IN THE HIGH COURT OF SOLOMON ISLANDS **Civil Case No. 480 of 2024.**
(Civil Jurisdiction)

BETWEEN:	The Hon. Peter Kenilorea (Jnr.)	Claimant
AND:	The Hon. Bradley Tovosia (Deputy Prime Minister of Solomon Islands)	First Defendant
	And	
	The Solomon Islands Water Authority	Second Defendant.
	And	
	The Attorney-General	Third Defendant.

Hearing 7 March 2025
Judgment: 27 May 2025

Counsel:
- B. Pitry for the Applicants/ First and Third Defendants;
- G. Suri for the Second Defendants (in support of the Application for Strike Out);
- P. Afeau for the Respondent/ Claimant

Palmer CJ:

1. This is an application by the Attorney-General, representing the First and Third Defendants, filed on the 27 January 2025 to have *inter alia* the Claim of the Respondent/ Claimant filed 18 November 2024 struck out on the following grounds:

   i. that it is frivolous and/ or vexatious;
   ii. it discloses no reasonable cause of action; and
   iii. that it is an abuse of court process.

2. The Application for Strike Out is brought under Rule 9.75 of the Solomon Islands Courts (Civil Procedure) Rules 2007 ("**the CP Rules**"). Rule 9.75 gives power to the Court to dismiss a proceeding on the application of a party, or on its own initiative.

Brief Statement of the Claim.

3. The Claim had been filed as a "Category C-Claim" on 18 November 2024 by the Claimant, Honourable Peter Kenilorea (Jnr.) MP, who was at the time the duly elected Member of Parliament for East A're A're Constituency, Malaita Province, and the current Leader of the Independent Group in Parliament of Solomon Islands pursuant to section 66 of the Constitution.

4. The first Defendant is the duly elected Member of Parliament for East Guadalcanal Constituency, Guadalcanal Province, the Deputy Prime Minister and the Minister[1] responsible *inter alia* for Water Supply.

5. The second Defendant is the Solomon Islands Water Authority (**"SIWA"**) a body corporate constituted under section 5 of the Solomon Islands Water Authority Act (cap. 130), (**"SIWA Act"**).

6. The dispute arises from the decision of the Minister to appoint more than two public officers to the Solomon Islands Water Authority Board (**"SIWA Board"**), when the legislation[2], as construed by the Respondent/ Claimant, submits that it sets a limit of only two public officers to be members of the SIWA Board. In this instance, it is not disputed that at least four of the members of the SIWA Board were public officers.

7. Their appointments were made by Extraordinary Gazette (No. 1347), published on 26 September 2024.

8. The Claim had been filed pursuant to the Rules 15.9.2 and 15.9.3 of the CP Rules, which enables a Claimant to commence civil proceedings in the High Court for the determination of any question of construction arising under any deed or will or *other written instrument*[3].

9. Rule 15.9.3, in particular provides that:

> *"A person claiming* ***any legal or equitable right*** *which depends on the construction of any provision of a written law may apply for the determination of the question of construction and a declaration as to the right by filing a claim."* (Emphasis added).

10. The orders sought include the following:

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[1] Minister for Mines, Energy and Rural Electrification.
[2] See Section 6 of the SIWA Act and the Second Schedule.
[3] Rule 15.9.2 of the CP Rules.

(1) An order declaring the First Defendant acted beyond his powers under paragraph 1 (1) (c) of the Second Schedule to the Solomon Islands Water Authority Act (CAP 130) (the "Act") in appointing more than two public officers to the Board of Directors of Solomon Islands Water Authority (SIWA Board) on the 13 September 2024.

(2) An order declaring that the Extra-Ordinary Gazette (1347) published on 26 September 2024 for the Appointment of Members of the SIWA Board was defective and is null and void.

(3) An order declaring the current Directors of SIWA Board are not lawfully appointed and cannot perform the functions and duties of the Board."

A Brief Statement of the Application for Strike Out.

11. Mr. Pitry, of Counsel for the Applicants, submits that it is a prerequisite under the CP Rules, that the Respondent/ Claimant (**"the Claimant"**) demonstrates that he has a **"legal or equitable right"** under the Solomon Islands Water Authority Act (Cap. 130), (**"the SIWA Act"**) to take up this dispute.

12. He submits that to demonstrate that "he has a legal or equitable right", the Claimant needed to show that he is a person **"affected"** by the decision of the First Applicant (**"the First Defendant"**) and thereby establish that a **"real dispute"** exists between them. In failing to demonstrate this, any declaration sought therefore would have no practical benefit or effect on the issues raised in the claim, is frivolous and vexatious and should be struck out.

13. He submits that accordingly the Claimant **lacks standing** to pursue this claim further and should be dismissed at this stage of the proceedings.

14. He relies on numerous case authorities[4] and other legislation[5] in support of his submissions.

Summary of the Arguments of the Applicant – Strike Out.

15. The arguments put forward by the Applicant is in three parts:

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[4] Afeau v. Judicial and Legal Service Commission and Another [2007] SBCA 19; CASI-CAC 4 of 2007 (9 August 2007); Prime Minister v. Governor-General [1999] SBCA 6; CASI-CAC No. 14 of 1998 (1 September 1999); DJ Graphics Ltd v. Attorney-General [1995] SBHC 99; HCSI-CC 40 of 1995 (12 April 1995); Attorney-General v. Super Entertainment Centre Ltd [1996] SBHC 5; HCSI-CC 31 of 1996 (6 February 1996); Gatu v. Solomon Islands Electricity Authority [1998] SBHC 72; HCSI-CC 59 of 1997 (11 May 1998).

[5] Land and Titles Act – sections 66, 76, 84(5)(a), 139, 209(4), and 226(2); Political Parties Integrity Act 2014 – section 68.

(i) lack of *locus standi*,

(ii) misplaced reliance on Public Interest, and

(iii) Court's discretion on granting Declaratory Reliefs.

1. Lack of Locus Standi.

16. The Applicant submits that the Claimant lacks the legal right (**standing**) to file his Claim under Rule 15.9.3 of the CP Rules. He argues that it is a prerequisite under the said rule to demonstrate that he has a *legal or equitable right*, which depends on the construction of any provision of a written law, which will entitle him to file a suit under that rule.

17. He says that with regards to the SIWA Act, he has failed to identify any provision granting him a legal right that could trigger reliance on Rule 15.9.3. In this case there is none.

18. Mr. Pitry also submits that the Claimant has not demonstrated **any equitable interest** in the appointments made by the first Defendant on 13 September 2024. He submits that demonstrating there is an equitable interest is a prerequisite to relying on Rule 15.9.3 of the CP Rules.

19. He cited the case authorities in *DJ Graphics Ltd v. Attorney-General*[6] and the case of *Gouriet v. Union of Post Office Workers*[7] in support of his submissions, where the High Court had concluded that the issue of standing can be considered in the light of demonstration on the part of a Claimant that he has "**sufficient interest**" over the issue in dispute. He cites the statement of Lord Diplock in *Gouriet* (ibid) in which his Lordship said:

> "But the jurisdiction of the court is not to declare the law generally or to give advisory opinions; it is confined to **declaring contested legal rights, subsisting or future, of the parties represented** in the litigation before it and not those of anyone else." (Emphasis added).

20. In this case, Mr. Pitry submits that **no contested legal rights** is shown and being litigated, and so there is no basis for the claim.

21. He also argued that an example of a legal right arising under Rule 15.9.3 of the CP Rules is section 83 of the Constitution, which expressly provides for a declaratory relief for any person alleging that any provision of the Constitution (other than

[6] [1995] SBHC 99; HCSI-CC 40 of 1995 (12 April 1995)
[7] [1977] UKHL 5; [1978] AC 435 at 501, quoted in DJ Graphics Ltd (ibid) and applied.

Chapter II) **had been contravened** and the need to show that **his interests are being or likely to be affected** by such contraventions. He contrasts that with this case where it has not been demonstrated that there is any legal or equitable right arising from the SIWA Act.

2. Misplaced Reliance on Public Interest.

22. Under this ground, the Applicant submits that the reliance of the Claimant on public interest by virtue of his positions as a Member of Parliament and Leader of the Official Independent Group as demonstrating that he has a **legal interest** for coming to court are misplaced in law.

23. Mr. Pitry submits that the guardian of the public interest in Solomon Islands is bestowed on the Attorney-General upon his appointment under the Constitution and not anyone else. He cited the case of *Afeau v. Judicial Legal Service Commission and Another*[8] in support of his argument, citing the dissenting judgment of Adams JA, in which he made reference to the public interest duties of the Attorney-General.

24. He submits that the Attorney-General alone is the guardian of the public interest and only he has the authority to litigate matters of public interest.

25. In contrast he submits that the Claimant is not a public officer (section 145 of the Constitution). The case authority of *Attorney-General v. Super Entertainment Centre Ltd*[9], also supports the argument that only the Attorney-General can intervene in public interest matters. Therefore, he submits that the Claimant's reliance on the public interest in his capacity as an Official Leader of the Independent Group and as a Member of Parliament is misplaced in law and an abuse of the Court process.

Seeking Fiat from the Attorney-General.

26. Additional to his arguments on the public interest, Mr. Pitry submits that in this case the Claimant should have obtained the *fiat* (formal permission) from the Attorney-General before filing his claim. He cites the case authority of *Gatu v. Solomon Islands Electricity Authority*[10], in which the court referred with approval to the English case of *Hampshire CC v. Shonleigh Nominees Ltd*[11], indicating that the summons should be struck out unless the Attorney-General was prepared to give his *fiat* to the plaintiff to bring an action in the public interest. His failure to do so not only affects his standing but is also an abuse of process.

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[8] [2007] SBCA 19; CASI-CAC 4 of 2007 (9 August 2007).
[9] [1996] SBHC 5; HCSI-CC 31 of 1996 (6 February 1996
[10] [1998] SBHC 72; HCSI-CC 59 of 1997 (11 May 1998)
[11] [1970] 1 WLR 865

3. Court's Discretion in Granting Declaratory Reliefs

27. Under this third ground, the Applicant submits there are limitations in granting declaratory reliefs. He submits that the Court of Appeal in *Prime Minister v. Governor-General*[12] had adopted the approach taken in *Ainsworth v. Criminal Justice Commission*[13], that "*the person seeking relief* ***must have a real interest***". He submits that the Claimant is someone who is not affected by the decision of the First Defendant regarding the appointments of Board Members on 13 September 2024. There is ***no real or direct interest*** as between the parties in this case.

28. He submits the Claimant has failed to plead sufficient particulars regarding how any **right, duty or capacity** as a Member of Parliament and Leader of the Official Independent have been affected in anyway by the respective appointments of the 13 September 2024. Rather his concern is more on the **correct statutory interpretation** of paragraph 1(1)(c) of the Second Schedule to the SIWA Act. His complaint did not stem from **any personal harm or professional harm** which are a prerequisite to accessing declaratory relief under the CP Rules.

29. He further submits that if the claim is allowed to proceed, any person could challenge the Board appointments, leading to a floodgate of litigation to be lodged, which should not be allowed.

30. Finally, he submits that even if the Claimant may have an equitable right (which is denied), this is still subject to the limited discretionary power of the court to grant declaratory relief. In the particular circumstances of this case, where the Claimant has not shown that he has **any real interest or dispute** between the parties, his claim should be struck out from the outset as being frivolous or vexatious and an abuse of the Court's process.

A Brief Summary of the Second Defendant's Submissions.

31. The submission of the Second Defendant is filed in support of the First and Third Defendants' Application for Strike Out of the Claimant's Claim. The Second Defendant contends that the Claimant's action should be struck out also on similar grounds:

    i. The Claimant lacks legal standing (*locus standi*); and

    ii. The Claimant has misinterpreted the relevant provisions of the Solomon Islands Water Authority Act (Cap. 130) ("**SIWA Act**").

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[12] [1999] SBCA 6; CAC No 14 of 1998 (1 September 1999)
[13] [1992] HCA 10; (1992) 175 CLR 564

32. The Second Defendant argues that the Claimant does not meet the legal requirements for standing in statutory claims and that his claim is legally unsustainable under Rule 9.75 (a)–(c) of the CP Rules. Note Rule 9.75 gives the Court power to dismiss a claim generally if it is satisfied that the Claim is:

    (a) frivolous or vexatious; or

    (b) no reasonable cause of action is disclosed; or

    (c) the proceedings are an abuse of the process of the court.

33. In particular he supports the submission of the Applicant that a claim lodged under rules 15.9.2 and 15.9.3 of the CP Rules, need to demonstrate **some legal and or equitable right**s provided under the SIWA Act.

Lack of Legal Standing (Locus Standi).

34. Learned Counsel, Mr. Suri makes three main submissions under this ground. He says the Claimant has failed to demonstrate any **direct legal interest or personal harm or injury,** as a result of the actions by the first Defendant's appointments of Board members under the SIWA Act. He relies in support on the English case authority of *Sidebotham, Ex parte; In re Sidebotham [1880] UK Law Rp Cha 148; (1880) 14 ChD 458 (14 May 1880)*, which states that **in order to prove standing**, the Claimant must show he is a "**person aggrieved**" by the decision, and demonstrate that **his legal or equitable rights had been affected**, (which is denied).

35. Learned Counsel argues that in statutory claims a higher threshold of standing should be applied than in constitutional actions[14], being that the Claimant should show that he has a "**direct legal interest or personal stake**" in the dispute. It is not enough to show a **general grievance or concern** for the public interest. A mere technical challenge to statutory provision does not suffice, if the Claimant does not show how his **personal rights or interest** are affected.

Misinterpretation of the SIWA Act.

36. Under this ground, Mr. Suri submits that the Claimant's view or interpretation of the provisions of the SIWA Act as it relates to the appointment and composition of the Board members[15] **is misplaced.** He submits that the phrase *"five members appointed by the Minister of whom two shall be public officers"*, should be construed to set a **minimum threshold or allowance** for other public officers apart from the Permanent Secretary of the relevant Ministry to participate in the Board.

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[14] The issue of standing in *Kenilorea v. Attorney-General [1983] SILR 61*, distinguished.
[15] Section 6(2) of the SIWA Act as read with Paragraph 1(1)(c) of the Second Schedule

37. He submits that if the literal and plain meaning approach is given, the phrase "**two shall be public officers**" is merely to set **a minimum requirement, not a cap** on the number of public officers that may be appointed. He submits that this phrase supports the view that the Minister **has the discretion to appoint more than two public officers**, as there is no explicit limitation.

38. Further, he submits that the purposive approach enables the court to consider the purpose or object of the legislation to ensure that it is construed in a way that aligns with the legislative intent.

39. Such provisions ensures diversity and competence in the composition of the Board and reflects an overarching intent to maintain functionality and securing government perspective in the Board.

40. A purposive approach further reinforces the argument that the legislature intended flexibility in Board appointments to ensure effective governance.

41. In conclusion, learned Counsel submits that the Claimant lacks standing to bring this claim as he has not demonstrated **any direct legal interest or harm**. Secondly, the claim is founded on an **incorrect interpretation** of the SIWA Act. Thirdly, the Second Defendant supports the strike out application arguing that the claim is legally unsustainable and should be dismissed.

Key Issues & Arguments of the Respondent / Claimant.

42. **Legality of the First Defendant's Appointment of SIWA Board Members.** The ultimate issue raised by the Claimant is the legality of the First Defendant's appointment of SIWA Board Members. He asserts that the First Defendant exceeded his powers under paragraph 1(1)(c) of the Second Schedule to the **Solomon Islands Water Authority Act (CAP 130)** by appointing more than two public officers to the SIWA Board on 13 September 2024.

43. He submits that the SIWA Act limits the number of public officers on the SIWA Board, and the First Defendant's action violated this restriction. Accordingly, he seeks a declaratory relief that the appointments are unlawful.

44. He seeks consequential orders in turn to upend the validity of the Extra-Ordinary Gazette (1347) published on 26 September 2024, which formalized the appointments, arguing that it was defective and invalid.

45. He submits that since the appointment process was unlawful, the Gazette publication confirming those appointments is subsequently null and void.

46. Other consequential orders or relief sought are that the current SIWA Board members are not lawfully appointed and therefore cannot perform their duties.

47. One of the arguments raised by Mr. Afeau of Counsel for the Claimant, is the perceived Minister's inconsistency in defending his actions. While on one hand he had initially challenged the Claimant to seek a court ruling, but once a claim had been filed, sought later to have it struck out. He submits that this contradiction suggests a reluctance to justify the appointments before the court and undermines accountability and transparency.

Issues for determination by the Court.

48. **Issue of locus standi.** The issue of *locus standi* is not new, it is a threshold question that is usually raised at the outset before the substantive issues can be determined. If successful, the matter usually goes on for further directions and consideration. If not, then the matter is disposed of there and then.

49. Without having to be repetitive in reciting the arguments for and against the issue of locus standi in this case, the first point to note is that, while there seems to be a specific requirement imposed on locus standi under section 83 of the Constitution, there does not appear to be any valid judicial policy reason to impose the same limitation involving other Acts of Parliament, Rules, and Regulations, including Declaratory Proceedings under Rules 15.9.2 and 15.9.3.

50. The traditional restrictive arguments, such as the fear of opening floodgates for frivolous claims, are no longer justified. **Courts retain discretion** to determine standing on a case-by-case basis, ensuring that **only genuine claims** proceed.

51. Furthermore, the Attorney-General's inability to exercise his common law right to protect the public interest strengthens the need for an expanded application of the liberal test.

Judicial Support for a Liberal Approach

52. The leading case authority on ***locus standi*** in this jurisdiction is the case of *Kenilorea v. Attorney-General*[16], in which his Lordship, Chief Justice Daly in a comprehensive, erudite and carefully researched judgment, set out his observations on the issue of ***locus*** under the common law and the approach then.

53. The Applicant in that case, Sir Peter Kenilorea (Snr.) had sought relief under section 83 of the Constitution for breaches of the provisions of the Constitution as it related to the composition of the Committee on the Prerogative of Mercy established under

[16] [1983] SBHC 30; [1983] SILR 61 (11 April 1983)

section 45 of the Constitution, which normally tenders advice to the Governor-General, on who is entitled to be granted a pardon under section 45(2) of the Constitution. In this particular instance, the Applicant who was at the concerned time the Leader of the Opposition applied under section 83 of the Constitution for a declaration, that the provisions of the Constitution had been contravened and the acts of the Governor-General acting in accordance with the advice of the meeting, were null and void.

54. The Issue therefore before the Court was "*Whether Sir Peter Kenilorea, as Opposition Leader, had standing under section 83 of the Constitution to challenge the composition of the Committee on the Prerogative of Mercy*". In that case, the Applicant was asserting *locus standi* as:

    (a) a citizen of Solomon Islands;
    (b) a Member of the National Parliament; and
    (c) the Leader of the Official Opposition.

    He did concede however, that though he had **no personal financial or proprietary interest** but maintains that **he has standing even as a mere citizen**.

55. The Attorney-General also conceded standing in his capacity as Opposition Leader, affirming the role of such officials in upholding constitutional norms. However, he denies that an ordinary citizen has sufficient interest under Section 83.

56. In his carefully written judgment, his Lordship, Chief Justice Daly, cited with approval the view of the court in the Nigerian case of *Gamiobo v. Esezi II (1961) All N.L.R. 584*, where locus standi was not raised by the Plaintiff nor challenged by the Defendant, and stated as follows:

    "*...it will be enough to say here that since validity of a law is a matter of concern to the public at large* ***the Court had a duty to form its own judgment as to the plaintiff's locus standi,*** *and should not assume it merely because the defendant admits it or does not dispute it*."

57. In other words, where this issue is raised in relation to the **status of a Claimant as a citizen**, the **court has a duty to assess locus standi**. Courts **must independently assess standing**, even if it is not disputed by the parties. The decision of the Court should align with constitutional importance and not simply be based on party agreement.

58. The Court held that though the Applicant lacked a *personal financial interest*, he had **a public interest as a citizen and Opposition Leader**.

59. The court will exercise jurisdiction only if it is satisfied that the applicant's interests meet this criterion (Section 83(2)), that is, "***are being or likely to be affected***". In other words, the applicant must establish that there has been a contravention of the Constitution in the circumstances of that case.

Comparative Jurisprudence on Restrictive vs. Liberal Approaches

60. I will touch briefly on the approaches herewith as succinctly highlighted by Daly CJ in his judgment in *Kenilorea v. Attorney-General.*

61. On the issue of the Restrictive Approach, in his analysis, he noted that in many cases the conflict has been between an argument in favour of a **restrictive grant of locus standi** to those with **a personal interest** in the outcome of the case as against a **wider grant the public interest**.

62. He noted that in a case in St Lucida, this restrictive approach was followed in the case of *Gordon v. Minister of Finance*[17], which required **a pecuniary, proprietary, or directly personal interest**. The learned judge compared the arguments of the Applicant in which he had submitted that **the moral concept or duty or mere thought or expectation of having to pay money** will not suffice as amounting to a "**relevant interest**".

63. Other common law jurisdictions like England and Nigeria traditionally limited standing to those with a **personal legal interest or detriment**, see, *Gouriet v. Union of Post Office Workers (1977)*[18] and in *Usman Mohammed v. A.G. of Kaduna State and Another (No. 2)*[19] the Kaduna High Court[20] held that "**sufficient interest**" means "an interest which is **peculiar to the plaintiff** and **not an interest** which he shares **in common with general members of the public**".

64. In Australia, standing requires "**special damage for adverse detriment**" to be shown by persons making the application, see *Australia Conservation Foundation Inc. v. The Commonwealth of Australia and Other*[21](1979)), which takes the restrictive approach.

65. In contrast, **the Liberal Approach,** can be summarized as follows. In the English case of *R. v. I.R.C. Exp. Federation of Self Employed (1980) 2 W.L.R. 579* ("**the Federation of Self-Employed Case**"), the words "sufficient interest" were considered by the English Court of Appeal who held as follows:

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[17] (1968) 12 WLR 416
[18] (1977) UKHL 5; (1977) 3 All ER 70
[19] (1980) 1 Plateau Law Reports 70
[20] Per comments by
[21] (1979) 54 ALJR 176.

> "... have these self-employed and small shopkeepers, ... a "sufficient interest" to complain of this amnesty? Have they a **genuine grievance**? Are they **genuinely concerned**? Or are they mere busy bodies? This matter is to be decided objectively." (ibid at page 586, 587).

66. The Court of Appeal (per Lord Denning M.R), contrasts this with a person who is **genuinely concerned**, who can point objectively to something that has gone wrong and should be put right.

67. Ackner LJ[22], expounded further on this by equating a "**genuine grievance**" with that of "**reasonableness**", that it also has to be a "**reasonable grievance**".

68. In Canada, (citing the case of *Thorston v. Attorney-General of Canada (No. 2))*[23], and Papua New Guinea, (*Supreme Court Reference No. 4 of 1980*), the liberal approach was endorsed as:

    - Emphasizes public interest, constitutional integrity, and genuine grievances;
    - Recognizes that constitutional compliance is a shared public duty; and
    - Encourages access to justice for holding authorities accountable.

69. In Canada, the Court allowed a **broad standing** for constitutional challenges. In Papua New Guinea, the Court adopted a **flexible rule** allowing the Leader of the Opposition and ordinary citizens to challenge constitutional breaches.

Judicial Support for Liberal Standing in Solomon Islands

70. In the Solomon Islands context, this issue has also undergone careful scrutiny and commentary. In the case of *Ziru v Attorney-General [1993] SBHC 13*, Muria ACJ (as he then was), considered the **issue of *locus standi*** under Order 61 Rule 4(2) and reviewed restrictive and liberal approaches. He emphasized the trend towards a liberal approach, citing *Federation of Self-Employed and Small Businesses* (ibid) and *Kenilorea v Attorney General* (ibid). He concluded that the test of locus standi in Section 83 **should apply beyond constitutional cases** because the Constitution is the supreme law.

71. He interpreted the phrase "**persons directly affected" broadly**, concluding that an applicant need not be a party to the original decision **but must be an aggrieved person with sufficient interest**. He highlighted the importance of **access to justice**

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[22] At pages 596 and 597.
[23] (1974) 43 DLR 3d 1,

in holding public bodies accountable while ensuring that courts reject frivolous claims.

72. In the case of *Kongungaloso Timber Co Ltd v Attorney General*, (ibid), Muria CJ also reaffirmed the importance of the liberal approach to locus standi, particularly in cases where governmental decisions have widespread implications. He referred to UK, Australian, and Canadian jurisprudence favoring a broader standing test.

73. That case demonstrated that non-constitutional matters also warrant a liberal interpretation of standing to ensure fairness and legal compliance.

74. It is pertinent to note that the issues of Locus Standi and Declaratory Proceedings raised under Order 58 of the former rules, which allows individuals with legal or equitable rights to seek declarations, mirrors the current Rules 15.9.2 and 15.9.3.

75. The test of sufficient interest aligns with the liberal approach applied in constitutional cases.

76. The case law indicates a growing acceptance of broad standing, ensuring that legal questions with significant public impact are addressed.

77. In conclusion, on this particular issue, the judicial trend supports a liberal test for locus standi across different legal areas, ensuring that public authorities act lawfully while preventing abuse of judicial processes. The courts' discretion acts as a safeguard against frivolous claims, making the restrictive approach unnecessary.

78. This shift promotes rule of law and public participation in governance while safeguarding against abuse of the legal process.

The Decision of the Court.

79. This now brings me to address the two crucial issues for determination in this case:

    (1) Whether the Claimant has *locus standi* to bring this claim; and

    (2) What is the correct interpretation and application of the SIWA Act.

80. I will now deal with these two issues as they relate to the issues and questions raised in this Application for Strike Out.

81. First on the issue of **locus standi** and the matters discussed in detail, citing relevant and applicable case authorities that have adequately sought to address this issue in comparative depth and insight, **it is plain and obvious** to me that there is hardly any **real issue** of any "**personal interest**", or "**financial interest**".

82. I am not satisfied it has been satisfactorily established by the Respondent/ Claimant, that he has a "**sufficient interest**" *as per any* "**genuine grievance**", or sufficiently demonstrated the existence of any "**real dispute**" between him and the others.

83. I am unable to find the existence of "**any real contested legal rights"** subsisting between the parties (Claimant and Defendants) in this case, or the existence of any "**direct legal interest**", between them. I am unable to find that the Respondent/ Claimant in this case has demonstrated that he has **incurred any harm or detriment**, or experienced any "**adverse impact**" as a consequence of such appointments and composition of membership in the SIWA Board as per the decision of the First Applicant / Defendant in this case.

84. It is my respectful view, after carefully considering all the submissions raised and put forward on the issue of **standing**, including the pleadings and relevant statutory provisions, and noting in particular, that this issue has not been forcefully pressed or contested, my determination on this question must go in favour of the Applicants and the Second Defendants.

85. As had been alluded to earlier in this judgment, the Respondent/ Claimant had relied extensively on the issue of standing to challenge what he considered was an error in law committed by the Minister in making the appointments.

86. In other words, his argument is premised on the grounds that he had amply shown that he has "sufficient interest" or a "vested legal interest" to set the records straight in his capacity as a Member of Parliament and in particular as the Leader of the Independent Group in Parliament, **to challenge the appointments**. He says that since the issue of the ***validity of a law is a matter of concern to the public at large, the Court had a duty to form its own judgment*** as to the issue of locus standi in this case. He says this should raise **his level of "concern, interest" beyond** that of a mere busy body.

87. It is on this basis therefore that the **second issue,** on the correct **construction (interpretation and application) of the SIWA Act**, is directly relevant and goes to the *heart or root* of not only this application for strike out, but also the Claim itself as filed.

88. The Respondent's claim in essence is that the Appointments were erroneous in law and that this Court ought to allow the matter to go to a hearing so that this error can be rectified.

89. I will therefore spend a little time on addressing this issue.

90. In doing so I am cognisant of the fact that it may be argued that this question should be left for the substantive hearing so that both parties can be given an opportunity to be heard in full. However, as pointed out in this judgment, from the submissions of both the Applicant and the Second Defendants, they have raised this issue as a direct consequence to the question of *locus* and arguing that even if *locus* is found, in any event, this Court should refuse to grant declaratory relief on the basis that **there is no grounds** on which to have this matter determined, as the law is clear and not ambiguous.

91. They submit that if the argument of the Respondent is granted, this will have the effect of reading words into the Act which is not permitted, bearing in mind that it is the Legislature that makes law and not the court. The Court merely interprets the law as enacted and applies it to the context and circumstances of each case as they exist.

MISINTERPRETATION OF THE SIWA ACT.

92. Has the Claimant misinterpreted the relevant provisions of the Solomon Islands Water Authority Act (Cap. 130) ("**SIWA Act**")?

93. It is pertinent in the circumstances of this case to note the submissions of Mr. Suri regarding the Second Defendant's position.

94. In his submissions challenging the Legal Standing of the Claimant, Mr. Suri submits that while the Claimant seeks to challenge ministerial appointments under the SIWA Act, **he has not demonstrated *any direct legal or personal harm*.**

95. He submits, and in my view correctly, that the Claim of the Claimant is primarily based on a **technical statutory interpretation,** rather than **a substantive personal grievance.**

96. He submits that since the matter/ claim **concerns a statutory claim,** not a constitutional issue, the Claimant **does not meet the threshold for standing**[24].

97. In other words, in order to succeed under that rule, (15.9.3), the Claimant must show that there is a **triable issue** before the Court regarding **an error in the actions of the Minister** per the statutory provisions relating to questions of appointment of Members of the SIWA Board under the SIWA Act. He submits that the Claimant has failed to do that and his view of the provisions of the SIWA Act **is misplaced.**

1. Interpretation of the SIWA Act.

[24] See earlier comments in paragraphs 34 and 35 of this judgment.

98. I agree with the submission of Mr. Suri on this point, that the Claimant has incorrectly asserted that the SIWA Act (section 6(2)), **limits the Minister** to appointing **only two public officers** to the Board. It is important to note the wordings of the relevant provision (paragraph 1(1)(c) of the Second Schedule), which states:

> *"Five members appointed by the Minister, **of whom two** shall be public officers."* (Emphasis added).

99. This language does not impose a maximum limit or cap of two public officers. The words "**shall be**" rather set **a minimum requirement**, not a restriction.

100. The crucial submission of the Claimant is that, **this provision restricts the Minister to appointing only two public officers**.

101. However, as Mr. Suri rightly submits, the language used, "**of whom two shall be public officers**" is mandatory in so far as it sets a **minimum requirement**, but **not a maximum limit or cap.** There is no textual indication that the provision intends to limit the Minister's discretion to only two public officers.

102. This is supported by the established principles of statutory interpretation. In *In re Application by the Minister for Western Provincial Affairs* [1983] SILR 141, Daly CJ affirmed that where the statutory language is plain and unambiguous, it must be given its natural and ordinary meaning, unless doing so leads to absurdity or inconsistency with legislative intent. This is known as the **literal rule of interpretation**. Applying that rule here, the phrase *"two shall be public officers"* **sets a minimum, not a cap.** To that extent, I concur with learned Counsel on this construction. To place a limit on that phrase would be tantamount to making law, which is the role of Parliament and not the Court.

103. Moreover, Mr. Suri has pointed to comparative statutory formulations in other legislation which do contain express limitations. For example:

i. The Electricity Act [Cap. 128], section 4(1)(b) states: "**not less than four members (not more than two of whom shall be public officers)**" – expressly imposes a maximum or a cap of two.

ii. The Solomon Islands National Provident Fund Act [Cap. 109], section 3(1)(d) states: "**not more than two other persons...**" – again sets an express upper limit.

iii. The Central Bank of Solomon Islands Act [Cap. 49], section 7(1)(d) which states: "**not less than three and not more than six...**" – sets a clearly defined range.

iv. The Home Finance Corporation Act [Cap. 140], Second Schedule, para. 1 provides: "**not more than eight members**..." – again sets a hard upper limit.

104. It is important to note that no such limiting language appears in the SIWA Act. This deliberate legislative choice must be presumed to be intentional.

105. While this drafting style is somewhat unusual and may be criticized as lacking in clarity, not making the position clear one way or the other, such as, if the words "**not more than**" or "**at least two (2) of whom**" are used. In any event as drafted, there is no restriction or limit on how many in total out of 5 are public officers.

2. Purposive Interpretation and Legislative Intent

106. Even if the statutory language were ambiguous—which it is not—the Court would also be guided by the **purposive approach** to interpretation. This approach allows the Court to look to the overall purpose or objective of the legislation in order to give effect to the legislature's intent.

107. The purposive approach raises a presumption that the enactment is to be given a purposive construction. In other words, Parliament is presumed to intend that in construing an Act the Court, by advancing the remedy which is indicated by the words of the Act for the mischief being dealt, and the implications arising from those words, should aim to further every aspect of the legislative purpose[25].

108. So what is the purpose of the legislation on this issue? In his submissions on this issue, learned Counsel, Mr Suri again points out that the purpose of the SIWA Act is to ensure competent, representative, and functional governance of the Solomon Islands Water Authority. Requiring that at least two members be public officers ensures the inclusion of government perspectives, **but does not preclude the Minister** from appointing additional public officers where this enhances the Board's functionality.

109. The absence of restrictive terms such as "**not more than**" or "**only two**" or "**at least two of whom**", confirms that the legislature intended flexibility in appointments. To interpret the Act otherwise would unnecessarily constrain the Minister's discretion and undermine the effective administration of the Authority.

110. I am satisfied that this purposive construction is consistent with the guidance in *In re Application by the Minister for Western Provincial Affairs*[26] and with accepted principles of statutory interpretation.

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[25] See Francis Bennion Statutory Interpretation (3rd Edition), page 731.
[26] [1983] SILR 141, per Daly CJ.

111. I concur with the submissions of learned Counsel, that the claim is based on a **fundamental misreading** of the SIWA Act. The declaratory relief sought, premised on an incorrect legal interpretation, is inappropriate and unsustainable. The proceedings therefore disclose no reasonable cause of action and are liable to be struck out.

112. In the exercise of the Court's discretion under Rule 9.75 of the Civil Procedure Rules, and having regard to the overriding objective, the application for strike out is accordingly granted.

Orders of the Court:

1. **Grant the Application for Strike Out of the Claim of the Respondent, by the Applicants and the Second Defendants.**

2. **Dismiss the Application and Claim of the Respondent/ Claimant filed 18 November 2024.**

3. **Grant costs of the Applicants / First and Third Defendants and the Second Defendants, to be paid by the Respondent/ Claimant, to be taxed if not agreed.**

SIR ALBERT R. PALMER CBE

The Court.