

IN THE SENIOR COURTS OF BELIZE

IN THE HIGH COURT OF BELIZE

CLAIM No. 417 of 2024

BETWEEN:

DR HAILU HURRISSA

AYRES MAE G. HURRISSA

First Claimant/Respondent

Second Claimant/Respondent

AND

MINISTER OF NATURAL RESOURCES

Defendant/Applicant

Appearances:

Mr Darrell Bradley of Bradley Ellis LLP for the claimants

Ms Alea Gomez, Crown Counsel, with Ms Alisha Garraway, Crown Counsel for the defendant

16 February 2026

27 August 2026

JUDGMENT

Civil Practice and Procedure – CPR 26.3(10) - Strike out – Statement of Claim – Whether it discloses no reasonable grounds for commencing the claim – Whether it constitutes an abuse of process – Whether a litigant who seeks declaratory relief and consequential orders arising from a decision or action taken by a public authority, but not a quashing, mandatory or prohibitory order, is required to proceed by way of an application for judicial review - Whether section 27 of the Limitation Act, read with sections 2 and 3 of the Public Authorities Protection Act, applies to constitutional claims and to claims in tort - Whether the defendant should be granted an extension of time to file his defence – CPR 10.3(9) and CPR 26.1(2)(c) –

- [1] **HONDORA J.:** The Minister of Natural Resources, the defendant in the main proceedings, seeks an order striking out the claimants' statement of case on the ground that it discloses no reasonable basis for bringing the claim and constitutes an abuse of process. The Minister of Natural Resources also seeks an extension of time to file his defence. Mr and Mrs Hurriッサ, the claimants (respondents in these interlocutory proceedings), oppose both applications.

- [2] For ease of reference, I shall refer to the Minister of Natural Resources as such or as 'the applicant', and to the claimants as such or as the 'Hurrissas'.

Background

- [3] For the background facts, I rely primarily on the affidavit of Mr Hurrissa, the lead claimant, which served as his statement of claim.
- [4] In 2017, Mr Hurrissa and his wife purchased 10 acres of land in the Santa Cruz Agricultural Area in the Stann Creek District of Belize. In about 2018, he learned that 200 acres of government-owned land adjacent to the 10 acres were available for lease or purchase. After making enquiries, Mr Hurrissa was advised by Mr Owen Herrera, a Lands Officer with the Lands Department in Dangriga Town, to submit applications to survey and lease the 200 acres. Thereafter, Mr Hurrissa submitted four applications, each seeking permission to survey and lease 50 acres, making for a total of 200 acres.
- [5] Mr Hurrissa averred that he informed the Lands Officers at the Dangriga Lands Department of his intention to establish an orange 'orchard', and that those Officers told him and his wife that they could occupy the 200 acres, which they proceeded to do. Between 2018 and 2021, Mr and Mrs Hurrissa were in occupation of the 200 acres and established what, given the size of the property, I would describe as an 'orange plantation'.
- [6] On a date not specified in his affidavit, Mr Hurrissa received a letter dated 27 July 2021, instructing him to cease and desist from occupying the 200 acres. After receiving the letter, Mr Hurrissa went to the Belmopan Lands Department, met officials, and explained that the Lands Department was aware that he and his wife were in occupation, that he had invested money and labour, and that he had already established an orange plantation on the 200 acres.
- [7] Mr Hurrissa further averred that following discussions with officials at the Belmopan Lands Department, the Commissioner of Lands sent him a letter dated 29 September 2021, rescinding the 27 July 2021 letter and advising him that he (together with his wife) should continue their occupation and resume their development of the 200 acres. According to Mr Hurrissa:
- "Based on this letter, and other representations made by the Defendant, my wife and I invested and continued to invest sums to the value of or exceeding \$1,661,061.12, including for planting trees, constructing residential accommodations for our workers and a storage facility, constructing drains, road infrastructure and for maintenance to develop the citrus orchard."
- [8] Thereafter, the Hurrissas received an Enforcement Notice dated 22 March 2022, directing them to cease development and occupation of the 200 acres. Shortly thereafter, Mr Hurrissa and his wife were removed from the 200 acres.

[9] On 23 July 2024, Mr and Mrs Hurrissa commenced legal proceedings against the Minister of Natural Resources by filing a Fixed Date Claim Form, supported by an affidavit sworn by Mr Hurrissa.

[10] The Hurrissas contend that the Minister of Natural Resources “unjustly and unfairly took back” the 200 acres from them and gave them to someone else. They allege negligent misrepresentation and fraud. I pause to note that the Hurrissas did not provide particulars of the alleged fraud. They did, however, contend that:

“...the Defendant’s acts constitute negligence or negligent misrepresentation, including by negligently representing to me that my wife and I could occupy and continue occupation and development of the land, and my wife and I acted on that representation to our detriment, including by investing in improving the land, and we suffered damage as a result, including the loss of investment.”

[11] They also contend that they:

“...relied on the Defendant’s negligent misrepresentations to [their] detriment, including by investing and continuing to invest sums to the value of or exceeding \$1,661,061.12, including for planting trees, constructing residential accommodation[] for workers and a storage facility, constructing drains, road infrastructure and for maintenance to develop the citrus orchard.”

[12] As set out in their Fixed Date Claim Form, the Hurrissas seek, crucially, the following remedies:

1. A declaration that the actions of the Defendant, including to issue an Enforcement Notice dated 22 March 2022 requiring the Claimants to cease their development and occupation of the approximately 200 acres of land located in the Santa Cruz Agricultural Area and to thereafter remove the Claimants and their citrus orchard, buildings and works from this land, constitutes procedural ultra vires, unfairness, unequal and discriminatory treatment; is a violation of the Claimants’ right to protection of the law, equal protection of law and equal treatment under [the] law; is in breach of the Claimant’s legitimate expectation; is Wednesbury unreasonable and in breach of the Defendant’s statutory duty;
2. A declaration that the actions of the Defendant, including to represent to the Claimants that they could go onto the land and commence and thereafter continue their occupation and development of the 200 acres of land, constitutes negligence or negligent misrepresentation;
3. Damages, including for the Defendant’s wrongful acts and negligence or negligent misrepresentation.

[13] The Hurrissas served their Fixed Date Claim Form and Statement of Claim on the Minister of Natural Resources on 5 September 2024. This is evidenced by an affidavit of service sworn to by Mr Sidney Murillo on 6 September 2024. The Minister of Natural Resources did not file a defence within 28 days of service of the Hurrissas’ Fixed Date Claim Form and Statement of Claim, as required by CPR 10.3(1).

[14] On 4 February 2025, the Minister of Natural Resources filed an application for an extension of time to file his defence, and an application to strike out the Hurrissas’ statement of case on the grounds, as set out in [1] above, that the Hurrissas’ statement of claim did not disclose any reasonable grounds for bringing the claim and that the claim was an abuse of process.

[15] According to the Minister of Natural Resources, the Hurrissas’ four applications to survey and lease the 200

acres:

“...did not create any legal or equitable interest in land, nor were the [Hurrissas] granted a lease or purchase approval, therefore they have no legal interest in the properties.”

- [16] The Minister of Natural Resources also stated that the Lands Department made no representations to the Hurrissas. It was further argued that the Hurrissas' claim essentially challenges the Minister of Natural Resources' 'lawful decisions', including (a) the rejection of the Hurrissas' four applications for permission to survey and lease the 200 acres; (b) the issuance of the enforcement notice; and (c) that, as a result, their claim should have been filed as an application for judicial review, which it was not. The defendant maintained that the Hurrissas' challenge to the administrative decisions was not prompt. The Minister of Natural Resources also contended that the Hurrissas' negligence claim should have been commenced by way of an ordinary claim, not under the Fixed-Date Claim procedure under Part 56 of the CPR.
- [17] The Minister of Natural Resources further asserted that the Hurrissas should have, but failed to, comply with section 3 of the Public Authorities Protection Act ('PAPA'), which requires one month's prior notice of an intention to commence legal proceedings to be given to the public authority intended to be sued. Relying on section 27 of the Limitation Act, read with sections 2 and 3 of the PAPA, the Minister of Natural Resources also contended that the Hurrissas' claim is statute-barred because it was not commenced within one year of the date on which their cause of action arose.
- [18] Relying on these contentions, the Minister of Natural Resources contends that the Hurrissas' claim should be struck out on the basis that their statement of case fails to disclose reasonable grounds for bringing the claim and that the claim amounts to an abuse of the court's process.

Issues

- [19] These proceedings raise the following issues.
- (a) Should the Hurrissas' statement of case be struck out on the basis that it fails to disclose any reasonable grounds for bringing the claim and/or constitutes an abuse of process?
 - (b) If the answer to (a) above is 'Yes', that disposes of the proceedings. If the answer is 'No', this raises the question whether the first defendant should be granted an extension of time to file his defence.

Strike out application

- [20] I should note, at the outset, that the relevant facts underlying each of the applicant's contentions that the Hurrissas' statement of case should be struck out for failing to disclose reasonable grounds for commencing the claim and for constituting an abuse of process are not clearly set out in the application. Clarity and specificity in drafting are critical to strike-out applications, as the specific grounds and reasons upon which an applicant relies

must not be left to conjecture. In my assessment, the applicant's case is as follows:

- (a) the Hurrissas' statement of case discloses no reasonable grounds for bringing the claim because:
 - (i) their applications to survey and lease the 200 acres did not confer on them any legal or equitable interest in the individual properties; and
 - (ii) the Lands Department made no representations to the Hurrissas that would have given rise to any viable cause of action, and that, in any event, the Lands Department always maintained to the Hurrissas that they had no legal or equitable interest in the 200 acres; and
- (b) the Hurrissas' statement of case constitutes an abuse of process because:
 - (i) their challenge should, in any event, have been brought by way of judicial review proceedings, and their claim, which includes constitutional redress and common law and equitable claims, is a ruse to avoid compliance with CPR 56; and
 - (ii) they did not comply with section 3 of the PAPA, which requires one month's prior written notice to be given to a public authority of intended legal proceedings challenging "anything done in the exercise" of the public office, and that, under section 27 of the Limitation Act, the Hurrissas' claim is statute-barred because it was brought more than a year after the accrual of their cause of action.

[21] I will now address the principles governing strike-out applications.

Principles governing strike-out applications

[22] I do not propose to undertake a detailed analysis of the principles governing strike-out applications. Rather, I will adopt the analysis of those principles set out in **5962GOA4263 Inc. v MB Properties Group LLC**, Claim No. 151 of 2025 ('**5962GOA4263 Inc.**'), at [52]–[86], including the guidelines set out by the Caribbean Court of Justice (CCJ) in **Panday v Panday** [2026] CCJ 4 (AJ) GY at [20] ('**Panday**'). That said, I need to emphasise the following points.

[23] The court's inherent power to strike out part or all of a statement of case is set out in CPR 26.3(1), which provides:

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 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; or

- (d) 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.

- [24] The discretion and powers set out in CPR 26.3(1) are exercised in line with the general view that the strike-out remedy is a nuclear option and a remedy of last resort (see **Barbados Rediffusion Services Limited v Mirchandani**, CCJ Appeal No. CV 1 of 2005, at [44]) - a statement approved in **Panday** at [18]. See also the Privy Council's decision in **Real Time Systems Ltd v Renraw Investments Ltd** (2014) 84 WIR 439 (TT PC), at [17].
- [25] A court will not grant an order striking out a party's statement of case unless it is certain that the pleaded cause of action or defence is unwinnable and bound to fail (**Barrett v Enfield London Borough Council** [2001] 2 AC 550, at p.557, per Lord Browne-Wilkinson; **Richards (t/a Richards & Co) v Hughes** [2004] EWCA Civ 266, Peter Gibson LJ, [22]). Consequently, the strike-out applicant, who bears the burden of proof, must demonstrate, to this higher standard, that the respondent's statement of case must be struck out in whole or in part and that remedies short of a strike-out will not satisfy the justice of the case (**Dufresne v Nicholson**, Claim No. 117 of 2024, at [16]).
- [26] A strike-out applicant must accept the accuracy of the facts pleaded in the respondent's statement of case unless they are contradictory or plainly incorrect (**Tel Sarl v Visa Europe Ltd** [2023] EWHC 1336 (Ch), [31]). In addition, the focus of a strike-out application is on the respondent's statement of case rather than on the evidence (**Royal Brompton Hospital NHS Trust v Hammond** [2001] EWCA Civ 550, at [104]). It is impermissible to use a strike-out proceeding as a mini-trial of contested facts (see **5962GOA4263 Inc**, at [68] – [72]).
- [27] It is also settled that disputes raising difficult questions of fact and/or law for which there are no plain or obvious answers, and those involving new, developing or unsettled points of law, are not suitable for resolution by strike-out proceedings (**Partco Group Ltd v Wragg** [2002] EWCA Civ 594, at [48]).
- [28] As a general rule of practice, the court will not strike out a defective statement of case without first affording the relevant party an opportunity to cure any alleged defect. As Tungendhat J noted in **Kim v Park** [2011] 1781 (QB) at [40]:
- “...where the court holds that there is a defect in a pleading, it is normal for the court to refrain from striking out that pleading unless the court has given the party concerned an opportunity of putting right the defect, provided that there is reason to believe that he will be in a position to put the defect right”.
- [29] To resolve the merits of the strike-out application, I shall rely on the principles set out in the foregoing summary, including those in **5962GOA4263 Inc**.

(a) Does the Hurrissas' statement of case not disclose reasonable grounds for bringing the claim?

- [30] I will first address the Minister of Natural Resources' contention that Hurrissas' statement of case fails to disclose any reasonable grounds for bringing the claim, on the basis that (a) their applications to survey and lease the 200 acres did not confer any legal or equitable interest in the property on them; (b) the Lands Department made no representations to the Hurrissas that would have given rise to a viable cause of action; and (c) the Lands Department always maintained to the Hurrissas that they had no legal or equitable interest in the 200 acres.
- [31] In my view, these grounds are not an adequate basis for striking out the Hurrissas' statement of case. I rule accordingly for several reasons.
- [32] I note, in the first instance, that the Minister of Natural Resources seeks to strike out the Hurrissas' statement of case, relying on his contentions of alleged fact regarding how the Hurrissas came to occupy the 200 acres, which differ from those asserted by the Hurrissas in their statement of case. The applicant – who is legally represented - will know of the well-established rule that a litigant seeking to strike out a respondent's statement of case under CPR 26.3(1) must accept the accuracy of the facts pleaded by the respondent in their statement of case unless they are contradictory or plainly incorrect (see [26] above).
- [33] Where it is a strike-out applicant's contention that the facts set out in the respondent's statement of case are fanciful, plainly incorrect, incoherent, or contradictory, and/or that the pleaded facts do not establish any prima facie cause of action known at law, it lies on the applicant to plead such matters and to demonstrate, in their submissions, that such a state of affairs exists. It is insufficient for an applicant merely to outline, in their application, an alternative version of the alleged facts and to use those as a basis for requesting an order striking out the respondent's statement of case.
- [34] As a general rule, strike-out applications turn on the respondent's pleaded version of the facts as set out in their statement of case, not on the alternative facts pleaded by the applicant in their strike-out application. Where there is an evident conflict of facts, that conflict must (and will generally) be resolved at trial.
- [35] I should note, by way of a general observation, that these courts are often inundated with unmeritorious strike-out applications, many of which are pursued only or primarily on alternative and disputed versions of the alleged facts. While it is certainly for parties to litigation to pursue their litigation strategies, it will not be lost on most practitioners that courts regard an order striking out a litigant's statement of case, whether a statement of claim or a defence, as a nuclear option, hence the higher burden of proof.
- [36] In relation to these proceedings, whether the Hurrissas secured legal or equitable interests in the 200 acres following their applications to survey and lease the properties will, in part, turn on the parties' course of dealing,

including the letters exchanged between 2018 and September 2021. The letter dated 29 September 2021, which, on its face, was signed on behalf of the Commissioner of Lands and Surveys, is of particular interest. It states:

“This letter is supplemental to a previous correspondence dispatched to you dated July 27th, 2021 in which you were informed that you have no legal right or interest in the aforementioned land and to cease and desist any and all further development and/or occupation.

You are hereby informed that the said July 27th, 2021 letter is officially rescinded. You may resume your development/occupation of the land in question.” [Emphasis added]

[37] I note that the applicant appears to deny knowledge of the 29 September 2021 letter without affirmatively disputing its authenticity. This plainly indicates a material factual dispute between the parties. It would, of course, be contrary to established principles to resolve this dispute in favour of either party at this stage by strike-out proceedings (see **5962GOA4263 Inc.** at [68]-[72]).

[38] In my assessment, the applicant has not demonstrated that the facts pleaded by the Hurrissas are plainly fanciful or that they do not establish any viable cause of action in tort or equity, i.e., regarding (a) how the Hurrissas allegedly came to occupy the 200 acres; (b) the representations allegedly made by the Hurrissas to the Minister of Natural Resources’ officials and by those officials to the Hurrissas; (c) the letters allegedly sent by the Commissioner of Lands to the Hurrissas, including the 29 September 2021 letter, which informed the Hurrissas to continue occupying and developing the 200 acres; and (d) the financial losses which the Hurrissas allege they suffered as a result of the representations allegedly made to them by the Minister of Natural Resources’ officials.

[39] The Hurrissas do not, of course, need to plead law in their statement of case. That is a matter for submissions. However, it suffices to note that the Hurrissas allege that the Minister’s officials’ actions and decisions were negligent and/or that they negligently misrepresented to the Hurrissas that they could occupy and invest in the 200 acres, and that the decision to evict them caused them pecuniary loss. That claim is based in tort. Relatedly, the same facts may engage the principles of proprietary estoppel (an equitable remedy), i.e., as regards the loss the Hurrissas allege they suffered as a result of the representations allegedly made to them regarding their occupation and development of the 200 acres. As noted in **Obando v Obando**, Claim No. 163 of 2024 (No. 2), at [129]:

“...proprietary estoppel, in general terms, [is] an equitable remedy invoked by ‘X’, a person who claims an interest in property (which may be but is not limited to land), against a person ‘Y’ or their estate (the legal proprietor), to preclude ‘Y’ or their estate from denying ‘X’s’ beneficial interest in the property, where ‘Y’ assured, undertook or promised ‘X’ in clear terms - in writing, orally or by course of conduct - that ‘X’ has or will have a beneficial interest in the specified property, and on which assurance, undertaking or promise ‘X’ reasonably relied to their detriment, and where the denial of ‘X’s’ beneficial interest would be unconscionable.”

[40] Stepping back, the facts that constitute the Hurrissas’ cause(s) of action do not admit of an easy and ready

answer that their statement of case is – on any angle - bound to fail and unwinnable. In my preliminary assessment, the Hurrissas have pleaded sufficient facts and established a prima facie case that they occupied and developed the 200 acres with the applicant's knowledge and acquiescence, a point the Minister of Natural Resources disputes. They further contend that it is wrong for the Minister of Natural Resources to deny their claim for damages for the loss they say they suffered as a result of the defendant's decisions and actions. Ultimately, the substantive merits of the Hurrissas' case, which must be demonstrated on a balance of probabilities, are for trial.

[41] In summary, I hold that there is no merit in the applicant's contention that the Hurrissas' statement of case discloses no reasonable grounds for bringing the claim.

(b) Alleged abuse of process

[42] As noted above, I understand the applicant's contention to be that the Hurrissas' statement of case amounts to an abuse of process because:

- (a) the Hurrissas' challenge to the decisions and actions allegedly taken by the Minister of Natural Resources should have been brought by way of judicial review proceedings, and that the claim should be dismissed for non-compliance with the Rules in Part 56 governing applications for judicial review;
- (b) the Hurrissas did not comply with section 3 of the PAPA, which requires one month's prior written notice to be given to a public authority of intended legal proceedings challenging "anything done in the exercise" of the public office, and they did not commence legal proceedings within one year of the date on which their cause of action arose – with the consequence that their claim is statute-barred under section 27 of the Limitation Act; and
- (c) the Hurrissas' claims for negligence and/or negligent misrepresentation are "disguised as a claim for administrative orders", which amounts to "using PART 56 of the CPR in a manner for which it was not made."

Applicable Rules and Principles

[43] Before addressing the issues identified above, it is necessary, for relevant context, to set out (a) the Rules and principles governing applications for administrative orders, as set out in Part 56 of the CPR; and (b) briefly, the principles governing strike-out for abuse of process.

Applications for administrative orders

[44] CPR 56.1(1) affirms that:

- (1) This Part deals with applications–
 - (a) for judicial review;
 - (b) by way of originating motion or otherwise for relief under the Constitution;

- (c) for a declaration in which a party is the Crown, a court, a tribunal or any other public body; and
- (d) where the court has power by virtue of any enactment to quash any order, scheme, certificate or plan, any amendment or approval of any plan, any decision of a Minister or Government Department or any action on the part of a Minister or Government Department.

(2) In this Part such applications are referred to generally as “applications for an administrative order”.

(3) “Judicial Review” includes the remedies (whether by way of writ or order) of–

- (a) certiorari, for quashing unlawful acts;
- (b) prohibition, for prohibiting unlawful acts; and
- (c) mandamus, for requiring performance of a public duty, including a duty to make a decision or determination or to hear and determine any case.

[45] CPR 56.2(1) and (2) set out the categories of persons with standing to apply for judicial review. Standing is limited to those with a “sufficient interest in the subject matter of the application”.

[46] CPR 56.3, as relevant to these proceedings, provides that “*A person wishing to apply for judicial review must first obtain permission.*” CPR 56.5(3) provides that:

“An application for permission to apply for judicial review shall be made promptly and in any event within three months from the date when grounds for the application first arose unless the court considers that there is good reason for extending the period within which the application shall be made.”

[47] It is also well established that delay in seeking judicial review may result in the striking out or dismissal of the application (see, for example, the Privy Council’s decision in ***Fishermen and Friends of the Sea v Environmental Management Authority*** [2018] UKPC 24).

[48] Relatedly, CPR 56.7 stipulates that:

- (1) An application for an administrative order must be made by a fixed date claim in Form 2 identifying whether the application is–
 - (a) for judicial review;
 - (b) for relief under the Constitution;
 - (c) for a declaration; or
 - (d) for some other administrative order (naming it),
and must identify the nature of any relief sought.
- (2) The claim form in an application under the Constitution requiring an application to be made by originating motion should be headed ‘Originating Motion’.

[49] Further, CPR 56.8(1) permits joinder of different causes of action in an application for administrative orders. This Rule, no doubt, gives practical effect to section 45 of the Senior Courts Act, which provides that:

“The Court, in the exercise of the jurisdictions vested in it by this Act, shall, in every cause or matter pending before it, grant, either absolutely or on such terms and conditions as the Court thinks just, all such remedies whatever as any of the parties thereto may appear to be entitled to in respect of any legal or equitable claim properly brought forward by them in the cause or matter, so that, as far as possible, all matters in controversy between the parties may be completely and finally determined, and all multiplicity of legal proceedings concerning any of those matters avoided.”

[50] CPR 56.8(1) provides:

- (1) The general rule is that, where permitted by the substantive law, an applicant may include in an application for an administrative order a claim for any other relief or remedy that—
 - (a) arises out of; or
 - (b) is related or connected to, the subject matter of an application for an administrative order.
- (2) In particular the court may award—
 - (a) damages;
 - (b) restitution; or
 - (c) an order for return of property, to the claimant on a claim for Judicial Review or for relief under the Constitution if—
 - (i) the claimant has included in the claim form a claim for any such remedy arising out of any matter to which the claim for an administrative order relates; or
 - (ii) the facts set out in the claimant's affidavit or statement of case justify the granting of such remedy or relief; and
 - (iii) the court is satisfied that, at the time when the application was made, the claimant could have issued a claim for such remedy.
- (3) The court may however at any stage—
 - (a) direct that any claim for other relief be dealt with separately from the claim for an administrative order; or
 - (b) direct that the whole application be dealt with as a claim and give appropriate directions under Parts 26 and 27; and
 - (c) in either case, make any order it considers just as to costs that have been wasted because of the unreasonable use of the procedure under this Part."

Strike out applications on the grounds of abuse of process

[51] As a general principle, a respondent's statement of case – whether a statement of case or a defence - may be struck out in whole or in part as an abuse of the court's process for any number of reasons, if the court objectively finds that doing so will uphold the effective administration of justice. As opined in *Tillett v Attorney General*, Claim No. 6 of 2025 (No. 1), at [18]:

"Determining whether a litigant's statement of case constitutes an abuse of process requires the court to consider, as relevant, [the relevant statement of case, i.e., either the cause of action, or the defence], applicable principles of law, and/or the court's Rules. In essence, whether a statement of case is an abuse of process is a question of fact or law or a mixed question of fact and law. Lord Diplock's persuasive opinion in *Hunter v Chief Constable of the West Midlands Police* [1982] A.C. 529 at 536, which has stood the test of time, remains highly relevant, i.e., his statement that:

"[the] inherent power which any court of justice must possess to prevent misuse of its procedure in a way which, although not inconsistent with the literal application of its procedural rules, would nevertheless be manifestly unfair to a party to litigation before it, or would otherwise bring the administration of justice into disrepute among right-thinking people. The circumstances in which abuse can arise are very varied...it would be most unwise if this House were to use this occasion to say anything that might be taken as limiting to fixed categories the kinds of circumstances in which the court has a duty (I disavow the word discretion) to exercise its salutary power"

See also *Manzanero v Heritage Bank Limited*, Claim No. 147 of 2026, at [60] and [62], per Sylvester J.

Discussion

- [52] It is common ground that the Hurrissas commenced legal proceedings under Part 56 of the CPR, which governs, among others, applications for (a) judicial review; (b) relief under the constitution; (c) declarations against the Crown, a court, a tribunal or any other public body (CPR 56.1(1)).
- [53] The applicant submits that the Hurrissas are, in effect, challenging the process by which the Minister of Natural Resources reached his decisions and the legality of those decisions, thereby rendering the claim an application for judicial review. The applicant also submits that the declaratory orders sought by the Hurrissas relate to public law issues (the decisions and actions taken by the Minister of Natural Resources in relation to the 200 acres) and, as a consequence, that their legal action should have been commenced by way of judicial review.
- [54] The Hurrissas dispute the applicant's contention. They argue that they seek declaratory orders necessary to vindicate their private-law rights, i.e., rights arising from negligence and/or negligent misrepresentation. They also seek damages for the loss they say they suffered as a result of the applicant's decisions and actions.
- [55] For ease of reference, it is necessary to restate the Hurrissas' claim as set out in their Fixed Date Claim Form, which reads as follows:
1. A declaration that the actions of the Defendant, including to issue an Enforcement Notice dated 22 March 2022 requiring the Claimants to cease their development and occupation of the approximately 200 acres of land located in the Santa Cruz Agricultural Area and to thereafter remove the Claimants and their citrus orchard, buildings and works from this land, constitutes procedural ultra vires, unfairness, unequal and discriminatory treatment; is a violation of the Claimants' right to protection of the law, equal protection of law and equal treatment under [the] law; is in breach of the Claimant's legitimate expectation; is Wednesbury unreasonable and in breach of the Defendant's statutory duty;
 2. A declaration that the actions of the Defendant, including to represent to the Claimants that they could go onto the land and commence and thereafter continue their occupation and development of the 200 acres of land, constitutes negligence or negligent misrepresentation;
 3. Damages, including for the Defendant's wrongful acts and negligence or negligent misrepresentation.
- [56] In their opposition to the strike-out application, the Hurrissas aver that they are not seeking judicial review of the Minister of Natural Resources' decisions. In para. 11 of Mr Hurrissas' third affidavit, he states that:
- "While it is true that we seek a declaration, the relief is not intended to solely challenge the Defendant's lawful decision to deny the application to survey or to issue an enforcement notice. The relief we are seeking is rooted in a legitimate belief that we were acting within our rights to survey and develop the land, based on the communication we received from the Defendant, including the letter dated September 29th, 2021, which explicitly allowed us to resume our development and occupation of the land. Our claim is not a blanket challenge to the administrative decision-making process, but rather a specific request for clarity on whether our rights and interests in the land have been lawfully recognized and respected, given the official guidance we received."
- [57] I note that in the first relief, the Hurrissas seek declarations invoking their rights under the Constitution. They

contend that the Minister of Natural Resources' decisions and actions violated their constitutional rights to protection of the law and equal protection under the law. In the second relief, the Hurrissas seek declarations that the Minister of Natural Resources' officials' decisions and actions were negligent and/or constituted negligent misrepresentation. On the basis of these assertions, the Hurrissas claim damages.

[58] The first declaration, which the Hurrissas seek, is, unfortunately, in style an agglomeration of several declarations, all rolled into one. This, regrettably, is untidy. Each of the reliefs sought in that agglomerated declaration could have been pleaded and particularised more clearly and coherently, either individually or as differentiated sets.

[59] I would also agree that some elements of the first declaration are typical of a judicial review challenge, i.e., the declarations sought that the decisions and actions taken by the Minister of Natural Resources were (a) procedurally ultra vires; (b) unfair; (c) 'Wednesbury unreasonable'; (d) in breach of the Hurrissas' legitimate expectations; and (e) in breach of the Minister of Natural Resources' statutory duties. The Hurrissas did not identify which of the Minister of Natural Resources' statutory duties were breached or in what manner. Nor did they provide details of how the decisions were procedurally ultra vires or irrational under the Wednesbury standard, nor of the legitimate expectations that were breached.

[60] In light of this, I hold that, in addition to the other remedies (i.e., those grounded in tort law), the Hurrissas seek declaratory relief under public law (administrative and constitutional law). That said, does it follow that, because the Hurrissas also allege breaches of their public law rights: (a) they ought to have commenced their legal proceedings against the Minister of Natural Resources by way of judicial review; (b) their failure to do so constitutes an abuse of process; and (c) as a consequence, their statement of case should be struck out?

[61] A similar question was addressed in ***Belize Bank Ltd v Association of Concerned Belizeans***, BZ 2008 CA 2 ('***Belize Bank Limited***'). In that case, the claimants were not seeking to vindicate any private-law rights or to quash any of the defendant's actions or decisions. Rather, they sought declaratory orders as to the legality of the government's decision, which I paraphrase for simplicity as borrowing over \$33 million from Belize Bank. The defendants sought to strike out the claimants' statement of case on the ground that, having sought declaratory relief in relation to public-law issues, the claimants needed to proceed by way of judicial review and to comply with the procedural steps set out in Part 56 of the CPR.

[62] In ***Belize Bank Limited***, at [38], Sosa JA held:

"...Part 56 [of the CPR] has...without any ambiguity whatever, conferred a free standing entitlement on litigants to move the court for a declaration, whether it be in respect of public or private law rights, in any case "in which a party is the Crown, a court, a tribunal or any other public body" (Rule 56.1(1)(c))."

[63] I read the ratio in the ***Belize Bank Limited*** case, including Sosa JA's statement at [38], as meaning that a litigant is at liberty to:

- (a) challenge, by way of declaratory orders, decisions and/or actions taken by a public authority in any matter where the litigant has sufficient interest, even where their personal rights are not directly engaged; and
- (b) assert and vindicate their proclaimed personal rights or interests by using any or a combination of:
 - (i) the judicial review procedure (under CPR 56.1(1)(a));
 - (ii) the application for declaratory orders procedure (if the other party is the Crown, a court, a tribunal, or any other public body, under CPR 56.1(1)(c)); or
 - (iii) the constitutional relief procedure (under CPR 56.1(1)(b)).

[64] I further understand the ***Belize Bank Limited*** case to mean that resorting to any one, or a combination, of these procedures is not, without more, to be construed as an abuse of the court's process. In my view, Part 56 of the CPR provides a liberal, rather than a restrictive, approach to challenging public authorities' decisions and actions. It permits litigants to challenge decisions and actions taken by a public authority, irrespective of whether the remedies sought are grounded in public or private law. In addition, a claim for declaratory relief against a public authority under Part 56, although a discretionary remedy, is not inherently an abuse of process merely because no other remedy beyond the declaration is sought.

[65] In my opinion, it is arguably beyond dispute since the ***Belize Bank Limited*** case that:

- (a) a litigant is not obliged to apply for judicial review if the relief they seek consists of one or more declaratory orders as to the legality of an impugned decision and/or action by a public authority, or, together with consequential relief such as damages (but not including a quashing, mandatory or prohibitory order); and
- (b) if a litigant seeks, in their originating process, any of the usual judicial review remedies, i.e., a quashing, mandatory or prohibitory order, in addition to declaratory and/or other relief, without first obtaining leave, the court is more likely to hold that such proceedings constitute an abuse of process, as they should ordinarily be commenced by way of an application for judicial review in accordance with CPR 56.3 and CPR 56.5.

[66] I would also refer to the Privy Council's decision in ***Honourable Attorney General v Isaac*** [2018] UKPC 11 (***'Isaac'***). In that case, the issue was whether Ms Isaac's fixed-date claim form, in which she sought various declarations and damages, was, in effect, an application for judicial review for which leave was required but not sought under Part 56 of the Eastern Caribbean Supreme Court Civil Procedure Rules 2000. Apart from numbering, those Rules were similar in all material respects to Belize's Civil Procedure Rules, 2005, which have been replicated in the 2025 CPR.

[67] In **Isaac**, the claimant, Ms Isaac, was suspended from her employment as Secretary of Cabinet on 18 July 2014 for 28 days. When she returned to work on 18 August 2014, she was unable to enter her office because the locks had been changed. She was denied entry on the ground that her suspension had not yet ended. In addition, the Board of Education issued a press release on 18 August 2014 regarding Ms Isaac's suspension. Ms Isaac, considering that she had been constructively dismissed, commenced legal proceedings seeking, in addition to damages, various declarations (which I paraphrase) that (a) the decision to suspend her was arbitrary, wrong in law, without legal basis, and void and of no effect; and (b) when she was suspended (i) the Minister of Natural Resources had no authority to issue directives or instructions to her; (ii) she had not been given an opportunity to be heard, contrary to natural justice; and (iii) this was done in reckless disregard of her rights and reputation. Notably, Ms Isaac did not seek an order quashing the decision to suspend her or an order reinstating her. The Attorney General applied to have Ms Isaac's claim struck out on the ground that it was, in fact, a claim for judicial review filed without leave, contrary to the relevant provisions in the CPR. For her part, Ms Isaac argued that her claim was an application for an administrative order, not judicial review, and that, as a consequence, she did not require leave.

[68] Following a detailed analysis of the relevant Rules on administrative orders, which, as noted above, are similar to ours, save for numbering, the Privy Council, at [35], expressed the following persuasive opinion:

“...the Court of Appeal must be right in saying that an in-depth analysis of the nature of the claim will not normally be necessary, because generally the nature of the remedies actually sought will identify whether the application is for judicial review. Furthermore, in those cases where more rigorous scrutiny is required, going behind the form of the application and probing its substance, an analysis of what remedies the claimant is, in reality, pursuing will still play an important part in the exercise. The court will have to approach its task having firmly in mind the list set out in CPR 56.1(3), because that list of the principal judicial review remedies serves to indicate the shape of the concept of judicial review within CPR 56, and there is, in truth, little else to assist in the quest.” [Emphasis added]

[69] As it relates to these proceedings and, in general, to the law and practice in Belize in this area of law, I would add, drawing on the Privy Council's opinion in **Isaac** at [35], that it will fall to a strike-out applicant who alleges that, despite the claimant/respondent not seeking any quashing, mandatory or prohibitory order, to provide cogent reasons why a rigorous, in-depth analysis of the respondent's statement of case is necessary to ascertain whether it constitutes an abuse of process.

[70] Put differently, where no quashing, mandatory or prohibitory relief is sought, it is insufficient to challenge a claimant's/respondent's statement of case on the bare and unsubstantiated allegation that it is an abuse of process. The strike-out applicant, who bears the burden of proof, must provide clear and cogent reasons for the request that the court should go behind the relief sought and undertake a rigorous, in-depth analysis of the claimant's/respondent's cause of action. Nothing less than a clearly articulated and demonstrated abuse of process will suffice.

[71] At [39] in *Isaac*, the Privy Council stated:

“The *Belize Bank* case came to light during oral submissions to the Board and is worth mentioning here, not least because it shows a similar approach in the Court of Appeal of Belize to that taken by the Court of Appeal in the instant case. The Belizean Supreme Court Rules are identical in all material respects to the Eastern Caribbean Supreme Court Rules applicable in the present case, save as to some numbering of sub paragraphs. The *O'Reilly v Mackman* argument that the claimants, having sought declaratory relief in relation to public law issues, were obliged to proceed by way of judicial review, was rejected by the Court of Appeal of Belize. It distinguished the English law position as very different, for reasons which it set out. It favoured a liberal rather than a restrictive interpretation of Part 56 of the Belizean Rules, rejecting the submission that the Belizean equivalent to CPR 56.1(1)(b) should be limited to declarations concerning private rights, and holding that claimants seeking declaratory relief in relation to public law issues were not obliged to bring judicial review proceedings.” [Emphasis added]

[72] I adopt the Privy Council's interpretation of Part 56 of our CPR, as set out above, drawing on the *Belize Bank Limited* case. In my view, Part 56 of the CPR does not limit a claimant's entitlement to seek declaratory orders to private-law rights asserted against the Crown, a court, a tribunal, or any other public body. It extends to public-law matters, including constitutional cases, and to cases in which the claimant/respondent invokes equitable remedies against a public authority. On the latter point, I refer to section 42 of the Senior Courts Act, which provides:

“Subject to any other enactment, the Court or judge shall take notice of all equitable estates, titles and rights, and all equitable duties and liabilities appearing incidentally in the course of any cause or matter, in the same manner in which the High Court of Justice in England may now take notice of those matters in any suit or proceeding duly instituted therein.”

[73] In *Isaac*, the Privy Council further noted at [42] that, as in the *Belize Bank Limited* case, the claimant was not seeking any mandatory order (such as her reinstatement), nor an order prohibiting any continuing or threatened unlawful action, nor an order quashing any unlawful action – all judicial review remedies – and, as a consequence, her claim was not to be characterised as a judicial review application.

[74] The Privy Council in *Isaac* also addressed the Attorney General's argument that Ms Isaac's claim must be characterised as a judicial review application because she was challenging the process and legality of the Minister's decisions – the Minister being a public authority. A similar argument has been advanced by the Minister of Natural Resources in these interlocutory strike-out proceedings. I find Lady Black's opinion in *Isaac* at [44] persuasive and adopt it. Lady Black's opinion, as expressed, provides an adequate answer to the Minister of Natural Resources' objection to the Hurrissas' statement of case. The Minister of Natural Resources asserts that the Hurrissas' challenge concerns the process and the decisions made by the Minister. In response to the same contention as advanced in these proceedings, Lady Black stated in *Isaac* that:

“True it is that, as the appellants point out, her claim is concerned with the legality of events and the procedure by which decisions were reached in the public law sphere, but, given the structure of CPR 56, allowing as it does for the making of public law applications in four different ways, including merely by seeking declarations rather than judicial review, that is not sufficient to channel the application into CPR 56.1(1)(c) rather than CPR 56.1(1)(b).”

[75] Reverting to ***Belize Bank Limited***. In that case, the claimants sought to vindicate their public law rights solely by way of declaratory relief. In *Belize Bank Limited*, a decision binding on me, the Court of Appeal held that, under Part 56 of our CPR, the claimants were entitled to seek declaratory orders grounded in public and/or private law principles where the defendant was the Crown, a tribunal, or a public body. That was the only qualification the Court of Appeal set out.

[76] In ***Isaacs***, the Privy Council held – notably after citing ***Belize Bank Limited*** – that:

- (a) under Part 56 of Antigua and Barbuda’s Civil Procedure Rules (which are substantively in pari materia with Part 56 of our CPR) a claimant is not precluded from seeking declaratory relief grounded in public law principles; and
- (b) a claim for declaratory orders and consequential relief is not to be considered an application for judicial review (or an abuse of process) where the claimant is not seeking the usual judicial review remedies (quashing, mandatory and prohibiting orders).

[77] Although I do not intend to pronounce definitively on the question (because I did not receive submissions on the issue), it seems to me that, in a matter brought under Part 56 of the CPR, if a claimant seeks, in addition to declaratory orders, one or more of the usual judicial review remedies (a quashing, mandatory and/or a prohibitory order), the court may hold that the claim is, in substance, a judicial review application. If the court so holds, it may, in addition and in the exercise of its discretion, rule either that:

- (a) the claim be struck out on the ground that it is an abuse of the court’s process, because the challenge to administrative decisions or actions should have been made by way of an application for leave to apply for judicial review and subject to the Rules in Part 56 of the CPR governing such applications; or
- (b) the claim ought to proceed as an ordinary claim.

[78] This is to say that Part 56 of the CPR does not provide for a straitjacket. It does not provide for an either-or situation, that is to say: a claim that ought to have been initiated as an application for judicial review but was not (for whatever reason) must automatically be struck out as an abuse of process. In my view, when Part 56 is read in line with CPR 1.1(1), which provides that the court will deal with cases justly, it follows that the court retains discretion in relation to how it deals with matters such as those where it is contended that a matter should have been, but was not, brought as an ordinary claim, a constitutional motion or an application for judicial review. This is not to say that parties are free to disregard the Rules. Rather, it means that the decision on whether a matter would be struck out as an abuse of process depends on the totality of the circumstances. Where applicable, a relevant costs order may redress infelicities.

[79] I should also note that the Hurrissas are seeking public law remedies grounded in constitutional law. It is

indisputable that such claims cannot be struck out on the sole basis that they could have been commenced by way of a judicial review application, without more. The applicant is well on point to cite the Caribbean Court of Justice's case of **Lucas v Chief Education Officer**, BZ 2015 CCJ 2, in which it was held, drawing on Diplock LJ's decision in **Attorney General of Trinidad and Tobago v Harrikisoon** [1979] 3 WLR 62 (Harrikisoon), that:

Courts will frown on the filing of a constitutional Motion in lieu of a judicial review action when the latter is perfectly capable of yielding all the relief the litigant requires. Proceeding by constitutional Motion may well be an impermissible strategy either for unfairly jumping the litigation queue or evading the scrutiny of a judicial review judge charged with filtering out groundless or hopeless cases. A similar principle is applied where the litigant has adequate recourse in private law but chooses to proceed by way of constitutional motion. In those instances the courts will entertain a constitutional action only if the circumstances disclose some "special feature" that justifies going beyond private law remedies and invoking the constitution."

[80] That statement of principle is, of course, apposite and so too, Diplock LJ's statement in **Harrikisoon** that:

"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 1 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]

[81] The reproach of default reliance on the Bill of Rights (as set out in the Constitution) in cases against a public authority is well to the point. However, in these proceedings, the Minister of Natural Resources has not argued that the Hurrissas' claim that their constitutional right to protection of the law (section 3 of the Constitution) and their right to equal protection of the law (section 6 of the Constitution) has been violated is fanciful, unwinable and bound to fail, or that the facts pleaded by the Hurrissas do not demonstrate that they have any valid cause of action grounded on the alleged breach of their constitutional rights. The onus of pleading and demonstrating such a case to the higher standard applied to strike-out proceedings lies on the applicant, the Minister of Natural Resources. In my view, the Minister of Natural Resources has failed, beyond bare assertions, to discharge that onus.

[82] It is also necessary to consider the case of **Neal v Commander of the Belize Defence Forces**, Claim No. CV 614 of 2023 (**'Neal'**), a High Court decision cited in support of the strike-out application. In **Neal**, the claimant – a Major in the army – was bypassed for promotion to the rank of Acting Commander of the Air Wing – a division of the Belize Defence Forces. The post was awarded to an officer junior to Mr Neal. In his fixed-date claim form, Mr Neal alleged that his right to equal protection of the law had been violated and sought a declaration to that

effect. He also sought declarations that the decision was irrational, that it breached his legitimate expectation of fair career advancement, and that the appointing authority had considered irrelevant factors. The claimant also sought damages.

[83] In *Neal*, the defendants sought to strike out the claimant's statement of case on the ground that it constituted an abuse of process. It was argued that Mr Neal ought to have challenged the decision by way of a judicial review application. After citing a number of cases, including *Belize Bank Limited, Isaac, Harrikissoon, Lucas, Jaroo v Attorney General of Trinidad and Tobago* [2002] UKPC 5, *Durity v Attorney General of Trinidad and Tobago* [2002] 3 WLR 955, and *Brandt v Commissioner of Police* [2021] UKPC 12 ('Brandt'), the court held that the claimant's statement of case was an abuse of process. At [34], the court held that the claimant, Mr Neal, should have applied to judicially review the defendants' decision to appoint Mr Usher as Acting Wing Commander, rather than filing a constitutional claim asserting a breach of his personal rights as guaranteed under the Constitution. In my assessment, the court held that the substantive dispute between the parties was the decision to appoint Mr Usher as Acting Commander of the Air Wing, rather than the claimant's assertion that his personal rights under public law (constitutional) principles had been violated.

[84] Further, in *Neal* at [28], after citing *Brandt* at [39], the court held that:

"Litigants are...required to consider the real substance of the claim and whether some other procedure, common-law based or statutorily based, might more conveniently be invoked as opposed to filing for constitutional redress. The cases establish that a litigant seeking constitutional redress must do so in exceptional circumstances when there is a parallel remedy."

[85] I regrettably find myself unable to follow the decision in *Neal*, which likely turned on its facts and the strength of the respective parties' arguments, which persuaded the court that the claimant's statement of case was an abuse of process. As I have explained above, I am bound by the Court of Appeal's decision in *Belize Bank Limited*, which is authority for the proposition that, under Part 56, a claimant not seeking a quashing, mandatory or prohibitory order is entitled and at liberty to seek declaratory orders grounded in public and/or private law principles if the defendant is the Crown, a tribunal or a public body, and that doing so is not ipso facto, without more, an abuse of process.

[86] In these proceedings, the applicant has not shown that the Hurrissas' statement of case, in which they allege that their constitutional rights have been violated, is frivolous, vexatious, or an abuse of the court's process, made solely to avoid the necessity of applying in the normal way for the appropriate judicial remedy for unlawful administrative action that involves no contravention of any human right or fundamental freedom (see Diplock LJ in *Harrikissoon*). In addition, the Hurrissas have not sought any of the typical quashing, mandatory, or prohibitory orders, which might have suggested that their claim was, and should have been, brought as an application for

judicial review. On balance, I find that the Hurrissas' statement of case, in form and substance, is a permissible claim for declaratory orders and damages, and not an impermissible claim that should have been brought by way of an application for judicial review. Consequently, I find that the applicant has failed to demonstrate, to the appropriate higher standard, that the Hurrissas' claim should be struck out as an abuse of process.

[87] For completeness, I should add that, on the pleaded facts, I find that the Hurrissas have set out an arguable case challenging the lawfulness of the decisions and actions taken by the Minister of Natural Resources, and for damages. Relatedly, it is important to emphasise that the merits of the Hurrissas' statement of case are a matter for trial, and I offer no opinion on them.

[88] Having said that, I am of the view, as set out above, that the Hurrissas' statement of case is not adequately pleaded and particularised. The defendant/applicant has not taken up this point. However, it is one that I ought to raise in exercising my active case management powers (see CPR 25(1)) and **Panday**, at [20]. I rule that both the fixed date claim form and the statement of claim must be amended to clearly set out each declaration sought by the Hurrissas under the relevant provisions of the Constitution and/or administrative law principles, and/or tort and/or equity, as applicable to their cause(s) of action. Without resorting to prolixity, the facts underlying and supporting each such declaration, or each such set of declarations, sought must be clearly set out in the amended fixed date claim form and the statement of claim. In addition, the amended fixed date claim form must cite the Attorney General as a nominal defendant. Oddly, the Hurrissas currently list the Minister of Natural Resources as a '*First Defendant*,' but the fixed date claim form does not identify the second or any other defendant.

[89] In addition, as noted above, the Hurrissas' statement of claim alleges fraud. However, that allegation is neither adequately pleaded nor particularised. In addition, the statement of claim does not seek a declaration regarding the alleged fraud. If the Hurrissas intend to allege fraud against a particular individual or authority, they should clearly plead and particularise that cause of action, or delete any references to it. It is little disputed that an inadequately pleaded and particularised plea of fraud will be struck out.

[90] Further, since the Hurrissas have affirmatively indicated in these proceedings that they are not seeking to judicially review the Minister of Natural Resources' decisions and actions, but rather that they seek to assert their rights under private and public law principles with a view to obtaining damages, the amended statement of case should not contain unnecessary legalese such as "Wednesbury unreasonable," which invite the proposition that any alleged irrationality must be prosecuted and ventilated through an application for judicial review.

[91] In summary, I hold that the applicant has not demonstrated, to the standard appropriate for a strike-out

application, that the Hurrissas' claim, as pleaded, ought to have been brought by way of an application for judicial review rather than as a claim for declaratory orders and damages, and that, as a consequence, the claim is an abuse of process.

Contention that the Hurrissas did not comply with section 3 of the PAPA and is statute-barred

[92] The applicant further contends that the Hurrissas failed to comply with section 3 of the PAPA; that, in any event, their claim is statute-barred under section 27 of the Limitation Act, which provides a one-year limitation period for claims against public authorities; and that, as a result, the Hurrissas' statement of case should be struck out as an abuse of the court's process.

[93] Section 3 of the PAPA provides that:

- (1) No writ shall be sued out against, nor a copy of any process be served upon any public authority for anything done in the exercise of his office, until one month after notice in writing has been delivered to him, or left at his usual place of abode by the party who intends to sue out such writ or process, or by his attorney or agent, in which notice shall be clearly and explicitly contain the cause of the action, the name and place of abode of the person who is to bring the action, and the name and place of abode of the attorney or agent.
- (2) No evidence of any cause of action shall be produced except of such as is contained in such notice, and no verdict shall be given for the plaintiff unless he proves on the trial that such notice was given, and in default of such proof the defendant shall receive in such action a verdict and costs.

[94] Section 27 of the Limitation Act provides:

- (1) No action shall be brought against any person for any act done in pursuance, or execution, or intended execution of any Act or other law, or of any public duty or authority, or in respect of any neglect or default in the execution of any such Act or other law, duty or authority, unless it is commenced before the expiration of one year from the date on which the cause of action accrued,

Provided that where the act, neglect or default is a continuing one, no cause of action in respect thereof shall be deemed to have accrued, for the purposes of this subsection, until the act, neglect or default has ceased.
- (2) This section shall not apply to any action to which the Public Authorities Protection Act, Cap. 31 does not apply, or to any criminal proceeding.

[95] That the Minister of Natural Resources is a public authority is not in dispute. Section 2 of the PAPA provides:

"In this Act, "public authority" includes every person filling any public position in Belize, as well as police officers, whether temporarily or permanently employed, and whether there is or is not attached thereto any salary or remuneration."

[96] The facts of this matter raise the question whether the Hurrissas' claims under the Constitution, the common law and equity are subject to both the provisions of the PAPA and the Limitation Act, and, if so, in what manner.

The constitutional claim

[97] As noted above, the Hurrissas seek a declaration that the Minister of Natural Resources' decisions and actions violated their right to protection of the law (section 3(a) of the Constitution) and their right to equal protection of

the law (section 6 of the Constitution). This raises the following question: are constitutional claims subject to the notice requirements in section 3 of the PAPA and to the one-year limitation period in section 27 of the Limitation Act? In my view, the answer to this conjoined question is uncontroversial.

[98] Constitutional claims are not subject to section 3 of the PAPA or the provisions of the Limitation Act. As relevant to these proceedings, section 20 of the Constitution provides as follows:

- (1) If any person alleges that any of the provisions of sections 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.
- (2) The Supreme Court shall have original jurisdiction,
 - (a) to hear and determine any application made by any person in pursuance of subsection (1) of this section; and
 - (b) to determine any question arising in the case of any person which is referred to it in pursuance of subsection (3) of this section, and may make such declarations and orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement of any of the provisions of sections 3 to 19 inclusive of this Constitution.
- (3) If in any proceedings in any court (other than the Court of Appeal or the Supreme Court or a court-martial) any question arises as to the contravention of any of the provisions of sections 3 to 19 inclusive of this Constitution, the person presiding in that court may, and shall, if any party to the proceedings so requests, refer the question to the Supreme Court unless, in his opinion, the raising of this question is merely frivolous or vexatious.

[99] Section 2(1) of the Constitution provides that:

“This Constitution is the supreme law of Belize and if any other law is inconsistent with this Constitution that other law shall, to the extent of the inconsistency, be void.”

[100] It follows that any limitation on a person’s constitutional right to petition the High Court for redress of an alleged violation of their constitutional rights would need to be set out in the Constitution itself and in clear and unambiguous language. There is no provision in the Constitution that does so.

[101] In **Gilharry v Transport Board**, BZ 2012 CA 10, at [56] – [65], the Court of Appeal held that the notice requirements under section 3 of the PAPA do not apply to constitutional claims. That decision is binding on me. The question was also addressed in **Tillett v Attorney General**, Claim No. 6 of 2025 (No. 1), at [79] – [80].

[102] I would add that in **Holiday Lands Limited v Attorney General of Belize**, Claim No. Civ 250 of 2022 (No. 2), at [58]–[62], this court, drawing on the statements of principle in **Sealey v Attorney General of Guyana**, CCJ

Appeal No. CV 4 of 2007, at [12], and in ***Durity v Attorney General of Trinidad and Tobago*** [2002] UKPC 20, at [29]-[30], held that the general rule is as follows:

“A claim for redress for an alleged violation of a constitutional right or entitlement is not subject to statutory limitation periods.”

[103] In ***Durity***, regarding the contention that the claimant’s constitutional claim was subject to the twelve-month limitation period in section 2(1) of Trinidad and Tobago’s Public Authorities Protection Act, and that the claimant’s failure to comply with that prescription rendered the claim an abuse of process, the Privy Council held at [30] that:

Clearly, the inherent jurisdiction of the High Court to prevent abuse of its process applies as much to constitutional proceedings as it does to other proceedings. And the grant or refusal of a remedy in constitutional proceedings is a matter in respect of which the court has a judicial discretion. These limitations on a citizen’s right to pursue constitutional proceedings and obtain a remedy from the court are inherent in the High Court’s jurisdiction in respect of alleged contraventions of constitutional rights and freedoms. But the Constitution itself contains no express limitation period for the commencement of constitutional proceedings. The court should therefore be very slow indeed to hold that by a side wind the initiation of constitutional proceedings is subject to a rigid and short time bar. The very clearest language is needed before a court could properly so conclude. Such language is noticeably absent in the present case. The suggested incorporation of the inflexible, one year time limit in section 2(1) of the Public Authorities Protection Act, not itself mentioned in the Constitution, via section 33 of the State Liability and Proceedings Act lacks the clarity of intent necessary for this purpose.

[104] Drawing on the above line of authorities, I decline the Minister of Natural Resources’ invitation to strike out part of the first declaration sought by the Hurrissas in their fixed-date claim form, which is based on their contention that the defendant breached their rights under sections 3 and 6 of the Constitution. In these proceedings, the applicant has not contended that the Hurrissas have inordinately delayed in asserting their constitutional rights, nor that any such delay should prompt the court to decline to exercise its jurisdiction. Whether, on the facts, the defendant breached the Hurrissas’ constitutional rights, as contended, is plainly a matter for trial.

The claim in negligence and related declaratory orders

[105] Is the second declaration sought by the Hurrissas, which is based on the law of tort, liable to be struck out on the grounds (a) that they ought to have given the defendant one month’s prior written notice of their intention to commence legal proceedings; and (b) that the claim is statute-barred because they did not commence legal proceedings within one year of the date the cause of action accrued?

[106] In my view, whether section 27 of the Limitation Act, read with sections 2 and 3 of the PAPA, applies to the Hurrissas’ tortious cause of action (i.e., their claim in negligence and/or negligent misrepresentation) depends on whether the impugned decisions and acts relate to a duty owed by the Minister of Natural Resources to the public at large or to a private duty owed by the Minister of Natural Resources to the Hurrissas arising solely from the parties’ relationship and where there is no question of a public law challenge, i.e., in the sense of a judicial

review challenge. If the former, the Hurrissas' claim would be subject to section 27 of the Limitation Act, read with sections 2 and 3 of the PAPA. If the latter, section 27 of the Limitation Act, read with sections 2 and 3 of the PAPA, would not apply. This question was considered in *Ellis v Reid*, Claim No. Civ 391 of 2024 (No. 2) ('*Ellis*').

[107] In *Ellis*, at [60]–[61], this court held, drawing on the ratio in *Alves v Attorney General of the Virgin Islands* [2017] UKPC 42 at [35]–[37] and discounting the continuing applicability of earlier inconsistent jurisprudence, that:

[60] ...the test for determining whether section 27 of the Limitation Act, read with Sections 2 and 3 of the PAPA, applies to any dispute has two parts.

- (a) The first part requires determining whether the complained-of action was performed by a public body, a company, or a private person discharging a public function under statutory enabling.
- (b) The second part requires determining whether the duty invoked by the claimant, which it alleges has been breached, is (i) owed to the public or a section of it; or (ii) whether the obligation sued upon arises simply out of a relationship with the claimant, which duty would be the same for any non-public person or body and where there is no question of a public law challenge. If the former, the abbreviated limitation period applies; if the latter, it does not.

[61] Put differently:

1. If (a) the breach relied on by a claimant, which underpins their cause of action, concerns a duty arising from the public authority's relationship with the claimant; (b) the duty invoked would be the same for any non-public person or body; and (c) there is no question of a public law challenge, Section 27 of the Limitation Act, read with Sections 2 and 3 of the PAPA, does not apply (see para. 37 of *Alves*).
2. Where the duty alleged to have been breached is owed to the public at large or to a section of it, and there is, or could be, an element of a public law challenge, Section 27 of the Limitation Act, read with Sections 2 and 3 of the PAPA, applies.

[108] In these proceedings, the Hurrissas' case appears, in my estimation, to be that the Minister of Natural Resources' officials were negligent in allowing, encouraging, or permitting the Hurrissas to occupy the 200 acres, and that this was compounded by the 29 September 2021 letter, which, on its terms, permitted the Hurrissas to continue their occupation and development of the 200 acres. It is, of course, for the Hurrissas to plead facts and, at trial, to demonstrate, on a balance of probabilities, that the Minister of Natural Resources owed them a duty of care under the common law and/or statutory law, that the Minister of Natural Resources' officials breached that duty, that the Hurrissas suffered loss, that the relevant loss was caused by the alleged and demonstrated negligence or negligent misrepresentations made by the Minister of Natural Resources' officials, and the amount of damages.

[109] In short, whichever way one assesses their claim, the Hurrissas are not seeking to show that they have a cause of action based on a duty owed to the public generally or to any section thereof. Rather, it appears that they are asserting that the Minister of Natural Resources owed them, in their personal capacity, a duty, which duty would be the same for any non-public person or body. They are asserting their personal rights rather than rights owed

to the public generally. The merits of those contentions are a matter for trial and may not be dismissed, without more, by strike-out proceedings.

[110] I note, in addition, that the applicant argues that the Hurrissas' negligence claim should have been commenced by way of an ordinary claim, not pursuant to Part 56 of the CPR. In my view, that contention would have force if the applicant had demonstrated and I had found, on the facts as pleaded by the Hurrissas, that their allegation that their constitutional rights under sections 2 and 3 of the Constitution were violated is plainly "*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*" (see Diplock LJ in *Harikissoon*).

Summary

[111] I find that the applicant has not discharged his burden of proof to the applicable higher standard that the Hurrissas' claim, as pleaded, is unwinnable and bound to fail, that it constitutes an abuse of this court's process, and that, on the facts, they had no reasonable grounds for commencing legal proceedings.

Application for an extension of time to file a defence

[112] The Minister of Natural Resources has applied for an extension of time to file his defence. The Hurrissas oppose the application.

Principles governing applications for extension of time to file a defence

[113] CPR 10.3(9) provides that:

"Where the time limited for filing a defence either by the rules or by agreement has expired, a defendant must apply for an order extending time to file a defence." [Emphasis added]

[114] In addition, CPR 26.1(2)(c) provides that the court may:

"...extend or shorten the time for compliance with any Rule, practice direction, order or direction of the court even if the application for an extension or shortening of the time is made after the time for compliance has passed or before it has commenced."

[115] It is beyond question that the power to extend the time to file a defence is discretionary and, as required by CPR 1.2(a), must be exercised to give effect to the overriding objective.

[116] I do not propose to restate in detail the principles governing applications for an extension of time to file a defence, as in my view they are largely uncontroversial. I say this advisedly, recognising that the question whether the applicable test is that set out in the English case of *Denton v White* [2014] EWCA Civ 906 ('*Denton*'), which has been utilised in several High Court cases in this jurisdiction, remains to be resolved by the Court of Appeal. That said, in my view, there is no substantive difference between the *Denton* test and the approach set out in

numerous cases, including **Aikman v Young**, Claim No. 43 of 2025, and recapitulated in **Cruz v Cruz**, Claim No. Civ 156 of 2025 ('**Cruz**'), at [59]-[78]. I adopt, by reference, the summary of the applicable principles to be considered and the approach to applications for extensions of time to file a defence set out in **Cruz**.

[117] I do, however, wish to highlight the following practical steps required in relation to an out-of-time application for an extension of time to file a defence. In **Cruz**, at [71], this court stated:

“...a defendant seeking an extension of time to file their defence out of time is, in general terms, required to do the following:

- (a) promptly file their application upon realising that they have missed the prescribed timeline for filing a defence;
- (b) explain in their application the reasons why they need an extension of time;
- (c) explain the steps they took after they were served with the claim form and the reasons why they were unable to file their defence within the prescribed time limit;
- (d) provide information on the prima facie merits of the defence they intend to file or have already filed;
- (e) provide information on the prejudice they are likely to suffer if their application is not granted and the prejudice likely to be suffered by the opposite party if their application is granted;
- (f) explain why, considering the totality of the circumstances of the case, it is just that their application be granted.

[118] It was further stated at [78] that, in light of the overriding objective, namely the just resolution of disputes on their merits, the court:

“...in the exercise of its discretion and power to control its processes...may grant an extension of time to file a defence even where the reason proffered by the applicant for failing to file its defence in time cannot be characterised as a good reason, if, in the totality of the circumstances of the case, justice tilts in favour of permitting the requested extension of time and of the parties' dispute being resolved on its merits.”

Discussion

[119] It is not in dispute between the parties that on 5 September 2024 the Hurrissas served the applicant/defendant with their fixed-date claim form and statement of claim, both dated and filed on 23 July 2024. On 10 December 2024, the Hurrissas served the same originating process on the Attorney General. On 24 December 2024, the Attorney General's Office filed an acknowledgement of service.

[120] In support of the application for an extension of time to file a defence, Mr Alfred Cal, the Deputy Commissioner of Lands and Survey, avers in his affidavit that he was informed by the Administrative Officer at the Ministry of Natural Resources that legal counsel at the same Ministry were on Christmas vacation and did not return to the office until 10 January 2025. According to Mr Cal, this “led to the delay in gathering information and files from the other units within the Ministry of Natural Resources, Petroleum and Mining.” He also avers that in December 2024, “most people within the unit were on Christmas vacation and that due to an administrative slip, the information and instructions were not communicated timely to the Attorney General's Ministry.” These are the reasons given for the Minister of Natural Resources' failure to file an acknowledgement of service and a defence

in relation to the legal process served on the Ministry of Natural Resources on 5 September 2024.

[121] In my assessment, there is merit in the Hurrissas' contention that the applicant has failed to provide any good reason for not filing an acknowledgement of service and/or a defence after receipt of service of the Hurrissas' originating process on 5 September 2024.

[122] The applicant's argument that CPR 56.9(2) requires "[A] claim form relating to an application for relief under the Constitution or for judicial review must be served on the Attorney General" is undoubtedly correct. However, that point does not adequately explain the applicant's failure, after receiving service of the Hurrissas' originating process on 5 September 2024, to file an acknowledgement of service and the relevant defence. The Minister of Natural Resources has not denied that his officials had actual notice as of 5 September 2024 that the Hurrissas had commenced legal proceedings requiring a response. The applicant has also not argued, and the facts do not support the argument, that the 5 September 2024 service was invalid.

[123] Relatedly, after the Hurrissas served their fixed-date claim form and statement of claim on the Attorney General on 10 December 2024, an acknowledgement of service was filed on 24 December 2024, but no defence was filed. The reason advanced is that all legal counsel at the Attorney General's department were on Christmas holiday. Even if true, which is an incredible proposition, that, in my view, is not a satisfactory explanation. An argument by any litigant that they should be granted an extension of time to file their defence because their attorney was on holiday at the time they were served with the originating process does not pass muster.

[124] The applicant avers in the proposed defence that the Hurrissas' applications to survey and lease the 200 acres did not confer any legal or equitable interest. The applicant also asserts that the Ministry of Natural Resources has no record of the 29 September 2021 letter informing the Hurrissas that they may resume occupation and development of the 200 acres. I may not pronounce on either defence, save to say that they are arguable, and their merits will turn on the evidence.

[125] Stepping back, I hold – on balance – that although the applicant has not given a good reason for failing to file a defence on time, the applicant should, in light of the overriding objective, be granted an extension of time to file a defence. I rule accordingly for the following reasons.

[126] [126] In my assessment, the facts pleaded by the Hurrissas will, in the first instance, turn on findings of fact relating to (a) the alleged representations made by the Hurrissas to the Lands Department; and (b) the alleged representations made orally and in writing by the Lands Department to the Hurrissas. This factual context raises complex issues of fact and law that engage public policy, and in relation to which there is no easy or obvious answer, i.e., on:

- (a) whether the parties' course of dealing engaged the Hurrissas' rights under sections 3 and 6 of the Constitution;
- (b) whether on the facts the Lands Department had a common law or statutory duty towards the Hurrissas, if so, the nature of that alleged duty and whether the Lands Department breached it; if so, whether that foreseeably caused loss to the Hurrissas; and, if so, in what amount;
- (c) whether equitable principles apply to the facts of the parties' dispute, if so, which equitable principles; and
- (d) what remedy, on the facts and law, if any, applies in the circumstances of the case.

[127] In my view, the justice of the case calls for the applicant being granted an extension of time to file a defence. In these proceedings, the court will be greatly assisted by having all parties participating with a view to arriving at a decision that is fair and just on the pleaded facts and the applicable legal principles.

[128] I also do not foresee any prejudice to either party if the applicant is permitted to file his defence out of time. As set out above, the Hurrissas must amend their fixed-date claim form and statement of claim to clearly plead and particularise the declarations and other relief sought. In my view, that resets the proceedings. The court will benefit from hearing from both parties on all issues advanced, given the complex factual matrix. In constitutional matters, it is generally preferable for the Attorney General to be heard.

[129] I also note that if the parties had cooperated, agreed to an extension of time to file a defence, and sought the court's approval of a consent order to that effect, this would have obviated these contested interlocutory proceedings and allowed the matter to proceed much more expeditiously to a resolution on the merits. Courts expect parties to cooperate on issues such as extensions of time to file defences (see **5962GOA4263 Inc.** at [81]–[84]).

[130] In summary, in my view, on the issues arising in the main proceedings, declining the application for an extension of time to file a defence would not further the overriding objective.

Costs

[131] The Hurrissas are the successful party in relation to the strike-out application and, as a consequence, are entitled to their costs. Relatedly, the defendant/applicant needed, in any event, to apply for an extension of time to file a defence because they failed to comply with CPR 10.3(1). The Hurrissas' objection to the application for an extension of time to file a defence was based on the reasonable ground that the Minister of Natural Resources did not provide a valid reason for the failure to file a defence in time. Consequently, I hold that the defendant should also bear the Hurrissas' costs of that application.

[132] In summary, I hold that the Hurrissas are entitled to the costs of the conjoined proceedings. If the costs are not

agreed, they shall be assessed.

Conclusion

[133] Drawing on the above, I rule as follows:

1. The defendant's application to strike out the claimants' statement of case is dismissed.
2. The defendant is granted an extension of time to file a defence.
3. The claimants are awarded costs of the proceedings relating to the defendant's strike-out application and the application for an extension of time to file a defence, which, if not agreed, shall be assessed.
4. The claimants shall file and serve an amended fixed-date claim form and a statement of claim by 18 September 2026.
5. The defendant shall file a defence to the claimants' amended fixed-date claim form and statement of claim by 19 October 2026.
6. The matter is adjourned to 17 November 2026 for a Case Management Conference at 9 AM.

Mr Justice Hondora
Judge
High Court