimant's claim against the Defendants discloses no reasonable grounds for bringing this claim and that it is prolix.

25. It is respectfully submitted that the starting point for a Court considering a Strike Out Application is to consider whether there is an appropriate alternative sanction to Striking Out a Claim. This is in line with the discretion in **Rule 26.3(1)** where the Rules state that the Court *may* strike

out a statement of case or part of statement of case where any of the conditions in **Rule 26.3(1)(a)** to **(d)** are satisfied. This is also consistent with the learning in ***Biguzzi v Rank Leisure*** where it was opined that the initial approach of the Courts should not be to Strike Out the Statement of Case. This submission is also in line with the dicta of Benjamin CJ in ***Trevor Vernon v Edmond Castro*** Claim 86 of 2014 **[TAB 7]** at [24] where the learned Chief Justice observed that:

> *'It cannot be disputed that the striking out of a statement of case is the ultimate of the powers available to the Court and therefore, the Court ought to explore the possibility of applying some lesser sanction to address the defects in the claim.'*

26. The Court undoubtedly has the power to Order the Claimants to amend their Statement of Claim. The Court can also impose the sanction of an adverse Costs Order against the Claimants as an alternative to Striking Out. It would however, be undesirable, inappropriate and inconsistent with the overriding objective in **Rule 1.1** of the CPR to deal with cases justly if the Court were to permit the amendment of the Amended Statement of Claim or Costs Order as an alternative to Striking Out. The Claimants were given Notice of the Defendants' objections to the Statement of Claim with the filing and service of this Notice of this Strike Out Application. The Claimants have been aware

that the Defendants take issue with the Statement of Claim for its breaches of **Rule 8.7(2); Part 23** the Claimants' lack of reasonable grounds for bringing this claim and the prolixity of the Statement of Claim. The Claimants have in between the filing and service of the Notice of this Strike Out Application and the hearing of the Application filed an Amended Statement of Claim. The amendments made to the Statement of Claim only change the names of the 3rd and 8th Defendants and only improperly add Next of Friends to the Claims of the 9th, 19th and 28th Claimants in breach of **Part 23** of the CPR. The amendments made by the Claimants fail to address the breaches of **Rule 8.7(2)** and **Part 23** of the CPR. Furthermore, the amendments made by the Claimants fail to address the Defendants' Strike Out Application ground that the claim discloses no reasonable ground for bringing the claim and the ground that the Statement of Claim is prolix.

27. It is humbly submitted that the Claimants' failure and or inability to address the grounds for this Strike Out Application in the Amended Statement of Claim is a strong indication that an Order for Amendment is inappropriate in the circumstances. The Court should proceed to strike out the Statement of Claim in its entirety under **Rule 26.3(1)** of the CPR. The Claimants' failure to address breaches of **Rule 8.7(2); Part 23;** the ground that the claim

discloses no reasonable ground for bringing the claim and the prolixity of the Statement of Claim is evidence from which the Court should determine that an Order for Amendment cannot in the circumstances cure the defects in the Claimants' Statement of Claim. Furthermore, an Order for amendment would be inappropriate because it would fail to address the breach of **Part 23** in relation to minors and the proper appointment and or authorization of Next of Friends. An Order for amendment would only address the substance of the pleaded matters in the Statement of Claim and not concern itself with how the 9th, 19th and 28th Claimants can rectify the breaches of **Part 23** in the appointment and or authorization of Next of Friends. The Claimants' failure to amend the Statement of Claim to make it more concise so as to avoid prolixity is also indicative of why the Court ought to Strike out in its entirety the Amended Statement of Claim. The Claimants have failed to make the Amended Statement of Claim concise and they have also failed to remove irrelevant matters and matters of evidence that should properly appear in witness statements.

28. Ordering a further amendment of the Statement of Claim would be contrary to the overriding objective in **Rule 1.1** of the CPR in that the Defendants will be once again required to respond to a lengthy, prolix statement of

Claim which the Claimants have been unable to cure in their first amendment even though the Claimants have been aware of the specific objections to the Statement of Claim. An order for a further amendment of the Statement of Claim would also cause the Defendants to incur unnecessary expenses which would have been prevented by the Claimants properly amending their Statement of Claim upon receipt of the Notice of the Strike Out Application and the Grounds for that Application. Furthermore, a further amendment would also prevent this claim from being dealt with expeditiously by this Honourable Court.

29. An order for a further amendment would also fail to cure the fact that the Claimants' claim discloses no reasonable ground for bringing the claim given that the Claimants were lawfully arrested and detained under the State of Emergency in the Southside of Belize City upon reasonable suspicion of being involved in shootings and gang rivalries between George Street and Banak Street Gangs. An Adverse Costs Order would also fail to further the overriding objective. Ordering Costs against the Claimants will not allow the Court to expeditiously dispose of this Claim. A Costs Order would not address the breaches of **Rule 8.7(2), Part 23**; prolixity and the lack of reasonable grounds for bringing this Claim.

Costs

30. The general Rule is that the unsuccessful party in litigation is to pay the costs of the successful party. See **Rule 63.6(1)** of the CPR. It is humbly submitted that the Defendants having provided this Honourable Court with sufficient Grounds for Striking Out in its entirety the Amended Statement of Claim, costs ought to be awarded to the Defendants there being no compelling reason to depart for the general rule as to costs.

Conclusion

31. It is humbly submitted that the Claimants being in breach of **Rule 8.7(2)** of the CPR and **Part 23** of the CPR; furthermore, the statement of Claim being prolix and containing no reasonable grounds for bringing this Claim, the appropriate sanction which the Court should impose on the Claimants is to Strike Out in its entirety the Statement of Claim in Claim 304 of 2019. It is further respectfully submitted in conclusion that Costs be awarded to the Defendants and that an Order in the terms of the Draft Order filed with this Application be granted in favour of the Defendants as there is no other appropriate sanction in the circumstances of this Application.

32. Legal Submissions on behalf of the Respondents

Grounds 1 and 3

In stating that the Claimants' statement of claim has breached Rule 8.7 and is prolix, the Defendants have reiterated this point in Grounds 1- submissions 1 and 3, and Ground 3 in their written submission. As such these submissions will be addressed together. As admitted by the Defendants in Ground 1- Submission 1, it is because this claim consists of 35 Claimants each with specific factual allegations as basis for their claims that the claim takes on the nature of being lengthy. If the Claimants were to be more concise they each risk omitting crucial factors of their claim. The defendant is of the view that the statement of claim contains matters more appropriately suited for the witness statements. Though some of the issues stated in the statements of claim overlap with factual details that will be mentioned in witness statements, the reason for including these issues in the statement of claim is because they indicate a fact pattern among defendants strengthening the claims of unlawful arrest and prolonged aggravated detention. These cause of actions require certain requirements to be pleaded and as such require detail. It is the Claimants' humble submission that the length of the claim may seem verbose, but when weighed with the number of Claimants and the complexity of the cause of action which they submit is crucial to establish the

claim. The Claimants further submit that the Court will appreciate that it is unlikely for matters of this magnitude to be able to be short vague paragraphs. What may be concise in one matter does not necessarily apply to all matters of that nature. Therefore, since each case turns on its own series of facts, it is submitted that the Claimants' claim is in full compliance with rule 8.7 (2).

Insofar as ***Desmond Kinlock v Denny Mc Farlane Etal*** as rightly stated, pleadings must include material facts but not evidence, this ruling is in agreement with Rule 8.7(1). In line of this the Claimants submit that it is for the court to determine if the facts stated in the Claimants' statement of claim is to be classed as strictly material facts or evidence. The statements presented are material facts to be further detailed by the Claimants in their witness statements. Regarding the paragraphs following subheading "Arrest and Detention" these support the claim of unlawful arrest and false imprisonment in that these show the conditions under which the Claimants were arrested and detained. It shows the highhandedness of the officers during these arrest and the blatant disregard for procedural guidance in executing the State of Emergency arrests. The defendants suggest that there was no need to delve into details of the arrest but the listed details in the arrest and detention indicate the lack of reasonable grounds for arrest and that the Claimants were not in the course of any illegal action to arouse the suspicion of the police, giving them reasonable ground to arrest and detain the Claimants. It

also supports the allegation that the Claimants were assaulted and battered. The Claimants submit that these are all issues to be specifically disproved by the Defendants in response to this claim.

33. Insofar as details of their detention at the Belize Central Prison Kolbe Foundation, the defendants are to be minded that this shows the condition of the extended detention, which is a matter for the court to consider when assessing damages that the length of the claim does not entitle the Defendants a strike out. It is submitted that if the court is of the view that the Claimants' statement of claim is in violation of Rule 8.7 the court has various powers it may exercise including allowing an Amendment of the Statement of Claim or to strike out what it deems unnecessary in the claim but not to strike out the claim in its entirety which will be draconian in these circumstances and contrary to the spirit of the CPR.

34. **<u>Ground 2 - Submission 1</u>**

The Claimants claim discloses no reasonable grounds for bringing this claim.

It is the Claimants' case that the police officers did not have reasonable grounds or probable cause to arrest and detain them during the "State of Emergency" whether the officers had reasonable ground or probable cause and whether it was a State of Emergency are clearly issues that require

determination by the Court of a hearing evidence and submissions. It is further submitted that even though the Claimants' arrest and detention took place during a state of emergency, the police officers must have had reasonable grounds to arrest and detain, and such detention must be for inquiries only. The Proclamation of the State of Emergency was not a carte blanche for the police to arrest and detain, but they must justify each arrest and detention that was made during the emergency period. Whether this was done can only be determined after evidence is presented by both parties. The Claimants submit that the crux of this matter is whether the arrest and detention of the Claimants by the Defendants can be justified under **Regulation 11 of the Emergency Powers Regulation.[1][Tab 1]**

35. Arrest & Detention

The Claimants were arrested and detained pursuant to **Regulation 11 of the Emergency Powers Regulation** which states as follows:

11. (1) Notwithstanding any rule of law to the contrary, a police officer may arrest, without a warrant, and detain, for the purposes of enquiries, any person within an emergency area, whose behavior is of such a nature as to give reasonable grounds for suspecting that he has –

***(a)** acted or is acting in a manner prejudicial to public safety;*

***(b)** has committed, is committing or is likely to commit an offence under the Crime Control and Criminal Justice Act.*

[1]Belize Constitution (Emergency Powers) Regulations, 2018, Statutory Instrument No. 50 of 2018, B

(2) A person detained under these Regulations *may be held for a period of up to thirty (30) days.*

It is the Claimants' humble submission that under Regulation 11, the Defendants must have reasonable and probable cause to justify the arrest and detention of the Claimants and the detention must be for the purposes of enquiries. The reasonable and probable cause test was stated in **O' Hara v Chief Constable of the Royal Constabulary**[2] (and adopted by Morrison JA (as he then was) in the leading case of **Attorney General of Belize v Margaret Bennett et al, Civil Appeals No. 48, 49, 50 of 2011** [**TAB 2**][3] as partly objective and partly subjective. The test is subjective because the arresting police officer must have formulated a genuine suspicion within his own mind that the accused person has committed the offence. Based on the forgoing, the following questions must be considered in determining whether there was **reasonable and probable cause;**

(a) Did the officer **honestly** have the requisite suspicion or belief?

(b) Did the officer when exercising the power **honestly believe** in the existence of the objective circumstances which he now relies on as the basis for that suspicion or belief?

(c) Was his **belief** in the existence of those circumstances **based on reasonable grounds?**

[2] [1997] 1 ALL ER 129, pages 138-139

[3] page 13, paragraphs 31 -36

(d) Did the circumstances constitute **reasonable grounds for the requisite suspicion or belief?**

The Claimants respectfully submit that if the answer to any of these questions require disclosure, witness, statements and a trial where evidence is submitted in support of the claim and defence. The Claimants were arrested and detained for six offences relating to gang membership and gang-related activities pursuant to **the Crime Control and Criminal Justice (Amendment) Act, 2018.**

Regulation 11(2)

36. In addition to the issue of reasonable grounds for arrest, **Section 11 of the Regulations** states that a police officer may arrest and detained any person within an emergency area, for purposes of enquiries, and a person who is detained may be held for a period of up to thirty (30) days.[4]

37. In the landmark case of **Kevin Stuart v The Attorney General of Trinidad and Tobago[5], [TAB 3]** a case that deals with the type of evidence necessary to establish a case of being a member of a gang under the Anti-Gang Act,

[4] Regulation 11 (2)
[5] C.A. No. P162 of 2015

(which is similar to our Crime Control and Criminal Justice Act 2018,) Bereaux JA sets out the type of details of gang activity and gang membership, and the nexus to gang activity that the Defence case must present to establish reasonable cause for arrest.

38. In **Kevin Stuart, Bereaux** JA at paragraphs 17-21 posited that;

[17]. It is readily apparent from these provisions that proving gang membership in a court of law is no slam dunk. It requires a careful compilation of the evidence showing how the gang is organized, how the gang activity is perpetrated through gang members and their respective roles in such activity. Evidence at trial must be carefully led to show the nexus between the gang, the members and the activity. In a case where the gang-related activity relates to narcotics, evidence of actual sales of the narcotics is required to prove the gang-related activity. Mere surveillance without more may not suffice. It is not enough to simply observe the accused making "interactions" with other persons. The evidence must be that narcotics were sold by the accused to someone. This would include proof of exchange of money and the actual price paid. Undercover detection may be necessary. The best evidence would no doubt be that of a former member of the gang who has direct knowledge of its activities.

[18] Taking into account the definitions of gang, gang member and gang-related activity, it was necessary for the appellant to show that PC Phillips had a reasonable basis for suspecting that:

. *(i) Stuart belonged to a gang consisting of his wife, Kerwin Rocke and himself; and that he, in combination with his wife, or Kerwin Rocke, or both, engaged in the sale of narcotic drugs (being a gang-related activity) either through all or any of them or through an agent;*

.

. *(ii) or that Stuart acted as an agent for, or as an accessory of, the gang, or voluntarily associated himself with the gang-related activity (the sale of a narcotic drug)*

.

(i) or that Stuart acquiesced in, consented or agreed to, or directed, ordered, authorized, requested or ratified the sale of narcotics.

[19] To prove reasonable suspicion it is important to show a nexus between the gang members, in this case, Stuart, Stuart's wife and Kerwin Rocke. It is necessary to provide evidence showing that there was a reasonable basis for suspecting the three alleged gang members were acting in concert to sell a narcotic drug. Evidence of their respective roles as gang members in the activity would also be required. Was he responsible simply for selling the narcotics? Was he responsible for making contact with purchasers? Was the wife's role merely to provide the facade of legitimacy by selling in the shop? What role did Rocke play? It is not enough simply to show Stuart acting alone (unless the evidence also pointed to agency). If that was the only evidence, then he should have been arrested for the sale of narcotics and not for being a gang member.

[20] The best evidence no doubt would be information emanating from a former member of the gang intimately acquainted with Stuart's role, by virtue of his own participation in the activity or, a confession from Stuart himself. If a former gang member is the source of that information he could be identified as a "former gang member" without necessarily naming him so as to allow the court to judge the basis of reasonable suspicion.

[21] But details of the gang activity and gang membership, the nexus between the activity and the gang member and his role in the gang and in the activity, are required. The facts put forward by PC Phillips never approached the detail required[6]*….*

[6] see paragraphs 22-25

39. The Defendants admitted at paragraphs 55-56 of their Defence that the Claimants were detained for their involvement in gang activities such as murder, trafficking of drugs, shooting, robberies, possession of illegal firearms and ammunition. Having admitted the reasons for detention, the Defendants' pleadings is not sufficient; there must be evidence by the police to justify their arrest and detention. This pleading is not sufficient for a determination by this Court of Law that the police had reasonable suspicion and acted lawfully, resulting in the striking out the claim.

40. Ms. Kimberly Wallace, in support of the Defendants' application to Strike Out, swore an affidavit where she states that she has "reviewed the relevant files from the Belize Police Department, Solicitor General's Chambers and the Kolbe Foundation," and accordingly <u>believes</u> that the, "Claimants have no reasonable grounds to bring the claim…"

41. It is the Claimants" humble opinion, that Ms. Wallace's affidavit does not add to Defendants' case that the Defendants had reasonable grounds when the claimants were arrested and detained. Ms. Wallace basically is saying that she "reviewed files" and she "believes" that the Claimants have no case. Which files did she review? What evidence was contained in those files that

connected the Claimants to the offences they were detained for Ms. Wallace did not tell the Claimants of any! The Claimants further submit that Ms. Wallace is not able to say that she believes that the Claimants' case has no reasonable grounds to bring the Claim against the Defendants. The critical issue in this claim is whether the Defendants had reasonable grounds for arresting and detaining the Claimants - an issue that must be determined by this Honourable Court, after hearing the evidences of the Claimants and more importantly the testimonies of the Defendants' witnesses. Lastly, Ms. Wallace cannot give any evidence about what she read in those files. The Claimants humbly submit that is for the Court to determine whether the arrest and detention were lawful. For the Court to decide the issue, the court will have to hear the evidence of the arresting officers to see if they had reasonable grounds for suspecting that the Claimants were involved in the various gang-related activities that they were detained for. In other words, the resolution of this claim is highly dependent on the Court' assessments of the facts.

42. The Defendants in their submission are humbly asking the Court to Strike Out this claim in its entirety because, *"the Claimants cannot succeed without properly impugning and challenging the proclamation of the State of Emergency…"* The Defendants did not submit any authority to support such assertion. On the other hand, it is the Claimants' submission that the

Claimants do not need to challenge the validity of the State of Emergency for them to succeed in the case at bar. The Regulations states that a police officer may arrest and detain upon having reasonable grounds, and such detention should be for enquires only. They may detain someone for a period of thirty (30) days. The Courts have always maintained that the rule of law requires that the exercise of a discretionary power is subject to scrutiny by the Courts. The Claimants humbly submit that is for the Courts to consider whether the facts relied upon for the exercise of that discretion by the Defendants are reasonable. This is an issue that the Court will have to determine based on the evidence. Based on the forgoing, the Claimants humbly submit that the Application to Strike Out the Claimants' Claim in its entirety be dismissed. The Claimants' case has a reasonable chance of success, and the case involves matters of facts that could only be resolved by having the issues ventilated through a hearing. Additionally, the Defence is weak and unlikely to succeed, as they have not placed before this Court any material to justify why the Claimants were detained and why they needed to be detained for twenty-eight (28) days.

Ground 2 – Submission 2

43. The Defendants' submission is that the Claimants "failed to specify and or particularize the allegations of assault and battery and it crucially fails to identify which of the 35 Claimants is claiming assault and battery." The Defendants further submit that, "it is a fatal omission because claiming assault and battery without particularizing the Claimant who is claiming under that cause of action means that the court does not have before it a claim by an identifiable claimant which the Court is obliged to resolve at trial." The Claimants respectfully submit that from the Claimants' pleadings, sufficiently sets out the Claimants who were assaulted by the Defendants. The Claimants who are claiming they were assaulted are the 3rd, 4th, 7th, 10th, 11th, 27th 29th and 35th and all assaults were set out under the subheading Arrest and Detention. As it relates to the 3rd and 4th Claimants this was pleaded at paragraph 5. The 10th Claimant set out his allegations at paragraph 28 to 30. The 11th Claimant deposed at paragraph 38 to 40, Claimant 27 sets outs his allegation at paragraph 111. The 29th Claimant at paragraph 119 also states he was battered. Claimant 135 details his assault at paragraph 140. The Claimants humbly submit that there are facts pleaded by specific Claimants about their individual assaults.

Ground 2- Submission 3

44. If the court is of the view that there is a breach of Rule 23.8, this issue is a technical objection in these early stages of proceedings. Rule 23.8 allows the court to withhold the use of its most stringent course of action and remedy this defect by making an order appointing a Next of Friend without an application by the Claimants, or any other order. Additionally, to grant an application for strike out under these circumstances would deprive these Claimants of their right to a hearing. This is contrary to the overriding objective of the Civil Procedure Rules, which offers the court lesser options to this technical defect.

45. In ***Cedar Valley Springs Homeowners Association Incorporated v Hyacinth Pestanina and Cedar Valley Springs Homeowners Association Incorporated v Kenneatgh Meade and Hilda Meade***[7]***[TAB 8]*** it was held that the learned master erred in principle in striking out the appellant's claims, having already found that the appellant's cause of action was sufficiently pleaded to enable the claims to proceed. *Furthermore, his basis for striking out the claim – that there was need to plead additional facts - could have been adequately addressed through alternative means (for instance by directing the*

[7] Court of Appeal, Antigua and Barbuda, ANUHCVAP2016/009

appellant to amend the claims to address the failure) particularly since the defendant's application for strikeout came prior to the claim being case managed." [8]

46. In the interest of justice to the Claimants, and in furtherance of the overriding objective of the Civil Procedure Rules, the Claimants humbly pray that this Court does not strike out the Claim based solely on a technical issue, but humbly pray that it adopts a more appropriate measure under the circumstances if it is deemed necessary. For example, the court could appoint a necessary Next of Friend even where the Claimants have not done so by way of application, or the court may also grant an adjournment to allow the Claimants to file the necessary applications to rectify this defect or to make the necessary amendments. Nonetheless, the Claimants have amended their Claim to include the Next of Friend for the three (3) minors.

47. The Claimants submit that striking out of claim under these conditions is not appropriate, as it settled law that the jurisdiction to strike out is to be used sparingly, and only in plain and obvious cases where there was no point in having a trial. Put differently, it should be deemed as a last resort, where it

[8] Antigua and Barbuda ANUHCVAP2016/0009(delivered January 18th 2017)

is clear that no legal claim has been set out against the defendant. The Claimants have set out a reasonable claim in their pleadings, and that this court being guided by the strength of said pleadings, and the availability of less severe measures, may not adopt its ultimate power available and it ought to explore lesser sanctions to address any defect at this stage of proceedings. The Court has a general power to striking out claims under Part 26 of the Rules. However, the power to strike out proceedings should be only exercised in very clear and obvious cases deserving of such a course. In the case at Bar, there are important issues that should be ventilated at a trial and this case cannot be categorized as an abuse of process or even one where no cause of action arises on the face of the claim. On the face of this claim there is an important question as to whether persons were falsely imprisoned during a State of Emergency carried out by the State. The court should refuse to conduct a mini trial in order to ascertain whether the case should go to trial.

Whether the claim should proceed to trial and not be struck out

48. According to **Blackstone's Civil Practice 2004 at page 341** :

> "**Under the old rules it was well settled that the jurisdiction to strike out was to be used sparingly**. The reason was, and this has not changed, that **the exercise of the jurisdiction deprives a party of its right to a trial, and of its ability to strengthen its case through the process of disclosure and other court procedures such as requests for further information**. Further, it has always been true that the examination and cross examination of witnesses often changes the

complexion of a case. **It was accordingly the accepted rule that striking out was limited to plain and obvious cases where there was no point in having a trial. Under the CPR it is part of the court's active case management role to identify the issues at an early stage and to decide which issues need full investigation at trial, and to dispose summarily of the others."**

49. In the case of **Swain v Hillman [2001]1 All ER 91**, a summary judgment case, Lord Woolf MR said that **Part 24** applications had to be kept within their proper limits, and were not meant to be used to dispense with the need for a trial where there were issues which should be considered at trial. It is respectfully submitted that the same principles would be applicable to a striking out claim especially the claim at bar.

50. This was the same position adopted by her ladyship Madam Justice Young in the case of **Barbara Estella Romero v. Minister of Natural Resources and others Claim No. 302 of 2012**, the learned judge refused to strike out a claim on the basis that they were proper issues to be ventilated at trial disclosed from the face of the Claim. Whilst the judgment is not binding on this court, it underscores the core principles that the court must be guided by.

51. In the case of **Belize International Services Limited v. The Attorney General of Belize, Claim No. 698 of 2013**, where there was in existence an agreement between the government and the company for management of the Merchant and Shipping Registry and the government compulsory acquired the Registry in breach of the agreement. The Company brought an action for breach of its constitutional rights and judicial review but the court disagreed and found that it was premised and rooted in contract law. Her ladyship Justice Michelle Arana opined:

"I am most grateful for the submissions made on behalf of the Applicant/Defendant and Respondent/Claimant in this matter. ***Having considered all the authorities and submissions made (written and oral) and having perused the affidavits filed in this matter, I am satisfied that this is a contractual dispute***. I am not prepared to go so far as to say that this is an ordinary claim masquerading as a constitutional claim which therefore amounts to an abuse of process. I do find that the facts alleged if proven by - 21 - the Claimant/Respondent may give rise to serious constitutional concerns especially with regard to the allegations regarding the arbitrary use of state power. **However, upon examining the nature of the claim made and the relief sought, I find that this is essentially a claim for breach of contract. Did the contract between the parties come to an end on June 10th, 2013 (as alleged by the Defendant/Applicant) or was the contract extended to June 11th, 2020 (as averred by the Claimant/Respondent)? Did the Defendant/Applicant breach the contract? And if so, what quantum of damages should be awarded to the Claimant/Respondent? To my mind, these are major issues which need to be determined by the court in addressing this claim. This is a claim for damages for breach of contract and should have been brought as an ordinary claim**. However, **I will not strike out the claim. Instead I order pursuant to Rule 56.8(3) of the Civil Procedure Rules that this matter be converted to an ordinary claim for breach of contract. A Statement of Claim shall be filed within the next two weeks after which the matter shall proceed as if it had been commenced as an ordinary claim pursuant to Civil Procedure Rules Part 8**. Application to strike out claim is refused."

The Court adopted the proper approach and did not strike out the case; the court allowed the claim to be converted and issued further directions in keeping with the justice of the case under the overriding objectives.

52. The court is obliged to interpret the CPR in keeping with the overriding objectives of the rules with one of the fundamental planks being to do justice to the parties in a case. The fact that the Claim may be prolix or an aspect of the rule not complied with should not close the doors of justice to a party. The

Claim should not be dispensed with based on procedural issues that can be cured. See also the case of **Roland James v. The Attorney General of Trinidad and Tobago, Civil Appeal No. 44 of 2014**, where the Court of Appeal of Trinidad and Tobago was addressing the issue of an extension of time but expressed strong sentiment about closing the doors to justice to a party and shutting them out based on procedural objections. The Claimants commend this case to the court for consideration. It is respectfully submitted that this is not a proper case for striking out. The Claim can be amended if directed and the parties proceed to the substantive issues to be resolved at trial.

Whether it should have been a part 56 Claim

53. It is submitted that a party is obliged to exhaust his private law remedy first and this is exactly what is being done in pursuing a claim in false imprisonment. It would be an abuse to file constitutional claims without first filing an alternative private law remedy. The case of **Harrikissoon v Attorney General of Trinidad & Tobago (1979) 31 WIR 348** is authority for the proposition that the private law remedy should be explored first. Lord Diplock at page 349 stated:

> "'***The notion that whenever there is a failure by an organ of government or a public authority or public officer to comply with the law this necessarily entails the contravention of some human right or fundamental freedom guaranteed to individuals by Chapter I of the Constitution is fallacious***. The right to apply to the High Court under Section 6 of the Constitution for redress when any human right or fundamental freedom is or is likely to be contravened, ***is an important safeguard of those rights and freedoms; but its value 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***. In an originating application to the High Court under Section 6(1), the mere allegation that a human right or fundamental freedom of the applicant has been or is likely to be

contravened is not of itself sufficient to entitle the applicant to invoke the jurisdiction of the court under the subsection if it is apparent that the allegation is frivolous or vexatious or an abuse of ***the process of the court as being made solely for the purpose of avoiding the necessity of applying in the normal way for the appropriate judicial remedy for unlawful administrative action which involves no contravention of any human right or fundamental freedom.'"*** (Emphasis Added)

54. This position was buttressed by the case of **Thakur Persad Jaroo v. The Attorney General of Trinidad and Tobago (2002) 59 WIR 519**. In the circumstances, a Part 56 Claim would have been constitutional in nature but these authorities suggest that the private law remedies should be exhausted first. This position is adopted by the CCJ in the case of Guyana Stores Limited v. Attorney General of Guyana and the Guyana Revenue Authority.

Conclusion

55. The Claimants humbly pray that this Court exercise its discretion in favor of the Claimants, and dismiss the Defendants' application to Strike Out the Claimants' case in its entirety and award costs to the Claimants. The Claimants humbly ask that this Honourable Court addresses its mind to the following principles;

(a) That Striking Out should only be used in clear and obvious cases as it is a drastic step.

(b) This procedure should only be used where it can be seen on the face of the claim that it is obviously unsustainable, cannot proceed or in some way is an abuse of process of the court. This has been expressed in terms that the claim should not be struck out if there is a 'scintilla' of a cause of action.

(c) In treating with an application to strike out, this Court should proceed on the assumption that the facts alleged in the statement of case are true.

(d) The employment of this procedure is appropriate in the following instances: where the claim sets out no facts indicating what the claim is about, or if it is incoherent and makes no sense, or if the facts it states, even if true, do not disclose a legally recognizable claim against the defendant.

(e) Conversely, this procedure would be inappropriate where the argument involves a substantial point of law which does not admit of a plain and obvious, or the law is in a state of development, or where the strength of the case may not be clear because it has to be fully investigated.

56. Applicant's Submissions in Reply

Reply to Claimants' Submissions on Grounds 1 and 3

The 1st – 12th and the 14th Defendants humbly submit that the Claimants' submissions at paragraphs 1 to 6 in relation to Grounds 1 and 3 are lacking. Those submissions fail to address the issue raised by the 1st – 12th and the 14th Defendants in their Strike Out Application in that the justification given for the Statement of Claim being prolix is that there are 35 Claimants. The Claimants' submissions fail to address the inclusion of facts that do not

establish the cause of action. Instead the Claimants at paragraph 3 of their submissions justify their prolixity by stating that *'the reason for including these issues in the statement of claim is because they indicate a fact pattern among defendants strengthening their claims of unlawful arrest and prolonged aggravated detention.'* The 1st – 12th and the 14th Defendants respectfully submit that this falls short of the rule in ***Desmond Kinlock v Denny McFarlane Etal*** Claim No. 2013 HCV01350. Pleading matters which show a fact pattern by defendants so as to strengthen a claim are matters that should properly be included in witness statements. After all, the Claimants admit that those prolix facts only go to show a fact pattern to strengthen the claim as opposed to stating matters that need to be proved in order for the claim to succeed. The Claimants' submissions refer to the Court of Appeal judgment in ***Attorney General of Belize v Margaret Bennet Etal*** Civil Appeal Nos. 48, 49 & 50 of 2011 an appeal dealing with false imprisonment. The 1st – 12th and the 14th Defendants humbly submit that that judgment provides the Claimants with guidance as to what needs to be established in a Claim for false imprisonment and as such implicitly provides the Claimants with guidance as to what needs to be pleaded in their Statement of Claim. The Amended Statement of Claim fails to plead only material facts, meaning those necessary for the purpose of formulating a cause of action or defence, and not

background facts or evidence. This is in fact admitted by the Claimants in their submissions.

Reply to Claimants' Submissions on Ground 2

57. The Claimants' submission in response to Ground 2 Submission 1 of the 1st - 12th and the 14th Defendants submissions is that it is the Claimants' case that the police did not have reasonable grounds or probable cause to arrest and detain the claimants during the state of emergency. The Claimants go on to further submit that *'whether the officers* ha[d] *reasonable ground*[s] *or probable cause and whether it was a State of Emergency are clearly issues that require determination by the Court…'*

The 1st- 12th and the 14th Defendants respectfully submit that a question of whether it was a State of Emergency; which is a question which the Claimants say must be determined by the Court, is a question which can only be properly before the Court when brought as a Part 56 **Supreme Court (Civil Procedure) Rules 2005** ('CPR'). The reason for this submission is the following. The state of Emergency was declared under **section 18** of the **Belize Constitution.** The proclamation of the state of Emergency is a Constitutional power exercisable by His Excellency the Governor General. Therefore, any determination by this Honourable Court of the question which the Claimants say needs to be determined, namely, *'whether it was a State of Emergency'* is a question which can only come before the Courts as a **Part**

56 Claim under the **CPR**. Furthermore, the **Belize Constitution (Emergency Powers) Regulations** which the Claimants say were breached in their arrests and detention were promulgated under **section 18(9)** of the **Belize Constitution**. This it is submitted, is a further reason why this Claim should proceed as **a Part 56** Claim under the **CPR** as opposed to an ordinary claim. The State of Emergency, the arrests and detention were all made under powers prescribed under the **Belize Constitution**. These arrests and detentions were not made under ordinary circumstances nor were they made under any common law power vested in the police.

58. The 1st to 12th and the 14th Defendants are mindful of the Claimants' submission that *'the Claimants do not need to challenge the validity of the State of Emergency for them to succeed in the Case at Bar. The Regulations state that a police officer may arrest and detain upon having reasonable grounds, and such detention should be for inquiries only.'* The 1st to 12th and the 14th Defendants humbly submit that this submission by the Claimant ignores the fact that the State of Emergency and the arrests and detention of the Claimants was done under emergency powers granted to the police under a state of emergency declared under the Constitution. Therefore, this Claim ought to be by way of a **Part 56** Claim whether or not the success of the claim depends on impugning the validity of the State of Emergency. The powers of

arrest and detention were granted to the police under Regulations made under the Constitution itself as opposed to powers made under an ordinary Act of parliament. In any event the Statement of Claim pleads Constitutional breaches at paragraphs 142 to 152. This is an indication that this Claim ought to be by way of a **Part 56** Claim.

59. The Claimants further submit that the Defendants have not placed any material before this Court any material to justify the Claimants' detention and the need to detain for 28 days and that this demonstrates that the Defence is weak and unlikely to succeed. Firstly, it is for the Claimants to prove that the arrests and detentions were unjustified under the Regulations. He who asserts must prove. Secondly, this submission by the Claimants confuses supporting evidence to be produced in witness statements and led at trial with the pleading of material facts which must appear in a statement of case. The Defendants at the stage of pleading need not place before the Court evidence supporting the Defence.

Reply to Claimants' Submissions on Ground 2 Submission 2

60. The Defendants stand by their submissions made in the Strike Out Application.

Reply to Claimants' Submissions on Ground 2 Submission 3

61. The 1st - 12th and the 14th Defendants humbly submit that the Claimants' submission in relation to not having a Next of Friend properly before the Court are lacking. The sum of the submission by the Claimants is that the Claim should not be struck out for want of a Next of Friend for the Claimants who are minors because the Court can appoint a Next of Friend without an application being made. Furthermore, that the Claimants in their Amended Claim have nonetheless added Next of Friends for those Claimants who are minors. The Claimants' submissions ignore the fact that a Next of Friend whether appointed by Court Order on Application or otherwise, needs to comply with **Rules 23.6** and **23.7** of the CPR. The Claimants have not complied with those rules. They have simply added their names as Next of Friends on the heading of their Statement of Claim and the Paragraphs listing each Claimant and their respective addresses. The procedure under **Rule 23.7** applies to the case at Bar because the purported addition of Next of Friends in the Amended Statement of Claim was made without an Order of the Court.

Conclusion

62. The 1st - 12th and the 14th Defendants agree that Striking Out is a sanction of last resort. However, in the circumstances of the default or breaches of the

CPR in relation to prolixity, the failure to use the procedure in Part 56 of the CPR to bring this claim and the failure to have Next of Friends properly before the Court should persuade this Honourable Court to Strike out this Claim. Constitutional claims questions cannot be brought before the Courts of Belize other than by a Claim made under **Part 56** of the CPR. This claim of unlawful arrest, false imprisonment and assault and battery seeks to impugn powers of arrest and detention exercised under emergency powers granted to the police under the Constitution of Belize during a State of Emergency declared by His Excellency the Governor General under powers vested in his Office by the Constitution.

63.DECISION

I wish to express gratitude to both counsel for their extensive arguments, oral and written, on this Application to Strike Out Claim. I have analyzed and considered the submissions for and against this application. While I agree with some of the arguments raised by the Applicants to a certain extent in that I find that the Statement of Case does in fact run afoul of the CPR in its prolixity, I also agree with the submissions of the Respondents that striking out the Claim on this basis would be too draconian. A strike out would deprive these 35 Claimants

of having their substantive challenge to the legitimacy of their arrest, detention and deprivation of their liberty during the State of Emergency remaining unheard. The questions raised by the Claimants in this Claim are too important to be struck out on the basis of procedural irregularities. I therefore order that this claim be converted to a constitutional claim under Part 56, a Statement of Claim be filed within two weeks and the Claimants be allowed to properly apply for Next Friend status for the minors to be properly represented in this Claim.

Application dismissed. Each party to bear own costs.

Dated this 16th date of June 2021

Michelle Arana

Chief Justice (Acting)

Supreme Court of Belize