BARBADOS

[Unreported]

IN THE SUPREME COURT OF JUDICATURE

HIGH COURT

CIVIL DIVISION

No. 1753 of 2015

BETWEEN:

MARIA AGARD **CLAIMANT**

AND

MIA MOTTLEY **FIRST DEFENDANT**
(Acting herein in her capacity as Chairman of the Barbados Labour Party (BLP) and on behalf of the members of the BLP)

JEROME WALCOTT **SECOND DEFENDANT**
(Acting herein in his capacity as General Secretary of the Barbados Labour Party (BLP) and on behalf of the members of the BLP)

Before Dr. the Honourable Justice Olson DeC Alleyne, Judge of the High Court

Date of decision: 29 December 2017

Mr. Hal Gollop Q.C. in association with Ms. Lynette Eastmond and Ms. Kara-Je Kellman for the Claimant.

Mr. Leslie Haynes Q.C. in association with Mr. Leslie Roberts for the First Defendant.

Mr. Roger Forde Q.C. in association with Ms. Michelle Shepherd for the Second Defendant.

DECISION

INTRODUCTION

[1] Before me are two applications filed by the first and second defendant, respectively. They seek to have a Fixed Date Claim Form ("the FDCF") and an affidavit ("the claimant's affidavit") filed by the claimant on 11 December, 2015 struck out.

[2] I heard the applications on 7 April 2016. Having reviewed the submissions and the documents filed by the parties, I have determined that for the reasons set out below, the FDCF and the claimant's affidavit ought to be struck out. I have also determined that an amended FDCF filed by her on 4 March 2016 ("the amended FDCF") ought to meet a similar fate.

PROCEDURAL HISTORY

[3] The FDCF came on before me on 23 December 2015. On that occasion, the first and second defendants indicated their intention to make the applications under consideration. I scheduled the filing of the related documents and the hearing of the applications.

[4] The first defendant filed her application on 29 January 2016; an affidavit on 4 February 2016; and written submissions on 5 February 2016. The second defendant filed his application on 29 February 2016 along with an affidavit; and written submissions on 4 March 2016. The claimant filed her written

submissions on 4 March 2016. On that date, she also filed the amended FDCF. She filed no affidavit in response to the defendants' affidavits.

BACKGROUND

[5] I will now set out the background to the applications drawing on such facts as are not in dispute.

[6] These proceedings concern the status of the claimant's membership of the Barbados Labour Party ("the BLP"), a political party in this Island. The first defendant is the Chairman of the BLP and the second defendant, its General Secretary.

[7] The BLP is an unincorporated association. Its internal affairs are regulated by a constitution ("the constitution"). Among other things, the constitution provides for the disciplining of members. It also sets out the powers and duties of various office holders and the structure and functions of the BLP's organs. One such organ is the National Council to which the disciplinary function is assigned. Its membership includes the BLP Chairman and the General Secretary.

[8] The Chairman's constitutional function is to preside over meetings of the National Council. He has an original and a casting vote. Among other duties, the General Secretary is required by the constitution to attend all meetings of the National Council.

[9] The Claimant was a member of the BLP up to 22 November 2015. Whether that membership continues is the subject of these proceedings. On that date, she faced a number of disciplinary charges before the National Council. The hearing terminated with a decision to expel her from the BLP. She now seeks to challenge the lawfulness of that decision.

THE FDCF

[10] I must describe the FDCF with some specificity. The title of the proceedings is set out on the first page. In it, the first defendant is expressed to be "[a]cting herein in her capacity as Chairman of the Barbados Labour Party (BLP) and on behalf of the members of the BLP". In like style, the second defendant is expressed to be acting in his capacity as General Secretary of the BLP and on behalf of its members.

[11] The following words are set out immediately above the references to the parties:

> IN THE MATTER OF SECTION 17 OF THE SUPREME COURT OF JUDICATURE ACT CAP 117A OF THE LAWS OF BARBADOS

[12] The next two pages contain a set of printed notes directed to the defendants and informing them how they may deal with the claim. In the specimen form of FDCF ("Form 2") set out in the appendix to ***the Supreme Court (Civil Procedure) Rules, 2008 ("the CPR)***, these notes appear at the end of the

document. However, this peculiarity in the arrangement of the claimant's FDCF is not the subject of complaint by the defendants.

[13] The substantive portions of the FDCF are set out on pages 4 and 5 which are headed "STATEMENT OF CLAIM" and "STATEMENT OF PARTICULARS", respectively. They end with a certificate of truth. The backing sheet is marked "FIXED DATE CLAIM FORM".

[14] The page which bears the rubric "STATEMENT OF CLAIM" reads:

> "The Claimant … claims against the Defendants:
>
> 1. A Declaration that the National Council of the Barbados Labour Party (BLP) while acting as a quasi Judicial body in the disciplinary hearing of the Claimant on Sunday 22 November 2015 and to which the Claimant was summoned to appear before it (***sic***) to be heard and show cause why the Claimant should not be disciplined, the Defendants acting through the officers of the National Council of the BLP while under a duty to observe the rules of natural justice, failed and/or refused to accord the Claimant the protection due to her in accordance with the said rules of natural justice (***sic***).
>
> 2. A Declaration that in the premises the decision to expel the Claimant from membership of the BLP was unlawful, void and of no effect.
>
> 3. A Declaration that in the events which transpired on Sunday 22 November 2015 at the BLP headquarters which led to the expulsion of the Claimant from the BLP, the Defendants acted in disregard of the Claimant's right to a fair hearing.
>
> 4. A Declaration that the decision to expel the Claimant from the BLP in her absence was a breach of the Claimant's right to a fair hearing.

5. A Declaration that in the events which transpired on 22 November 2015 at the Headquarters of the BLP, the decision taken by the Defendants to expel the Claimant from the BLP was an unlawful and/or unreasonable exercise of discretionary power.

6. Damages.

7. Further or other relief as may be deemed just by the Honourable Court.

[15] The page captioned "STATEMENT OF PARTICULARS" reads:

(a) A resolution was passed by the National Council of the BLP at its meeting of 12 November 2015 that in exercise of the powers vested in it under Rule 81 of the Constitution of the BLP the Claimant should be charged for breaches of discipline in accordance with Rule 82 of its Constitution. Nine (9) charges were preferred in a Schedule.

(b) The nine (9) charges were drafted by the General Secretary (the Second Defendant herein) who sat as a member of the National Council adjudicating at the said hearing which was presided over by the First Defendant herein.

(c) The Members sitting on the National Council at the hearing were members of the same Council that passed the resolution to prefer charges against the Claimant.

(d) The Claimant and Counsel took the decision to withdraw from the hearing as it appeared futile to remain in light of the Claimant's ***(sic)*** intention to proceed in the same unlawful manner, even after objections had been raised by Counsel, namely the National Council's failure to observe the rules of Natural Justice and the absence of procedural propriety.

(e) The Claimant later heard of her expulsion through a radio news item later on the night of 22 November 2015.

THE CLAIMANT'S AFFIDAVIT

[16] In her affidavit, the claimant deposed to her association with the BLP, the structure of the party and the National Council, the circumstances leading up to the disciplinary meeting, the events of the meeting, and her acquiring knowledge of the outcome of the meeting.

THE APPLICATIONS

[17] The first defendant's application is in these terms:

> **TAKE NOTICE** that the First Defendant applies to the Court pursuant to the Supreme Court (Civil Procedure) Rules 2008 Part 26 Rule 26.3 (1) and 26.3 (3) … for an Order that the Fixed Date Claim Form together with the Statement of Claim, Statement of Particulars and the Affidavit in support thereof deposed to by the Claimant, all filed on 11th December 2015, be struck out and the Claimant's claim be dismissed with costs to be assessed.

[18] The second defendant's application reads:

> The Second Defendant applies to the Court, pursuant to Supreme Court (Civil Procedure Rules) 2008 (CPR) Part 26 Rules 26.3 (1) and 26.3 (3) or the inherent jurisdiction of the Court for the following Orders: -
>
> 1. That the Fixed Date Claim Form and the supporting Affidavit deposed to by the Claimant, both filed herein on 11th December 2015, be struck out and the Claimant's claim be dismissed.
>
> 2. That the Statement of Claim or the Affidavit filed herein on the 11th day of December, 2015 be struck out.
>
> 3. That the Second Defendant be removed as a party to the claim.

4. That the costs of and the costs occasioned by this application be assessed and paid by the Claimant.

[19] The applications set out copiously the grounds on which they are based. These were mirrored in the written submissions filed on behalf of the defendants. Hence, I will not detail them now. The range of topics they span include (i) the capacity and status of the defendants; (ii) the use of the FDCF and the claimant's affidavit in commencing the proceedings; (3) the content and structure of the FDCF; and (4) whether the FDCF discloses a cause of action against the defendants.

THE DEFENDANTS' AFFIDAVITS

[20] In her affidavit, the first defendant deposed that on 22 November 2015, she chaired a meeting of the National Council and participated in the decision to expel the claimant from the BLP. She deposed further that the members of the BLP did not authorise her to sue or be sued on their behalf.

[21] The second defendant deposed to a similar lack of authority with respect to judicial proceedings. He stated that he was not a party to the deliberations of the National Council which led to the expulsion decision. His further evidence related to the events of the meeting.

THE AMENDED FDCF

[22] The claimant filed the amended FDCF after receipt of the defendants' applications and written submissions without the leave of the Court. This

document differs from the FDCF in two respects. First, the word "Chairman's" in the second line of paragraph (d) of the section headed "**STATEMENT OF PARTICULARS**" is changed to the word "Claimant's". Secondly, 11 paragraphs lettered (f) to (p) have been added to the section headed "STATEMENT OF PARTICULARS". These read:

> (f) The National Council acted in breach of the rules of natural justice insofar as it made a decision to expel the Claimant in her absence and insofar as the Members sitting on the National Council at the hearing were members of the same Council that passed the resolution to prefer charges against the Claimant.
>
> (g) The National Council acted in breached (sic) of the Claimant's rights to a fair hearing.
>
> (h) The Constitution of the BLP forms the contract of membership between the parties. The National Council acted in breach of rule 83 of the Constitution of the BLP and therefore breached an expressed term of the contract. The Constitution is annexed to the Claimant's Affidavit which was filed on 11 December 2015.
>
> (i) It was an implied term of the contract that the Claimant would not be expelled from the BLP otherwise that (sic) in accordance with the rules of natural justice. The national Council acted in breach of an implied term of the Constitution namely to abide by the rules of natural justice while acting as a quasi-judicial body.
>
> (j) The National Council's decision to expel the Claimant was an unlawful and/or unreasonable exercise of its discretionary power given to it by rule 81 of the Constitution of the BLP.
>
> (k) The Claimant was at all material times before the night of 22 November 2015 a member of the Barbados Labour Party

(BLP). The Claimant filed an affidavit on 11 December 2015 giving further details surrounding the events which led to her expulsion and the hearing of 22 November 2015.

(l) The First Defendant was at all material times the Chairman of the BLP and the Chairman of the National Council of the BLP. The First Defendant at all material times had actual and/or ostensible authority to act on behalf of persons who were members of the BLP at the material times.

(m) The Second Defendant was at all material times the General Secretary of the BLP and a member of the National Council of the BLP. The Second Defendant at all material times had actual and/or ostensible authority to act on behalf of persons who were members of the BLP at the material times.

(n) The First and Second Defendants are the appropriate persons to represent the members of the BLP in this claim.

(o) The National Council is an organ of the BLP. The details of the National Council are contained in the Claimant's affidavit.

(p) The BLP is a political party in Barbados and an unincorporated association.

THE STATUS OF THE AMENDED FDCF

[23] At the outset of the hearing, I inquired of the parties as to the status of the amended FDCF. Some debate ensued among them. Mr. Hal Gollop Q.C. who appeared for the claimant in association with Ms. Lynette Eastmond and Ms. Kara-Je Kellman submitted that the filing of the amended FDCF was permissible by ***CPR 20.1 (1)*** and that, effectively, it has taken the place of the FDCF.

[24] ***CPR 20.1 (1)*** and ***(2)*** read:

> 20.1 (1) A statement of case may be amended at any time prior to a case management conference and the filing of a defence without the court's permission.
>
> (2) The court may give permission to amend a statement of case at a case management conference or, at any time after a case management conference, upon an application being made to the court.

[25] ***CPR 2.3*** provides a partial definition of the term "statement of case". It reads:

> "Statement of case" includes
>
> (a) an application, statement of claim, defence, counterclaim, third party (or subsequent) notice or other ancillary claim or defence and a reply to a defence;
>
> (b) any further information given in relation to any statement of case under Part 34 either voluntary or by order of the court.

[26] The term "claim form" is not on the list of items identified in paragraph (a) of that definition. However, that list is not exhaustive. That is the effect of the word "includes" which precedes the listed items. In a general way, the editors of ***Blackstones Civil Practice 2011*** at paragraph 23.2 describe the term "statement of case" as one "which applies to all documents in which a party's case is set out for the other parties and for the court". A claim form falls within that definition. The parties do not dispute that references to a statement of case include a claim form.

[27] Mr. Gollop Q.C. submitted that since no defence had been filed, it was open to the claimant to amend the FDCF without leave. Mr. Haynes Q.C. who appeared for the first defendant in association with Mr. Leslie Roberts; and Mr. Roger Forde Q.C. who appeared for the second defendant in association with Ms. Michelle Shepherd, disagreed with Mr. Gollop Q.C.

[28] Mr. Forde Q.C. submitted that ***CPR 20.1*** does not apply where the statement of case is under challenge and that in such a situation, one must seek leave to amend. He submitted further that the matter was at the stage of case management and therefore leave to amend was required. Mr. Haynes Q.C. endorsed these submissions.

[29] It is unnecessary for me to determine whether the filing of the amended FDCF is compliant with ***CPR 20.1*** since I agree with Mr. Forde Q.C. and Mr. Haynes Q.C. as to the non-applicability of that rule in this situation. ***CPR 20.1*** regulates the filing of an amended statement of case in the ordinary course of things. It does not address the amendment of a statement of case that is the subject of an application to strike.

[30] In this respect, I endorse entirely the general thrust of a pronouncement made by Mangatal J in ***Index Communication Networks Limited v Capital Solutions Limited et al HCV 739 of 2011 (Jamaica Supreme Court, date of decision 3 May 2012)*** with respect to ***rule 20.1*** of the ***Civil Procedure Rules***,

2002 of Jamaica. Generally, that rule permits a party to amend a statement of case "at any time before the case management conference without the court's permission". Mangatal J stated at paragraph 44:

> … even if a matter has not reached the case management stage, where an application to strike out the existing Statement of case is being heard, it is not correct that a party could simply, "pull the rug out" from under the feet of the party applying to strike out on the basis of alleged weaknesses in the pleaded case, or omissions or admissions, by simply turning up with a newly amended statement of case that has been filed without the court's leave. … In my judgment, that would, at the very least, offend the rules of natural justice and the Constitutional right to a fair hearing. ... once the application under consideration before the court is an application to strike out a party's Statement of Case, the Statement of Case cannot be amended without the leave of the Court.

[31] In interpreting ***CPR 20.1*** in this restrictive way, I have sought to give effect to the overriding objective of ***the CPR*** expressed in ***CPR 1.1(1)***, as I am required to do by ***CPR 1.3***. That objective is to enable the Court to deal with cases justly. ***CPR 1.1(2)*** provides that dealing justly with a case includes, so far as is practicable, ensuring that parties are on equal footing and ensuring that a case is dealt with expeditiously and fairly.

[32] To hold that ***CPR 20.1*** is applicable in the circumstances of this case would be to encourage the injection of unfairness and disorder into proceedings which though not irremediable might lead to an inefficient use of time. The

defendants were not present to shoot at a moving target. They came to make out a case against the FDCF and the claimant's affidavit.

[33] The amended FDCF must therefore be at risk of being struck out and can play no role in these proceedings except with the leave of the Court. The claimant made no application in that respect. I permitted the defendants to proceed with their submissions in respect of the FDCF. I considered it prudent to determine after hearing the arguments what ought to be the future position with respect to the amended FDCF.

THE LEGAL APPROACH

[34] Before considering the submissions made by Counsel, I will set out the rules on which the applications are based; the provisions of ***CPR 26.4*** which guide me as to the effect of procedural breaches and the remedial powers of the Court; and the contents of ***CPR 1.1*** which I explained in part in paragraph 31 and which I must also keep firmly in mind as I consider how to exercise any discretion. I will also briefly sum-up the general approach to be taken in matters of this sort.

[35] Both defendants apply pursuant to **CPR 26.3 (1)** and **(3)**. These read:

> **26.3** (1) In addition to any other power under these Rules, the court may strike out a statement of case or part of a statement of case where it appears to the court that there has been a failure to comply with a rule or practice direction given by the court in the proceedings.

(2) …

(3) The court may also, in addition to all other powers under these Rules, strike out, at a case management conference or otherwise upon an application on notice, a statement of case or part of a statement of case if it appears to the court

(a) 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;

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

(c) that the statement of case or the part to be struck out is prolix or does not comply with the requirements of Part 8 or 10.

[36] ***CPR 26.4*** provides

26.4 (1) This rule applies in relation to a matter in respect of which an order has not been sought, or if sought, has not been made under 26.3 striking out a statement of case or part of a statement of case.

(2) An error of procedure or failure to comply with a rule, practice direction or court direction or order does not invalidate any step taken in the proceedings, unless the court so orders.

(3) Where there has been an error of procedure or failure to comply with a rule, practice direction, court order or direction, the court may make an order to rectify the error or failure.

(4) The court may make such an order on or without an application by a party.

[37] ***CPR 1*** is in these terms:

1.1 (1) The overriding objective of these Rules is to enable the court to deal with cases justly.

(2) Dealing justly with a case includes, so far as is practicable,

(a) ensuring that the parties are on equal footing;

(b) saving expense;

(c) dealing with cases in ways which are proportionate to

(i) the amount of money involved;

(ii) the importance of the case;

(iii) the complexity of the issues; and

(iv) the financial position of each party;

(d) ensuring that it has been dealt with expeditiously and fairly; and

(e) allotting to it an appropriate share of the court's resources, while taking into account the need to allot resources to other cases.

1.2 The court must seek to give effect to the overriding objective when interpreting these rules or exercising any powers under these Rules.

1.3 The parties are required to help the court to further the overriding objective.

[38] The principles relating to the exercise of the Court's inherent jurisdiction are set out with reference to authorities in the ***Supreme Court Practice 1995 Vol. 1*** at ***paragraphs 18/19/36*** and ***18/19/37***. The Court may stay proceedings before it which are frivolous, vexatious or an abuse of the process of the Court.

This jurisdiction is discretionary and ought to be exercised circumspectly and only where it is clear that a claim cannot succeed.

[39] The need for circumspection applies always where a court is considering an application to strike out a statement of case. The authors of ***The Caribbean Civil Court Practice 2011***, at note 23.22, citing ***Walsh v Misseldine [2001] CPLR 201*** guide that:

> When deciding whether or not to strike out, the court takes into account all the relevant circumstances and makes 'a broad judgment after considering the available possibilities'. It is necessary to concentrate on the intrinsic justice of a particular case in light of the overriding objective.

[40] Striking out ought to be reserved for cases where the employment of curative options would not do justice. With graphic militarist imagery, Lord Mance in ***Real Time Systems Ltd v Renraw Investments Ltd (Trinidad and Tobago) et al [2014] UKPC 6; 84 WIR 439***, at paragraph 17, described the power to strike out as a "nuclear option". It ought not to be activated lightly and only where necessary in the interest of justice.

SUBMISSIONS and DISCUSSIONS

The capacity/status of the defendants

[41] I will now review and consider the legal submissions. I will first deal with those relating to the capacity and status of the defendants. Generally, these debate the legitimacy of the proceedings, given that the BLP is an

unincorporated association and the statements contained in the title to the FDCF in relation to the defendants.

[42] In this respect, the first defendant's Counsel urged that their client has not been authorised to act on behalf of the members of the BLP, a submission also made by Mr. Forde Q.C. in respect of the second defendant. The first defendant's Counsel urged further that she has been sued "in an incorrect capacity"; that it is legally erroneous to sue her "on behalf of the members of the BLP"; and that the proper defendant ought to be the members of the National Council.

[43] Additionally, Counsel for the first defendant submitted that there has been no court order appointing the first defendant to act on behalf of the members of the BLP. They cited ***CPR 21.1*** in this respect, as did Mr. Forde Q.C. who made a like submission on behalf of his client. He urged that ***Part 21*** contemplates a process which has to be complied with in order to establish representative proceedings.

[44] Counsel for the first defendant also referred me to ***Halsburys' Laws of England vol. 6, paragraph 273*** and ***London Association for Protection of Trade v Greenlands Ltd [1916] 2 AC 15*** for the general law relating to civil actions involving unincorporated associations.

[45] Counsel for the claimant submitted that it is appropriate to bring the claim against representative defendants on behalf of the members of the BLP, and to name the defendants as parties in their capacities as Chairman and General Secretary respectively. They urged further that no order was required prior to commencing proceedings against defendants in a representative capacity.

[46] The passage at ***paragraph 273*** of ***Halsbury*** contains some general principles of law. Citing ***London Association for Protection of Trade***, ***Gray v Pearson (1870) LR 5 CP 568*** and ***Evans v Hooper (1875) 1 QBD 45***, it states:

> An unincorporated members' club, not being a partnership or legal entity, cannot sue or be sued in the name of the club, nor can the secretary or other officer of such a club sue or be sued on behalf of the club, even if the rules purport to give him power to sue and provide for his being sued, unless this is permitted by statute.

[47] It is clear from that passage that despite the status of the defendants in that unincorporated association, they cannot be sued on behalf of the BLP. It must be stated, though, that the claimant has not expressly represented on the FDCF that the defendants have been so sued, neither did her Counsel suggest that. They submitted that the defendants have been sued as representative defendants "on behalf of the **members** of the BLP" [Emphasis mine].

[48] The recommended way to describe club members who are sued in a representative capacity as shown on form number 35 in ***Atkins Court Forms 2nd ed.*** (***Atkins***) page 302, is to indicate that the named defendants are "sued

on their own behalf and on behalf of all other members [as at …. 20…] of the … Club [except [the Claimant or R. S. *or as the case may be*]]." Form number 36 which provides a description of committee members sued in a representative capacity suggests that a claimant may include a description of the status of the named defendants after their names. That form reads in part "C. D. and L.M., [the Chairman and Secretary respectively of the … Club] sued on their own behalf and on behalf of …". These forms are consistent with the accepted practice in this jurisdiction.

[49] However, the statement in the title to the FDCF is materially different. There each defendant is stated to be "[a]cting" in the capacity of the office they hold "and on behalf of the members of the BLP". I must confess that I have struggled to discern the meaning of these statements. I am mindful of what the claimant's Counsel indicated was intended but it seems to me that given their structure and content the statements are open to the interpretation that the claim is against the defendants, in their stated capacities, and also against them on behalf of the members of the BLP.

[50] The statements lend themselves to that interpretation since they do not state that the claim is against the defendants on behalf of themselves and the **other** members of the BLP. I have also observed that the statements do not expressly exclude the claimant from the members who it purports to be

represented by the defendants. Given that the claim is based on an assertion of membership by the claimant, this is a striking anomaly. Citing ***Harrison v Marquis of Abergaveeney Constitutional Club (1888) 57 LT 360, CA*** the editors of ***Atkins*** state in footnote 11 on page 311 that "[a]ny person excepted from the representation should be clearly identified or described".

[51] Such opacity in statements identifying parties to civil proceedings is undesirable and untenable. The passage from ***Halsbury*** dispels any notion that any action against the defendants individually on behalf of the BLP can be sustained. I will come later to whether the claim is properly established as against the defendants as representatives of the members of the BLP. Before doing so, however, I will consider another issue raised on the submissions as to who the proper defendants ought to be in this claim.

[52] Mr. Haynes Q.C. submitted that the claim ought to have been brought against the members of the National Council who made the decision to expel the claimant, or representatives on their behalf. Counsel for the claimant submitted that the claim may be brought against the members of the BLP by means of representative defendants. Mr. Haynes Q.C. offered a passage found at ***paragraph 237*** of ***Halsbury*** as supporting his position while Counsel for the claimant cited ***Louis v Chastenet et al Suit No. 0767 of 2014 High Court of St. Lucia (Date of decision, 2 March 2015).***

[53] I found neither of these references to be helpful as neither addressed the question in issue. The passage from ***Halsbury*** merely stated that the action "**may** be brought against the committee [emphasis mine]". It does not discuss whether it may also be brought against the wider membership of the unincorporated association. ***Louis*** involved a challenge to the expulsion of a member of a political party by the National Council, a committee of that unincorporated association. The proceedings were brought against three named defendants who were expressed to be sued on behalf of themselves and the other members of the association save and except the Claimant. However, no issue arose as to whether this was proper.

[54] Mr. Haynes Q.C. sought to rationalise his perspective. He submitted that a claim for wrongful expulsion is based on contract and that it was the members of the National Council that had made the decision, thus causing any breach of contract. However, Counsel did not consider that it might be said that the members of the BLP effected the decision with the agency of the National Council. On that basis, it may well be arguable that the claim could properly be brought against the members of the BLP.

[55] In any event though to the extent that the extant claim purports to be one against the defendants on behalf of the members of the BLP, I am persuaded

by the submissions of Mr. Forde Q.C. that it has not been properly established as such.

[56] This brings me to ***CPR 21***, the relevant parts of which are in these terms:

> **21.1** (1) This rule applies to any proceedings, other than proceedings falling within rule 21.4 where five or more persons have the same or similar interest in the proceedings.
>
> (2) The court may appoint
>
> (a) one or more of those persons; or
>
> (b) a body having a sufficient interest in the proceedings,
>
> to represent all or some of the persons with the same or similar interest.
>
> (3) A representative under this rule may be either a claimant or a defendant and may be appointed subject to such conditions as the court deems appropriate.
>
> **21.2** (1) An application for an order appointing a representative party may be made at any time, including a time before proceedings have been started.
>
> (2) An application for such an order may be made by
>
> (a) any party;
>
> (b) any person or body who wishes to be appointed as a representative party; or
>
> (c) any person or body who is likely to be a party in the proceedings.
>
> (3) An application for such an order
>
> (a) must be supported by affidavit evidence; and

(b) must identify every person to be represented, either

(i) individually; or

(ii) by description, if it is not practicable to identify a person individually.

(4) An application to appoint a representative defendant must be made on notice to the claimant and all defendants.

(5) An application to appoint a representative claimant must be made on notice to all defendants and proposed defendants.

(6) The court may direct that notice of an application be given to such other persons as it thinks fit.

(7) The court may order a person not already a party to be a representative defendant.

(8) A representative order may be rescinded at any time if the court considers that the order is not serving the interests of justice, and thereafter the proceedings shall continue as ordinary proceedings between the parties to it.

[57] In ***Daniel et al v Maharaj et al Suit No. CV3757 of 2010 (High Court of Trinidad and Tobago, date of decision 10 November 2014)*** Rahim J considered ***rule 21*** of ***the Civil Proceedings Rules, 1998*** of Trinidad and Tobago (***TTCPR 21***), a rule that is virtually identical to ***CPR 21***. He held that ***TTCPR 21*** provides a procedure if a member of an unincorporated association is to sue or be sued in a representative capacity and described the claimants' failure to comply with that rule as a "procedural faux paux".

[58] I agree with that analysis. Some obfuscation of the true meaning and effect of ***CPR 21*** might have resulted from references by Counsel for the first defendant and those for the claimant to texts discussing ***Order 15, rule 12(1)*** of the ***Rules of the Supreme Court of England and Wales, 1965***. As explained in ***paragraph 273*** of ***Halsbury***, that rule provided that: -

> Where numerous persons have the same interest in the proceedings, the proceedings can be begun and, unless the court orders otherwise, continued by or against one or more of the club members as representatives of the other members or some of them.

[59] Counsel for the claimant likened ***CPR 21*** to that provision and urged that it should be interpreted in like manner. I do not agree. ***CPR 21*** is a modern procedural code which regulates representative claims in this jurisdiction. It is very much unlike the old English rule referred to in the cited text which was embodied in ***Order 15, rule 12(1) of the Rules of the Supreme Court, 1982 (the RSC 1982)***. It neither confers on, nor recognises a right of prospective litigants to commence or conduct representative proceedings without first securing a representative order.

[60] Mr. Haynes Q.C. expressed some reservation as to whether ***CPR 21*** precludes commencement without such an order. I hold no such doubt. I am fortified in that view having considered ***the CPR*** as a whole. Wherever the terms "representative capacity", "representative claimant" or "representative

defendant" appear in that code, they are linked to ***CPR 21***. Unlike ***Order 15, rule 12(1)*** of ***the RSC 1982***, ***the CPR*** make no provision for the conversion of representative proceedings to ordinary proceedings, except as provided for in ***CPR 21.2 (8)*** which refers only to the rescission of a representative order. Nothing in ***the CPR*** contemplates representative proceedings commenced other than as provided for in ***Part 21***.

[61] The conjoint effect of ***CPR 21.1 (1)***, ***(2)*** and ***(3)*** is that where five or more persons have the same or similar interest in proceedings, the court may appoint one or more of them to represent all of them. An application for a representative order may be made by a prospective party before proceedings have been started or after commencement by a party (***CPR 21.2(1)*** and ***(2)***). The application must be supported by affidavit and identify every person to be represented either individually, or if that is impractical, by description (***CPR 21.2(3)***).

[62] Hence, a person wishing to pursue proceedings against representative defendants may proceed in one of the two ways provided for in ***CPR 21***. He or she may make a pre-action application for a representative order and, if successful, commence the claim against the appointed persons on behalf of themselves and the other persons they represent. Alternatively, he or she may commence proceedings against a number of defendants and apply

subsequently to have one or more of them appointed as representatives of them all.

[63] The claimant adopted neither of those courses. In ***London Association for the Protection of Trade***, the court and counsel agreed that where a rule requiring the appointment by order of a representative defendant had not been complied with, the orders made in the proceedings could not stand. The essential point was put by Lord Parker in this way, at pages 38 to 39:

> Sir Samuel Scott could not properly defend on behalf of himself and all other members of the association without an order of the Court authorizing him to do so.
>
> It may be said that this, too, was a technical matter. In my opinion, however, it was a matter of substance. Had Sir Samuel Scott applied to the Court for leave to defend on behalf of himself and all other members of the association, the Court would have had to inquire whether the case was within Order XVI., r. 9, of the Rules of the Supreme Court; in other words, whether the members of the association have a common interest within the meaning of that rule.

[64] The claimant's failure to follow the procedure set out in ***CPR 21*** is one of substance which I cannot disregard as a mere technical matter. Had an application been made pursuant to ***CPR 21.2(1)*** for an order appointing a representative party, the Court would have had to inquire whether the members of the BLP have the same or a similar interest in the proceedings, as required by ***CPR 21.1(1)***. The claimant asserts that they do. Mr. Haynes Q.C. disagrees. However, this is not the appropriate time to resolve that issue. It is

to be resolved on an application made pursuant to ***CPR 21.2(1)*** supported by affidavit evidence, as required by ***CPR 21.2 (3)***.

[65] In ***Daniel***, Rahim J held that a failure to comply with ***TTCPR 21*** in respect of representative claimants is not necessarily fatal. He stated, at paragraph 43, that whether such an error vitiates the claim is dependent on the facts and circumstances of each case. In the context of that case, he considered that the error was not fundamental and that to dismiss the claim on that basis "would be to punish the claimants for a non-material misstep in procedure and to do injustice to them". However, at paragraph 41 he opined, albeit obiter:

> Had the facts of this case been different however and the order sought were those seeking to bind a body of persons (the defendants in respect of whom an order for Representative defendant ***(sic)*** was not made and should have been made) then the absence of a Representative defendant would have been a material irregularity which goes to the heart of effect of any order made by the court.

[66] In my judgment, the claimant's failure to comply with ***CPR 21*** must mean that she has not established proceedings against the defendants in a representative capacity. The claim cannot move forward in the absence of a representative order. If it does, any subsequent orders would be ineffective against the defendants. For that reason alone, the proceedings must be stayed, if not struck out.

[67] A further point needs to be made. ***CPR 8.4(5)*** requires that "[w]here the defendant is being sued in a representative capacity under Part 21, the claimant must state what that capacity is". ***CPR 8.4*** generally regulates what must be included **in** the claim form [Emphasis mine]. The details in relation to the representative capacity of a defendant must be stated in the claim form. It is not enough to state it in the title. The claimant has not complied with that requirement.

The use of the FDCF and Affidavit

[68] I turn next to the defendants' complaints in relation to the claimant's use of a FDCF and an affidavit in commencing the proceedings. The relevant procedural rules are contained in ***CPR 8***.

[69] ***CPR 8.1*** deals with how to start proceedings. It reads:

> **8.1** (1) A proceeding is started by filing in the Registry the original and one copy for sealing of
>
> (a) the claim form;
>
> (b) subject to rule 8.2, the claimant's statement of claim; or
>
> (c) where any rule or practice direction so requires, an affidavit or other document.

[70] ***CPR 8.1(1)(b)*** is expressed to be subject to ***CPR 8.2*** which provides:

> **8.2** (1) Subject to sub-rule (6), a claim form may be issued and served without the claimant's statement of claim (or an affidavit or other document referred to in sub-rule (1) *(c)* of rule 8.1) only where

(a) the claimant has included in the claim form all the information required by rules 8.4 and 8.5 and (if applicable) 8.7 and 8.8; or

(b) the claimant gives permission.

[71] ***CPR 8.1 (4)*** and ***(5)*** provide for the use of two types of claim forms. Those provisions read:

> (4) A claim Form must be in Form 1, with or without variation, except in the circumstances set out in sub-rule (5).
>
> (5) Form 2 (fixed date claim form) must be used
>
> (a) in proceedings for possession of land;
>
> (b) in claims arising out of hire-purchase or credit sale agreements;
>
> (c) whenever its use is required by a rule or practice direction; and
>
> (d) where by any enactment proceedings are required to be commenced by originating summons or motion.

[72] Counsel for the defendants submitted that the claimant commenced the proceedings by the wrong form as they do not fall into any category of claim for which the use of a FDCF is mandated by ***CPR 8.1 (5)***. They urged further that the filing by the claimant of an affidavit and a statement of claim, or purported statement of claim as Mr. Haynes Q.C. described it, was in breach of the ***CPR***.

[73] Counsel for the claimant sought to justify the use of the FDCF on two bases. First, they contended that a claim may be commenced by FDCF where there is no substantial dispute of fact, and that this is such a claim. They referred me to certain passages from ***Gilbert Kodilyne and Vanessa Kodilyne, Commonwealth Caribbean Civil Procedure 3rd ed. 2009***.

[74] In the first passage, found at page 10, the authors opine that "[f]ixed date claims (for which Form 2 must be used) are equivalent to the originating summons type of claim under the RSC and to 'Pt 8 claims' under the English CPR." The reference to "RSC" is a reference to the former procedural Rules that once existed in many regional jurisdictions, of which the ***RSC 1982*** is an example. The authors go on to set out a list of types of claim that are to be commenced by FDCF. In that list they include, at (d), claims "where the claimant seeks the court's decision on a question which is unlikely to involve a substantial dispute of fact". However, that statement is followed by a parenthetical note that indicates that it applies to "Jamaica only". It appears that Counsel overlooked this.

[75] In the second passage, on page 12, having given an example of what they considered to be a common type of fixed date claim, the authors go on to state that "[t]here are also other types of claim, not involving a substantial dispute

of fact, where the claimant has the option of proceeding under the usual Form 1 or under Form 2 …"

[76] ***The CPR*** do not provide for the use of a FDCF on the basis that the claim involves no substantial dispute of fact, neither do they provide for optional modes of commencing proceedings. ***CPR 8.1 (4)*** requires that a claim form **must** be in Form 1 except in the four circumstances set out in ***CPR 8.1 (5)*** for which the use of a FDCF is mandated. None of those clearly enumerated situations apply here. It follows axiomatically that the claim ought to have been brought by a regular claim form (Form 1).

[77] Old habits die hard. However, legal change must be instantaneously embraced. The assumption that the framers of ***the CPR*** have merely transplanted and re-named modes of commencement familiar to practitioners of a bygone era is as false as the assumption that the ***CPR*** is a clone of the procedural rules of England and Wales. The ***CPR*** may be likened unto new wine in new wine skins. Any effort to apply them as if they were old wine in new wine skins is doomed to lead to procedural missteps.

[78] The claimant's second argument is rather more abstruse. ***CPR 12.2(b)*** precludes a claimant from obtaining a default judgment where the claim is a "fixed date claim". Premised on this, her Counsel submitted that in keeping with the overriding objective, the use of the FDCF ensures that no default

judgment could be entered against the defendants. The rest of the argument is best expressed in their own words. At paragraph 19 of the written submissions in response to the first defendant's, they stated:

> … if the Claimant in this matter had used Form 1 and there was no defence filed in reply, judgment in default would be available to her. … it would be illogical to accept that the Court would automatically make the types of Declarations sought in the present case if there is no reply to the claim. The types of relief sought, make it necessary for the Court to make a determination on the matter and therefore the Fixed Date Claim Form is the appropriate Claim Form in this matter.

[79] Unsurprisingly, Counsel cited no authority to support this rather novel proposition. ***CPR 8.1 (4)*** and ***(5)*** do not permit a claimant to choose his mode of commencement based on the nature of the remedies sought. That is the short and direct answer to their submission. I must add though, that the suggestion that a judgment in default of defence to a claim for declaratory relief is "automatically" entered is erroneous. The combined effect of ***CPR 12.10 (4)*** and ***(5)*** is that, in such a case, a court must determine the terms of the judgment after considering supporting affidavit evidence.

[80] The claimant's Counsel submitted further that any error as to the type of claim form used is not necessarily fatal. Citing ***Hannigan v Hannigan [2002] 2 FCR 650*** and ***Auto-Guadeloupe Investissement S. A. v Columbus Acquisitions Inc. et al Civ App No. 11 of 2001, date of decision 19 October*** **2012**, they urged the Court may remedy such an error pursuant to ***CPR 26.4***.

[81] Mr. Forde Q.C. submitted that the FDCF must be struck out on account of this error. However, in ***Auto-Guadeloupe***, the Court of Appeal acknowledged that the curative discretion granted by ***CPR 26.4*** may be exercised to salvage proceedings before it that were commenced by means of a wrong form. ***Hannigan*** supports a similar position in England and Wales.

[82] Counsel for the first defendant submitted that the use of a wrong form is a procedural error which the Court may cure by directing that the claim be treated as if commenced by Form 1. However, they urged that, given the number and types of procedural errors that constitute the circumstances of this case, the Court should decline to exercise its discretion in that way. I accept the first limb of that submission and must return to the second.

[83] I turn to the claimant's affidavit. The defendants contended that it was procedurally wrong for her to have filed this document. The first defendant's Counsel submitted that she ought to have filed a statement of claim with the FDCF, and that she could not file both an affidavit and a statement of claim. Mr. Forde Q.C. made a similar submission.

[84] In response, Counsel for the claimant submitted that ***the CPR*** do not prohibit the filing of an affidavit and a statement of claim, and that in keeping with the overriding objective, the Court ought to reject the notion that a claimant cannot file both documents. Further though, they submitted that the claimant

did not filed a statement of claim and that the section of the document headed "statement of claim" was simply part of the FDCF.

[85] ***CPR 8.1 (1)(a)*** and ***(b)*** require the filing of a claim form and a statement of claim to commence proceedings. ***CPR 8.1(1)(c)*** allows for the filing of an affidavit or a document instead of a statement of claim, where a rule or practice direction so requires. The combined effect of ***CPR 8.1(1)(b)*** and ***CPR 8.2(1)(a)*** is that a claim form may be filed without a statement of claim where the court so permits, or the claimant has included in the claim form all the information required by the various rules referred to in ***CPR 8.2(1)(a)***. Nothing in ***CPR 8.1*** requires the filing of both a statement of claim and an affidavit and nothing requires that an affidavit be filed merely because there is no statement of claim.

[86] The claimant has not identified any rule or practice direction that required her to file an affidavit with the FDCF. However, her Counsel emphasised that nothing in ***the CPR*** prohibit the filing of the affidavit either. This notion that what is not prohibited is permitted holds no water in this context. ***The CPR*** regulate the orderly progress of civil proceedings. There is no role for an affidavit at the commencement of proceedings, if not filed in fulfilment of a procedural requirement. The affidavit has been wrongly filed.

[87] It follows that the defendants are entitled to ignore the claimant's affidavit when, or if, they set about setting out a defence in response to the claimant's case. Yet, Counsel for the claimant suggested otherwise. At paragraph 25 of their written submissions in response to the first defendant's, they stated that "the Affidavit gives more details and set out facts, which if read together with the [FDCF] are sufficient to enable the Defendant to file a defence in reply."

[88] The FDCF makes no reference to the claimant's affidavit. The Amended FDCF does so. It refers to the affidavit at paragraphs (h), (k), and (o) of the section appearing under the caption "PARTICULARS OF CLAIM". Those paragraphs indicate that the BLP's constitution, details of the events leading to the expulsion, and details of the National Council are to be found in the affidavit.

[89] A defendant cannot be called upon to rummage through a document not required by the rules to determine the full extent of a claimant's case. ***CPR 8.5(1)*** requires that the facts on which the claimant relies be included in the claim form or in the statement of claim. That requirement is not met by non-specific references to parts of other documents.

The structure and content of the FDCF

[90] I will now consider a set of submissions relating to the structure and content of the FDCF. ***CPR 8.4(1)(a) and (b)*** and ***CPR 8.5*** are relevant.

[91] ***CPR 8.4 (1) (a)*** and ***(b)*** read:

> **8.4** (1) The claim form must
>
> (a) include a short description of the nature of the claim;
>
> (b) specify any remedy that the claimant is seeking, though this does not necessarily prevent the court granting any other remedy to which he may be entitled and which can be granted without injustice to the defendant; ...

[92] ***CPR 8.5(1)*** and ***(2)*** impose a duty on a claimant to set out his case. They provide:

> **8.5** (1) The claimant must include in the claim form or in the statement of claim a short statement of all the facts on which he relies.
>
> (2) The claim form or the statement of claim must identify or annex a copy of any document which is necessary to the claimant's case.

[93] Counsel for the first defendant submitted that the **FDCF** does not include a short description of the nature of the claim, as required by ***CPR 8.4(1)(a)***. The claimant's Counsel contended that the required statement is contained in the section of the document headed "Statement of Particulars". In effect, ***CPR 8.4(1)(a)*** requires the insertion in a claim form of a description that is sufficient to inform the defendant of the basic grounds of the claim but avoids excessive detail. I have been unable to find any statement which satisfies that requirement in any part of the FDCF.

[94] The defendants' Counsel also submitted that the FDCF does not disclose a cause of action against their respective clients. Interspersed with this assertion were submissions in relation to the headings used by the claimant in the FDCF.

[95] Counsel for the first defendant submitted that "[w]hat purports to be a Statement of Claim is NOT a statement of claim properly so called". They urged that the "statement of claim" sought relief without "any sufficiency of a factual basis" and that the claimant does not specify "whether her claims sound in public law/judicial review or contract". They posited that an action for wrongful expulsion from an unincorporated association lies in contract, but that the "statement of claim" alleged no contract; no implied term importing natural justice; and no breach of the implied term. They urged also that the "statement of claim" is bad if the claim is one for judicial review. Counsel took no account of the contents of the section of the FDCF headed "Statement of Particulars" in making the above submissions. They submitted that ***the CPR*** make no provision for such a creature and, more importantly, that nothing in the document identified the nature of the particulars or what part of the "statement of claim" they were referable to.

[96] However, on behalf of the second defendant, Mr. Forde Q.C. submitted that the "statement of particulars" does not provide any of the particulars omitted

from the "statement of claim". His submissions with respect to the deficiencies of the "statement of claim" were much like those of Counsel for the first defendant. He submitted that having so labelled that section of the FDCF, the claimant's Counsel could not now contend that the document contained no statement of claim. In any event, urged Mr. Forde Q.C., read together the "statement of claim" and "particulars of claim" came close to being a statement of claim.

[97] The claimant's Counsel submitted that the portions of the FDCF headed "statement of claim" and "statement of particulars" are simply part of the FDCF. They stated that the claim was not one for judicial review. They conceded that the FDCF "does not make clear the contractual relationship between the parties" and indicated that it was amended to remedy that defect. Citing Lane LJ in ***R v Hull Prison Board of Visitors, ex parte St Germain et al (No 2) [1979] 3 All ER 545, 552*** and Lord Morris in ***Ridge v Baldwin et al [1964] AC 40***, they submitted further that where a body acts as a quasi-judicial body, it must observe the rules of natural justice.

[98] The latter statement is a correct representation of the law. The duty to observe the rules of natural justice exists unless their application is expressly excluded by the association's rules. This was confirmed in ***John v Rees et al [1970] Ch 345*****.** Given the general rule**,** I do not think it was necessary for the claimant

to allege an implied term importing natural justice. However, I accept that the FDCF fails to disclose a cause of action in contract for wrongful expulsion in any section of the document. In the language of ***CPR 26.3(b)*** it discloses no reasonable ground for bringing the claim.

[99] In ***Fountaine v Chesterston (1968) 112 So. J.*** 690 Megarry J noted that the rules of an unincorporated association form a contract between all the members of the association, albeit a "somewhat special form of contract". The FDCF contains no assertion from which the existence of that special contractual relationship between the claimant and the members of the BLP can be gleaned, or of her entitlement to membership in accordance with the rules that gave rise to that contract.

A miscellany

[100] I shall briefly set out the defendants' remaining complaints. One made by the first defendant's Counsel gave rise to an issue as to the efficacy of the claimant's seeming reliance on ***section 17*** of the ***Supreme Court of Judicature Act Cap 117A*** (***SCJA***) to invoke the Court's jurisdiction.

[101] Counsel for the claimants submitted that ***section 17*** "speaks directly to the jurisdiction of the court to hear matters such as the present one and to make declarations such as those sought by the Claimant". I find it useful to set out this provision. It reads:

> 17.(1) No action or other proceeding is open to objection on the ground that a merely declaratory judgment or order is sought thereby.
>
> (2) The High Court may make binding declarations of right in any action or other proceeding whether or not any consequential relief is or could be claimed therein.
>
> (3) Notwithstanding that the events on which a right depends have not occurred, the High Court may in its discretion make a binding declaration of right, if it is satisfied that
>
> (a) the question for decision involves a point of general public importance, or that it would in the circumstances be unjust or inconvenient to withhold the declaration; and
>
> (b) the interest of the persons not parties to the proceedings would not be unjustly prejudiced by the declaration.

[102] ***Section 17*** of ***the SCJA*** protects claims in which only a declaratory order or relief is sought; confers jurisdiction on the High Court to make binding declarations of right; and in specified circumstances to do so even where a cause of action might not yet have accrued. However, in a claim of wrongful expulsion, the invocation of ***section 17*** does not obviate the fundamental requirement to disclose a reasonable ground for bringing the claim. This is the essence of the submission made by Mr. Haynes Q.C. and I endorse it fully.

[103] Counsel for the first defendant also made specific complaints with respect to certain features of paragraphs 1 and 5 of the section of the FDCF headed "Statement of Claim". For ease of reference, I will reproduce those paragraphs

again. It is to be remembered that they are prefaced by the words "And the Claimant … claims against the Defendants:" Paragraph 1 reads:

> A Declaration that the National Council of the Barbados Labour Party (BLP) while acting as a quasi Judicial body in the disciplinary hearing of the Claimant on Sunday 22 November 2015 and to which the Claimant was summoned to appear before it (***sic***) to be heard and show cause why the Claimant should not be disciplined, the Defendants acting through the officers of the National Council of the BLP while under a duty to observe the rules of natural justice, failed and/or refused to accord the Claimant the protection due to her in accordance with the said rules of natural justice (***sic***).

[104] Counsel for the first defendant took objection to the words "the Defendants acting through the officers of the National Council were under a duty to observe the rules of natural justice". They submitted that those words made no sense since the defendants are office holders, and according to Counsel, cannot act "through the officers of the National Council".

[105] Mr. Roger Forde Q.C. referred to paragraph 1 of the FDCF in support of his submission that the FDCF disclosed no reasonable cause of action against the second defendant. He submitted that the paragraph alleges that the National Council made the decision to expel the claimant and that the evidence as disclosed by his client is that he was not part of the decision-making process.

[106] Both these submissions fail to address the question of whether each member of the BLP can be said to be acting through the agency of the National Council. Nonetheless, I have some difficulty understanding what the

paragraph under discussion means. It manifests an obvious drafting error which makes it incoherent. If one reads the paragraph from commencement to the first comma, it suggests that a declaration is being sought with respect to the actions of the National Council. However, after the comma, the sentence virtually re-starts with the defendants as its subject. The paragraph is in need of some revision to make it intelligible.

[107] Paragraph 5 reads:

> A Declaration that in the events which transpired on 22 November 2015 at the Headquarters of the BLP, the decision taken by the Defendants to expel the Claimant from the BLP was an unlawful and/or unreasonable exercise of discretionary power.

[108] Counsel for the first defendant submitted that the "discretionary power" referred to "is not identified by relevant particulars or at all". In response, Counsel for the claimant suggested that the power referred to is identified in paragraph (a) under the heading "Statement of Particulars". In the latter paragraph, the claimant merely asserts that the National Council passed a resolution "in exercise of the powers vested in it under Rule 81 of the Constitution." There is no averment in that paragraph or elsewhere on the FDCF to any power of any individual or organ within the BLP to exercise a disciplinary function over that political party's members.

[109] Hence, there is merit in the first defendant's submission. Her Counsel also took issue with the claim for "Damages" set out at item 6 under the section

headed “Statement of Claim”. They submitted that there is no indication whether that relief is being sought for breach of contract or pursuant to the ***Administrative Justice Act Cap. 109B***. I have already acknowledged the vacuous nature of the FDCF in respect of its failure to indicate the nature of the claim or disclose a cause of action. It is therefore axiomatic that this submission must be upheld. I agree also with the defendants’ Counsel that the original FDCF is incoherent and so lacking in detail as to make it difficult for their clients to file a defence in response.

WHITHER ANY DISCRETION?

[110] I have already concluded that the claim is not properly established against the defendants in a representative capacity as was the stated intention of the claimant, and that for that reason alone the proceedings cannot go forward. Were this the only defect, I might have considered whether I should stay the proceedings and set a date by which they would be struck out if the claimant had not by then made the requisite ***CPR 21*** application. But, this matter is rather more complex.

[111] The claimant has committed a number of other procedural breaches. The catalogue of errors consists the use of an incorrect claim form; the improper use of an affidavit; the failure to set out a short description of the nature of the claim; the failure to state the capacity in which the defendants were being sued

in the body of the claim form; the failure to disclose a reasonable ground for bringing the claim against either defendant; the use of inappropriate headings that are apt to confuse; and the existence of deficient and unclear paragraphs in the section captioned "statement of claim".

[112] This brings me back to ***Hannigan*** and ***Auto-Guadeloupe Investissement S.A***. In ***Hannigan***, the Court of Appeal of England Wales allowed an appeal from a decision striking out a claim on account of the use by the Claimant of the wrong claim form and a number of other technical errors. Brooke LJ acknowledged the overriding objective of the applicable procedural rules to deal with cases justly. In considering the interest of the administration of justice, he considered it of paramount importance that the Defendants and their solicitors knew what was being claimed and why it was being claimed. Additionally, he noted that if the claim was struck out, the Defendants would have received an unjustified windfall due to the technical mistakes of a solicitor in the early days of a new procedural regime. Weighed against the inexcusable technical breaches on her solicitor's part, those factors tilted the balance of justice overwhelmingly in the appellant's favour. Brooke LJ considered that to strike out the claim would have been a totally disproportionate response to the errors made.

[113] In ***Auto-Guadeloupe Investissement S.A***., Gibson CJ and Mason JA considered that it would be a disproportionate response to strike out an application commenced by the wrong form, where the procedural guidance was unclear and the striking out of the timely filed document would have left the applicant barred by statute from proceeding further. These sentiments were largely echoed by Williams JA in a separate judgment.

[114] Each case turns on its own facts. In this case, there are multiple procedural breaches of substance, in addition to the use of the wrong claim form and there is nothing to suggest that the claimant would be without further access to the Court if her claim is struck out. I must add that there ought to have been no doubt as to what type of form the claimant was required to employ. These factors make this case distinctly different from ***Hannigan*** and ***Auto-Guadeloupe Investissement S.A***. Furthermore, those authorities are not to be taken as suggesting that breaches of procedural rules ought to be lightly overlooked. In both instances, the consequences of striking out would have been dire for the defaulting party. That was an important factor to be weighed against the commission of technical breaches.

[115] In ***LD Commodities Rice Merchandising LLC v The Owners And/or Charters of the vessel Styliani Z [2015] EWHC 3060 (Admlty)***, having

considered ***Hannigan*** and ***Thurrock Borough Council v Secretary of State for the Environment [2001] CP Rep 55***, Teare J stated at paragraph 50(xi):

> Where there has been an error of procedure which was culpable and ought never to have happened it can be said, with force, that the court ought not to remedy the error because the court should enforce its rules and thereby encourage careful rather than sloppy practice in the conduct of proceedings. But if by so doing the defendant receives a windfall, namely, the benefit of a time bar defence as a result of inadvertence by the claimant's solicitor, it can also be said, with force, that a refusal to remedy the error causes an injustice out of proportion to the fault of the solicitor. In deciding which course best serves the overriding objective of dealing with the case justly these two conflicting arguments have to be weighed in the balance.

[116] I have given regard to those considerations mindful though that unlike in ***LD Commodities Rice Merchandising LLC***, the breaches in this case extend beyond the use of the wrong claim form. I must add that the duty to encourage careful practice has also been acknowledged in this region. In ***Husbands v Cable & Wireless Suit No. 26 of 2003, High Court of St. Lucia, (date of decision, 29 May 2003)*** Hariprashad-Charles J was faced with a statement of claim which she characterised as "vague, riddled and confusing" and which did not disclose any reasonable ground for bringing the claim. Having determined that she ought to strike it out, she concluded at paragraph 11 that "[t]o do otherwise, would be to open the floodgates for non-compliance with the Rules and encourage sloppiness by legal practitioners".

[117] In considering this matter, I have taken account also that the claimant has had a second bite at the proverbial cherry. She filed an amended FDCF, albeit without leave. I have heard no submissions on it but the record speaks for itself. That document was filed to remedy admitted defects in the FDCF. However, as Counsel for the defendants submitted, it maintains many of the flaws that characterised the original document. It remains the wrong mode of commencement; it does not set out a short description of the nature of the claim; it does not state in its body the capacity in which the defendants are sued; it contains the same internal headings that are apt to confuse; and it reproduces an incoherent paragraph already the subject of complaint. Additionally, it invites unguided references to the claimant's affidavit for some of its intended contents.

[118] It is therefore pointless for this Court to contemplate allowing the amended FDCF to stand. In any event, I could make no such determination without hearing the parties further but it seems to me that in light of what I have said about the references to the affidavit and the repeat of errors, the document cannot be maintained without some amendment. It would therefore be a waste of time and expense to leave it for further consideration. It was filed without leave and it ought to be struck out.

[119] I have considered whether I should make a compendious order striking out the affidavit; staying the proceedings unless and until a ***CPR 21*** order is obtained; and providing that the claim be struck out if the claimant failed to make the ***CPR 21*** application and, if successful, file an amended claim form within specified times. In such an order, I would also have to make provision for the proceedings to continue as if they had been commenced by a Form 1.

[120] I do not think that the interest of the administration of justice would be served by such an order. The FDCF requires a major overhaul to bring it into line with the requirements of ***the CPR***. The breaches are substantial and substantial amendments are required to give it the form and substance necessary to make it legally acceptable. Conjoined with the requirement for the ***CPR 21*** order, the taking of corrective measures by the claimant would be tantamount to starting over.

[121] Striking out the claim would not deprive the claimant of her access to the Court or bestow any windfall on the defendants. The claimant may make a fresh start with these procedural flaws behind her. This seems to me to be more efficient than the untidy alternative considered above which would do nothing to discourage sloppiness or encourage careful adherence to ***the CPR***.

DISPOSAL

[122] For these reasons, therefore, I have determined that the applications of both defendants ought to succeed, and the FDCF, the claimant's affidavit and the amended FDCF be struck out. I will make orders accordingly and hear the parties on the issue of costs.

OLSON DeC ALLEYNE

JUDGE OF THE HIGH COURT