

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE COURT OF APPEAL**

GRENADA

GDAHCVAP2022/0008

BETWEEN:

THE PLANNING AND DEVELOPMENT AUTHORITY

Appellant

and

GRENADA LAND ACTORS INC

Respondent

and

PTE LTD **[1] SINGAPORE HENG SHENG GRENADA DEVELOPMENT**
[2] HARTMAN GROUP LTD
[3] RANGE DEVELOPMENTS (GRENADA) LTD

Interested Parties

**In Consolidation with
GDAHCVAP2022/0009**

HARTMAN GROUP LTD.

Appellant

and

GRENADA LAND ACTORS INC

Respondent

and

[1] THE PLANNING AND DEVELOPMENT AUTHORITY
[2] SINGAPORE HENG SHENG GRENADA PTE LTD
[3] RANGE DEVELOPMENTS (GRENADA) LTD

Interested Parties

**In Consolidation with
GDAHCVAP2022/0010**

RANGE DEVELOPMENTS (GRENADA) LTD

Appellant

and

GRENADA LAND ACTORS INC.

Respondent

and

**[1] THE PLANNING AND DEVELOPMENT AUTHORITY
[2] SINGAPORE HENG SHENG GRENADA
DEVELOPMENT PTE LTD
[3] HARTMAN GROUP LTD**

Interested Parties

Before:

The Hon. Mr. Davidson Kelvin Baptiste
Justice of Appeal

The Hon. Mde. Gertel Thom
Justice of Appeal

The Hon. Mr. Dexter Theodore
of Appeal [Ag.] Justice

Appearances:

Ms. Caryn Adams for The Planning Development Authority
Michael Hilton, KC with Mr. Sundiata Gibbs and Ms. Daniella
Williams-Mitchell for Hartman Group Ltd.

Mr. Darshan Ramdhani, KC with Ms. Sabrita Khan-Ramdhani for
Range Developments (Grenada) Ltd.

Mr. John Carrington, KC with Ms. Sheila Harris and Ms. Donnika
Maxwell for Singapore Heng Sheng (Grenada) Development Pte,
Ltd.

Mr. Leslie Thomas, KC with Ms. Rita Joseph-Olivetti for the
Respondent, Grenada Land Actors Inc.

2022: September 22;
2023: March 8.

Interlocutory appeal – Judicial review – Strike out – Locus standi – Delay – Whether the learned judge erred in ruling that in a meritorious claim issues of standing and unreasonable delay can only be considered at either the leave stage or substantive hearing of the claim – Whether the learned judge erred in that he failed to consider whether the case before him was a simple one in which the respondent clearly had no sufficient interest in the subject matter of the claim – Whether the Court of Appeal should consider and determine afresh the issues of standing and delay

On 30th March 2021 leave was granted for Grenada Land Actors Inc (“GLA”) to file a fixed date claim for judicial review, which it duly filed, challenging the decisions of the Planning and Development Authority (“PADA”) to grant planning permission for the La Sagesse development in St. David, the Levera development in St. Patrick and the Mt. Hartman development in St. George. GLA also sought judicial review of PADA’s failure to maintain a publicly accessible register and to create regulations. PADA entered an acknowledgment of service followed by an application on 13th May 2021 for the striking out of the claim on the ground that GLA lacked standing to pursue its claim for judicial review. On 10th September 2021 the court made an order for the joinder to the claim of the interested parties, Hartman Group Limited (“Hartman”), Range Developments (Grenada) Ltd (“Range”) and Singapore Heng Sheng Development PTE Ltd (“Singapore”).

Hartman and Range filed applications seeking to strike out the judicial review claim on the ground that the respondent lacked standing, and Singapore filed a notice in support of PADA’s application. Range also advanced the additional grounds that GLA had been guilty of unreasonable delay in making the application and to grant its application would be detrimental to good administration. The judge, in his decision of 29th March 2022, accepted that standing was usually considered a threshold issue but was of the firm view that, leave having been already granted, the issue of standing could not properly be considered by the court at such an early stage of the proceedings, in the absence of an application to set aside the grant of leave. The judge also concluded that in the case at bar it was inappropriate at that juncture to strike out the claim on the basis of delay.

Being dissatisfied with the learned judge's decision, PADA, Range and Hartman ("the appellants") appealed to this Court. The appellants' grounds of appeal call for consideration of the following issues: (i) whether the learned judge erred in ruling that in a meritorious claim the issues of standing and unreasonable delay can only be considered at either the leave stage or at the substantive hearing of the claim, (ii) whether the learned judge erred in that he failed to consider whether the case before him was a simple one in which the respondent clearly had no sufficient interest in the subject matter of the claim, and (iii) if the learned judge erred, whether this Court should consider and determine afresh the issues of standing and delay.

Held: Dismissing the appeals and affirming the order of the learned judge with costs to the respondent to be assessed by a judge of the High Court if not agreed within 21 days, that:

1. The learned judge did not rule that he only has the power to consider the issue of standing and unreasonable delay at only two stages of the proceedings, being the leave stage and the substantive hearing stage. The issue of standing can be best viewed in the round at the substantive hearing as the strength of the applicant's interest is one of the factors to be weighed in the balance at the substantive hearing. There may well be other factors which properly affect the court's evaluation of whether an applicant has a sufficient interest to maintain the challenge or secure a remedy. Therefore, save in simple or clear cases, the question of standing will not be determined as a preliminary issue independent of a full consideration of the merits of the complaint.

Judicial Review Handbook Michael Fordham QC (5th Edn, Oxford-Portland Oregon, 2008), para. 38.3 considered; **Halsbury's Laws of England** Judicial Review (vol. 61A, para. 57) considered; **R v Somerset County Council ex parte Dixon** [1998] Env LR 111 considered.

2. The case cannot be described as a simple or clear case in which the respondent lacks standing because whether the respondent had standing is dependent on whether they had the necessary expertise which was a fact sensitive issue. The learned judge, in determining that this fact-sensitive exercise

along with the issue of delay would best be conducted at the substantive hearing, was exercising his case management powers. There is no discernible error in the manner in which the learned judge exercised his discretion. There is, therefore, no legal basis to interfere with the exercise of his discretion.

Broughton v Kop Football (Cayman) Limited and Others [2012] EWCA Civ 1743 considered; **Inland Revenue Comrs v National Federation of Self-Employed and Small Businesses Ltd** [1981] 2 All ER 93 considered; **Regina v Secretary of State for Foreign and Commonwealth Affairs, Ex parte World Development Movement Ltd** [1995] 1 WLR 386 considered.

JUDGMENT

Introduction

- [1] **THEODORE JA [AG]:** These are appeals by Hartman Group Limited, the Planning and Development Authority and Range Developments (Grenada) Ltd against the judgment of Glasgow J delivered on 29th March 2022 in which he dismissed the appellants’ applications to strike out the judicial review claim filed by the respondent, Grenada Land Actors Inc (hereafter “GLA”) against the Planning and Development Authority (hereafter “PADA”), and awarding costs to GLA in the sum of \$2,250.00.

Background

- [2] On 26th March 2021 GLA applied, without notice, for leave to file for judicial review challenging the decisions of PADA to grant planning

permission for the La Sagesse development in St. David, the Levera development in St. Patrick and the Mt. Hartman development in St. George. GLA also sought judicial review of PADA's failure to maintain a publicly accessible register and to create regulations.

- [3] On 30th March 2021 leave was granted and GLA duly filed a fixed date claim for judicial review to which PADA entered an acknowledgment of service followed by an application on 13th May 2021 for the striking out of the claim on the ground that GLA lacked standing to pursue its claim for judicial review.
- [4] On 10th September 2021 the court made an order for the joinder to the claim of the interested parties.
- [5] GLA filed an amended fixed date claim on 16th September 2021.
- [6] The second interested party, Hartman Group Limited ("Hartman"), and the third, Range Developments (Grenada) Ltd ("Range"), filed applications seeking to strike out the amended fixed date claim on the ground that the respondent lacked standing and the first interested party Singapore Heng Sheng Development PTE Ltd ("Singapore") filed a notice in support of PADA's application. Range also advanced the additional grounds that GLA had been guilty of unreasonable delay in making the application and to grant its application would be detrimental to good administration.
- [7] On 19th November 2021 the learned judge heard the applications, treating them as applications to the court to determine GLA's standing as a preliminary issue, and reserved judgment.

The order refusing to strike out the claim

- [8] The judge, in his decision of 29th March 2022, accepted that standing was usually considered a threshold issue but was of the firm view that, leave having been already granted, the issue of standing could not properly be considered by the court at such an early stage of the proceedings, in the absence of an application to set aside the grant of leave.¹
- [9] The judge distinguished **John Mussington et al v Development Control Authority et al**² on the ground that, unlike the situation in the case at bar, **Mussington** concerned an appeal against the grant of leave.³
- [10] The judge reviewed the authorities and distilled from them certain principles including that standing was usually considered at the permission stage and at the substantive hearing. At the permission stage the threshold was a very low one and at the substantive hearing stage standing would be considered as part of the process of determining whether to grant the relief sought.⁴
- [11] From **The Attorney General v Martinus Francois**⁵ the court gleaned that in meritorious claims it was necessary to canvass the issues and the facts in order to determine whether there was a sufficient nexus between an applicant and the subject matter of the application.⁶ However, an applicant for judicial review can have no

¹ See paragraphs [19] - [21] of the judgment below.

² ANUHCVP2020/0005 (delivered 29th April 2021, unreported).

³ See paragraph [21] of the judgment below.

⁴ See paragraph [24] of the judgment below.

⁵ Saint Lucia Civil Appeal No. 37 of 2003 (delivered 29th March 2004, unreported).

⁶ See paragraph [28] of the judgment below.

standing if his claim is unmeritorious and it is unnecessary in such a case to first determine whether the applicant has locus standi.

[12] The judge proceeded to examine the court's case management powers to decide the order in which issues may be tried and to order the separate trial of an issue. After a review of **Craig Reeves v Platinum Trading Management Limited**⁷ and **Allen v Gulf Oil Trading Refining Ltd**⁸ the learned judge concluded that the court's case management powers to separate and decide issues in a claim is a process to be pursued in only rare cases and with extreme caution.⁹

[13] The judge also considered that the court was constrained to follow the guidance on the management of judicial review claims by the description in **Richard Frederick et al v Comptroller of Customs et al**¹⁰ of judicial review proceedings as 'a peculiar specie of civil proceedings' to which the **Civil Procedure Rules 2000** (the "CPR") allocated a regime of rules in Part 56 which are only applicable to such proceedings.¹¹

[14] The learned judge ruled that PADA had failed to satisfy him that the issue of whether GLA had a sufficient interest was a matter which may, or ought, to be revisited in the period between the date of the granting of leave and the substantive hearing of the claim as a preliminary or separate issue.

⁷ St. Christopher and Nevis HCVAP2007/022 (delivered 25th February 2008, unreported).

⁸ [1981] 1 All ER 353 at page 363.

⁹ See paragraph [33] of the judgment below.

¹⁰ SLUHCVAP2008/0037 (delivered 6th July 2009, unreported) at para. [32].

¹¹ See paragraph [34] of the judgment below.

[15] The learned judge extracted from **Roland Browne v The Public Service Commission**¹² the principle that, much like the issue of standing, the question of unreasonable delay arose at either the permission stage or the substantive hearing stage¹³. The judge concluded that in the case at bar it was inappropriate at that juncture to strike out the claim on the basis of delay. He made it clear that the appellants were entitled at the substantive hearing to seek an order for the court to refuse the relief sought on the grounds of GLA's dilatoriness.

Grounds of Appeal

[16] The grounds of appeal call for consideration of the following issues: (1) whether the learned judge erred in ruling that in a meritorious claim the issues of standing and unreasonable delay can only be considered at either the leave stage or at the substantive hearing of the claim, (2) whether the learned judge erred in that he failed to consider whether the case before him was a simple one in which the respondent clearly had no sufficient interest in the subject matter of the claim, and (3) if the learned judge erred, whether this Court should consider and determine afresh the issues of standing and delay.

Submissions of Counsel: Counsel for the Appellants

[17] Ms. Caryn Adams for PADA submitted that the court has a discretion in simple and clear-cut cases, as in the case at bar, to treat with standing as a standalone preliminary issue where a party

¹² SLUHCVAP2010/023 (delivered 15th December 2010, unreported).

¹³ See paragraph [37] of the judgment below.

has not demonstrated that it has a sufficient interest to pursue its claim.

- [18] Counsel submitted that nowhere in **John Mussington** did this Court confine the determination of standing in a judicial review claim to the leave stage or to the trial of the substantive issues. Ms. Adams conceded that traditionally the question of standing was determined either at the leave stage or at the substantive hearing but submitted that since standing was a threshold issue it was within the court's discretion to determine the locus standi of an applicant for judicial review at any time after leave and before the substantive hearing. Ms. Adams contended that the law was not stagnant.
- [19] Ms. Adams cited **Regina v Secretary of State for the Environment, Ex parte Rose Theatre Trust Co.**¹⁴ as authority for the proposition that the court had a continuing duty to examine whether an applicant for judicial review had a sufficient interest in the subject matter of the application.
- [20] Ms. Adams further posited that the learned judge misconstrued **Richard Frederick** when he regarded that case as imposing a constraint upon the exercise of his discretion under CPR 25 and 26 whereas at paragraph 33 of **Richard Frederick** the Court expressly confirmed that CPR 56.11(1) required the court to case manage judicial review claims in accordance with Parts 25-27 of the CPR.
- [21] Learned counsel submitted that **Craig Reeves** confirmed that if the facts are isolated and the issue is one of law it is most appropriate for the trial of a preliminary issue.

¹⁴ [1990] 2 WLR 186.

- [22] Ms. Adams submitted that on the evidence before the court the respondent was nothing more than a busybody which sought to rely, not on its own expertise, but that of another entity who is not a party.
- [23] Ms. Adams further submitted that the learned judge's ruling meant that once a claim had merit, a court is precluded from enquiring into standing without first delving into the substantive issues.
- [24] She submitted that **Inland Revenue Comrs v National Federation of Self-Employed and Small Businesses Ltd**¹⁵ the opposite was declared to be the case. There Lord Fraser of Tullybelton described the question of sufficient interest as a separate and logically prior question which has to be answered affirmatively before any question on the merits arises.
- [25] Ms. Adams conceded that in that case the court was dealing with the issue of standing at the leave stage but argued that the case showed nevertheless that it was not necessary to traverse the issues in order to determine whether there is sufficient nexus between the respondent and the subject matter of the claim.
- [26] Mr. Michael Hylton, KC for Hartman submitted that the learned judge erred by deciding that standing only be raised as a pre-trial issue on an application to set aside a grant of leave. Mr. Hylton, KC argued that the judge failed to recognize that in simple cases the issue of standing could be revisited after leave was granted but before the substantive hearing. He relied on **Inland Revenue Comrs** for that submission. Mr. Hylton, KC submitted that the learned judge had proceeded on the basis that he had no discretion

¹⁵ [1981] 2 All ER 93.

and thus failed to explore the issue as to whether the case was a simple case in which he could exercise a discretion. Mr. Hylton, KC further submitted that the judge having failed to address the issue this Court should make its own ruling on standing. In his view the claim ought to fail because the respondent had failed to show that it had the requisite expertise and there was no point leaving the point to be determined at the trial. Mr. Hylton, KC conceded that the question whether the respondent possessed the necessary expertise was a fact-sensitive one. However, it was learned counsel's view that all the facts were already before the court and in the interest of furthering the overriding objective the issue should be dealt with now rather than later.

[27] Mr. Darshan Ramdhani, KC for Range urged that the learned judge had failed to exercise his discretion. He submitted that when the judge stated at paragraph [36] of his judgment that the appellants had failed to satisfy him that he 'may or ought' to revisit the issue of whether the respondent had sufficient interest the judge was merely considering his case management power of bifurcation, having, at paragraph [24] of his judgment, concluded that he had no discretion to revisit standing as a threshold matter.

[28] Mr. Ramdhani, KC sought to distinguish **Roland Browne** on the basis that there the court had acted on its own motion in revisiting delay whereas in the case at bar the appellants had made an application. Mr. Ramdhani, KC sought to rely on **John Mussington** as authority for the submission that even in the absence of an appeal against the grant of leave this Court could determine that there was significant delay in bringing the proceedings. Mr. Ramdhani, KC also urged this Court to exercise its discretion afresh.

- [29] Mr. John Carrington, KC for Singapore submitted that the learned judge fell into error in four ways: (1) he wrongly believed that he could not deal with standing at this point (2) he failed to appreciate that he had all of the relevant evidence before him (3) he failed to come to any conclusion as to why dealing with the issue of jurisdiction would have delayed the proceedings or cause unnecessary costs to be incurred and (4) he failed to weigh the importance of the jurisdictional point against considerations of cost and expedition and address his mind to the fact that even if the appellants were unsuccessful the result would be that there would be one less issue to consider at the trial.
- [30] Mr. Carrington, KC also posited that this was a clear enough case since the respondent had no track record whatsoever and he invited the Court to review the facts and conclude that the respondent lacked standing.

Counsel for the Respondent

- [31] Mr. Leslie Thomas, KC reminded the Court that the applications before the court were for the claim to be struck out and not for the trial of a preliminary issue and that different tests applied. He argued that an application to strike out should only be granted in clear and obvious cases. He submitted that the appellants were not entitled to have the issue of standing decided as a preliminary issue when that is not what they applied for.

- [32] Mr. Thomas, KC did concede, however, that the judge gave detailed consideration to standing as a preliminary issue.
- [33] Learned counsel for the respondent argued that while standing goes to jurisdiction, the question of whether or not to try the issue of standing as a preliminary issue is a matter of discretion.
- [34] Mr. Thomas, KC submitted that there was nothing in the judgment of the learned judge to suggest that the judge doubted that he had the power to try the issue of standing as a preliminary point.
- [35] Mr. Thomas, KC pointed out that the appellants had relied on paragraphs [24] and [36] of the judgment for their submissions that the judge had failed to exercise any discretion at all.
- [36] In relation to paragraph [24] of the judgment below Mr. Thomas, KC submitted that the judge had used the qualifier 'normally' and did not say that it was only at the permission stage or the substantive hearing stage that the court assesses standing.
- [37] Mr. Thomas, KC submitted in relation to paragraph [36] that the conclusion expressed by the learned judge at paragraph [36] of his judgment was the exercise of his discretion after having at paragraphs [29] and [30] acknowledged his power to order the trial of a preliminary issue.
- [38] Mr. Thomas, KC submitted that **Ex parte Rose Theatre Trust Co.** did not reflect the current state of the law in England and was criticised by Sedley J in **R v Somerset County Council ex parte Dixon**¹⁶ and in **De Smith's Judicial Review**¹⁷ the learned authors

¹⁶ [1998] Env LR 111.

opined that a court faced with similar facts would likely adopt an approach different from the one followed in the **Ex parte Rose Theatre Trust Co.** case.

- [39] Learned counsel for the respondent relied on **Ex parte Dixon** as authority for the submission that it is not necessarily the case that an applicant for judicial review must be affected to a greater extent than the general public.
- [40] Mr. Thomas, KC submitted that the respondent was also the victim of an alleged breach of the law in that two of their members had requested, and been denied, information which ought to have been publicly available and which was not recorded in the public register.
- [41] On the point of delay, Mr. Thomas, KC urged that learned counsel for the appellants were blowing hot and cold in that they would argue on the one hand that the knowledge of the directors of the respondent was knowledge of the respondent for the purposes of establishing delay but that their knowledge was not the knowledge of the respondent for the purpose of establishing the requisite expertise.
- [42] In reply, Mr. Sundiata Gibbs clarified that Hartman in its application had included a prayer for such other relief as the court considered appropriate and that the matter of standing had been fully argued before the learned judge and the appeal was being pursued on that very basis.

¹⁷ The Right Hon Lord Woolf; Sir Jeffrey Jowell, QC; Catherine Donnelly; Ivan Hare, QC; Dr Joanna Bell, De Smith's Judicial Review, Sweet & Maxwell, 8th Edn, 2021.

- [43] Mr. Ramdhani, KC submitted that when the learned judge used the word ‘normally’ at paragraph [24] he was in fact referring to what the court was doing at the first stage and that the learned judge then went on at paragraph [29] to explain his pronouncement that standing can only be determined at two stages.
- [44] Mr. Ramdhani, KC submitted that at paragraph [36] the learned judge was saying that he believed that he could not, and ought not, to consider the issue of standing as a preliminary point.
- [45] On the issue of delay, Mr. Ramdhani, KC submitted that CPR 56.2(2) requires the court to consider the expertise of the applicant and he submitted that this referred to the expertise of the applicant, not its members.
- [46] Ms. Adams, in her reply, distinguished **Craig Reeves** because the issue that the court was being asked to try separately was an issue of law. Learned counsel reiterated that the issue of the respondent’s lack of standing was clear-cut and the appellants had shown why they made that submission but that learned King’s Counsel for the respondent had not shown the basis for his argument to the contrary.

Discussion

Did the learned judge rule that the issues of standing and unreasonable delay can only be considered at either the leave stage or at the substantive hearing of the claim?

- [47] While it is undoubtedly the case that the question of standing goes to jurisdiction, the issue of whether to try the issue of standing as a

preliminary issue involves the exercise of discretion on the part of the judge.

- [48] An appellate court will not lightly interfere with a judge's exercise of discretion unless the judge has failed to take relevant factors into account or has taken irrelevant ones into account or erred in principle so much so that his decision exceeded the generous ambit within which reasonable disagreement was possible.
- [49] At paragraph [23] of his judgment the learned judge stated, '[t]he authorities are clear that the court usually analyses standing at two stages in a judicial review claim' (underlining supplied).
- [50] I pause here to state that this is an impeccable statement of the law.
- [51] In support of his statement of the law the learned judge referred to various authoritative texts including the **Judicial Review Handbook**¹⁸ in which it is stated that standing 'can be best viewed in the round at the substantive hearing' (underlining supplied).
- [52] The learned judge referred to **Ex parte Dixon** where the court indicated that the strength of the applicant's interest is one of the factors to be weighed in the balance at the substantive hearing. There the court made it clear that there may well be other factors which properly affect the court's evaluation of whether an applicant has a sufficient interest to maintain the challenge or secure a remedy.

¹⁸ Michael Fordham QC (5th Edn, Oxford-Portland Oregon, 2008), para. 38.3.

- [53] The learned judge also referred to a passage in **Halsbury's Laws of England**¹⁹ where it is stated that in most cases the question of standing is determined on the substantive application. It was further stated there that save in simple or clear cases, the question of standing will not be determined at the threshold stage as a preliminary issue independent of a full consideration of the merits of the complaint.
- [54] At paragraph [24] of the judgment below the judge stated:
- “Gathered from the above authorities, the first stage at which standing is considered is the permission stage. At that point in the proceedings, the court normally assesses and determines whether the applicant for leave has satisfied the court that it has a sufficient interest to bring the judicial review claim. The threshold at that stage is a very low one. The second stage is at the substantive hearing, where the court deliberates on standing as part of determining whether to grant the relief(s) sought by the claimant.”
- [55] Taking this passage in isolation, the judge appears to be deviating from what he stated in paragraph [23] of his judgment and now stating that the question of standing is only considered at two-stages: (1) the permission stage and (2) the substantive hearing stage. When he does use the adverb ‘normally’, it is not used with reference to the frequency with which standing is considered by the court between the permission stage and the substantive hearing stage. Rather, it is used to govern the frequency with which standing is considered at the permission stage.
- [56] However, such an interpretation would be doing a disservice to the judge. Paragraph [24] of the judgment below must be read together with paragraph [23] where the judge properly directed

¹⁹ Halsbury's Laws of England: Judicial Review (vol. 61A, para. 57).

himself that the issue of standing is usually analysed at two stages of proceedings for judicial review.

[57] The appellants rely on the judge's conclusion at paragraph [36] of his judgment that '[t]he applicants have therefore failed to satisfy me that the issue of whether GLA has a sufficient interest may or ought to be revisited after the grant of leave but before the substantive hearing of the claim as a preliminary or separate issue' as indicative of the judge's abdication of his function of exercising his discretion.

[58] I disagree.

[59] It is instructive that the learned judge used the word 'may' as distinct from the word 'can'. If the judge had meant that he did not have the power to grant the application, he would have used the word 'can' because 'can' is the verb that connotes ability while 'may' connotes possibility. By choosing to use the word 'may' the judge was signifying that in light of the authorities and in all the circumstances it was not permissible to grant the application, not that he could not.

[60] Therefore, I agree with Mr. Thomas, KC that the judge's conclusion at paragraph [36] was the exercise of his discretion in relation to the issue of standing.

[61] On the issue of delay the judge relied on a judgment of this Court, **Roland Browne** and declared that:

"[I]t seems wholly inappropriate for this court to strike out the claim at this juncture on the basis of delay. The applicants are nonetheless entitled to ask the court at the substantive

hearing to refuse to grant the relief sought by GLA on the grounds that there has been delay in bringing the claim.”

- [62] I do not believe that the judge can be faulted for what was essentially a case management decision to revisit the issue of delay at the substantive hearing, if necessary.

Whether the learned judge erred in that he failed to consider whether the case before him was a simple one in which the respondent clearly had no sufficient interest in the subject matter of the claim

- [63] Ultimately the judge’s decision not to allow the bifurcation of the trial was a case management decision.
- [64] It is unfair to criticise the judge for failing to consider whether the case was a straightforward case in which the respondent lacked standing when in essence his decision was to defer consideration of the matter to the substantive hearing.
- [65] In **Broughton v Kop Football (Cayman) Limited and Others**²⁰ at paragraph 51 Lord Justice Lewison stated:

“Case management decisions are discretionary decisions. They often involve an attempt to find the least worst solution where parties have diametrically opposed interests. The discretion involved is entrusted to the first instance judge. An appellate court does not exercise the discretion for itself. It can interfere with the exercise of the discretion by a first instance judge where he has misdirected himself in law, has failed to take relevant factors into account, has taken into account irrelevant factors or has come to a decision that is plainly wrong in the sense of being outside the generous ambit where reasonable decision makers may disagree. So

²⁰ [2012] EWCA Civ 1743.

the question is not whether we would have made the same decisions as the judge.”

- [66] In **Inland Revenue Comrs** Lord Wilberforce referred to the refusal of leave at the threshold stage in simple cases where the applicant lacked standing. In that case the House of Lords lamented the fact that at the substantive hearing stage locus standi was tried as a preliminary issue.
- [67] It cannot be said that the judge’s decision was plainly wrong bearing in mind that in **Regina v Secretary of State for Foreign and Commonwealth Affairs, Ex parte World Development Movement Ltd**²¹ it was held that standing is not to be treated as a preliminary issue but is to be taken in the legal and factual context of the whole case.
- [68] Finally, the case cannot be described as a simple case in which the respondent lacks standing because of the context-sensitive nature of the expertise that a body is required to possess in order to establish standing and because the merits of a challenge are an important factor when considering standing.

²¹ [1995] 1 WLR 386.

Conclusion

[69] For the reasons given above, I would dismiss the appeals and affirm the order of the learned judge with costs to the respondent to be assessed by a judge of the High Court if not agreed within 21 days.

I concur.

Davidson Kelvin Baptiste

Justice of Appeal

I concur.

Gertel Thom

Justice of Appeal

Deputy Chief Registrar