THE EASTERN CARIBBEAN SUPREME COURT
IN THE COURT OF APPEAL

SAINT CHRISTOPHER AND NEVIS

SKBHCVAP2024/0002

BETWEEN:

[1] HERITAGE PLANTATION CONDOMINIUMS LTD.
[2] HERITAGE PLANTATION INC.
[3] MERVIN GRANT

Appellants

and

DOCHE AND DOCHE INC

Respondent

Before:

The Hon. Mde. Vicki Ann Ellis	Justice of Appeal
The Hon. Mde. Esco Henry	Justice of Appeal
The Hon. Mr. Gerard St. C. Farara	Justice of Appeal [Ag.]

Appearances:

Dr. Henry L.O.S. Browne KC for the Appellants
No appearance for the respondent

2025: December 11;
2026: September 23.

Civil Appeal – Fixed Date Claim – Summary Trial – Companies – Rectification of register of members and Companies register – Eastern Caribbean Supreme Court Civil Procedure Rules (Revised Edition) 2023 ('CPR') 27.2(4) (CPR) – Duty to give reasons – Judicial notice – Issue estoppel – Res judicata – Effect of earlier appellate judgments – Companies Act sections 42 and 47 – Evidence Act section 128 – Whether court may take judicial notice of prior rulings in same proceedings – Whether summary trial procedure properly employed – Whether entitlement to shareholding previously determined – Whether outstanding disclosure applications precluded relief

Doche and Doche Inc. ("Doche and Doche" or "the respondent") commenced proceedings against Heritage Plantation Condominiums Ltd. ("HPC" or "the first appellant"), Heritage

Plantation Inc. ("HPI" or "the second appellant") and Mr Mervin Grant ("the third appellant") by a Fixed Date Claim Form, superseded by an Amended Fixed Date Claim Form filed on 12th May 2021. The respondent pleaded that earlier findings of Ventose J in Consolidated Civil Claims No. 186 of 2018 and No. 343 of 2017, as subsequently addressed by this Court in Civil Appeal SKBHCVAP2020/006 **Mervin Grant and Heritage Plantation Inc. v Heritage Plantation Condominiums Ltd. and Doche and Doche** (the "Webster JA judgment"), placed beyond dispute that it was the legal, albeit unregistered, holder of 90% of the shares in HPC, and that HPI was entitled to the remaining 10%. It sought declarations to that effect together with orders for the issue and allotment of shares and rectification of HPC's register of members and of the Companies Registry, alternatively pursuant to sections 47(1) and (3) of the Companies Act, or sections 23 and 24 of the Eastern Caribbean Supreme Court (Saint Christopher and Nevis) Act ("the Supreme Court Act"), or by specific performance of a 2014 Shareholders' Agreement between the parties. The supporting affidavit of Mr Rafik Doche was filed on 5th December 2023.

The appellants filed a defence on 6th May 2022 denying that any consideration had passed from the respondent for the 90% shareholding and contending that the refusal to order rectification in the Webster JA judgment rendered the matters res judicata. Mr Grant's affidavit in support was filed on 5th December 2023.

Following a ruling delivered on 21st November 2023 directing that the amended claim proceed by way of summary trial under CPR 27.2(4), the learned judge, by Order dated 11th December 2023, declared that the respondent had an existing right to be issued and allotted 90% of the shares of HPC with retrospective effect from 20th November 2014 and that HPI was entitled to the remaining 10%, directed the convening of a general meeting to effect the allotments, and ordered consequential rectification of HPC's records and filings. Prescribed costs of $10,000.00 pursuant to CPR 65.5(2)(d) were awarded against the second and third appellants. The sixth recital of the Order stated that the shareholding issue was "previously determined."

Dissatisfied with the judge's decision, the appellants appealed by notice of appeal filed on 15th January 2024, advancing twelve grounds which raised, in substance, four issues: (1) whether the judge failed to give adequate reasons for her decision; (2) whether the proceedings satisfied the requirements of a summary trial under CPR 27.2(4); (3) whether the judge erred in concluding that the respondent's entitlement to the disputed shareholding had already been conclusively determined and in ordering rectification of the register; and (4) whether outstanding applications for disclosure, leave to appeal and a stay ought to have precluded the grant of relief. A stay of the Order was granted by a single judge of the Court on 23rd April 2024. It was set aside by order of the Full Court dated 23rd July 2025.[1] The respondent filed no notice of opposition and did not otherwise participate in the appeal.

Held: dismissing the appeal, affirming the Order of the learned judge dated 11th December 2023, ~~setting aside the stay granted by a single judge on 23rd April 2024,~~ and ordering that the appellants bear their own costs of the appeal, that:

[1] Reissued on 20th August 2025. This sentence is inserted and consequential amendments are made to the chapeau to the holdings and to paragraphs 14 and 80 of the judgment pursuant to CPR 42.10.

1. A judge's duty to give reasons is fundamental to the administration of justice and to due process; a losing party is entitled to know why it lost and to be able to assess whether the court has misdirected itself and whether an appeal lies. What amounts to adequate reasons depends on the circumstances of the case; a judge need not address every argument advanced but must identify and explain the reasoning on the issues critical to the decision. A failure to give adequate reasons does not automatically invalidate a decision; it affords a free-standing ground of appeal which, if made out, will result either in a retrial or in the appellate court determining the substantive issues itself.

   English v Emery Reimbold & Strick Ltd [2002] EWCA Civ 605 applied; **R v Crown Court at Knightsbridge, ex parte International Sporting Club (London) Ltd** [1982] QB 304 applied; **R v Harrow Crown Court, ex parte Dave** [1994] 1 All ER 315 applied; **Flannery v Halifax Estate Agencies Ltd** [2000] 1 WLR 377 applied; **Breen v Amalgamated Engineering Union** [1971] 1 All ER 1148 applied; **IPOC International Growth Fund Ltd v LV Finance Group Ltd et al**, BVI Civil Appeal Nos. 20 of 2003 & 1 of 2004 (delivered 19th September 2005, unreported) applied; **Amazing Global Technologies Ltd v Prudential Trustee Co Ltd**, SKBHCVAP2008/0008 (delivered 4th May 2009, unreported) applied; **Capital Bank International Ltd v Eastern Caribbean Central Bank and Sir Dwight Venner**, Grenada Civil Appeal Nos. 12 and 14 of 2002 (delivered 10th March 2003, unreported) applied; **Brilla Capital Investment et al v John Greenwood et al**, AXAHCVAP2013/0007 (delivered 24th November 2014, unreported) applied; **SFC Swiss Forfaiting Co v Swiss Forfaiting**, BVIHCMAP2015/0012 (delivered 4th July 2016, unreported) applied; **Emmerson International Corporation v Renova Industries Ltd et al** (unreported, delivered 23rd March 2017) applied.

2. Although concise, the Order did not fail for want of reasons. Read in its proper procedural context, it implemented conclusions the judge had already fully explained in her ruling of 21st November 2023, delivered in the same proceedings between the same parties less than a month earlier. The Order's recital that the shareholding issue had been "previously determined" incorporated that earlier reasoning and showed that the judge treated the respondent's entitlement as no longer live. Where their authenticity is beyond dispute and no unfairness results to the parties, an appellate court may take judicial notice of its own earlier rulings and judgments and those of first-instance courts in the same litigation, notwithstanding that they were not placed in the Record of Appeal. The earlier ruling was not thereby treated as supplying fresh reasons retrospectively, but as demonstrating the existing foundation for the later Order.

   Commonwealth Shipping Representative v Peninsular and Oriental Branch Service [1922] All ER Rep 207 applied; section 128 of the **Evidence Act, Cap. 3.12** (Saint Christopher and Nevis) considered.

3. The judge correctly held that the respondent's entitlement to a 90% shareholding in HPC and HPI's entitlement to the remaining 10% had already been authoritatively determined in earlier proceedings between the same parties. The findings of Ventose J, as interpreted and preserved by this Court in the Webster JA judgment and by Ward J and Price-Findlay JA in subsequent proceedings, established that entitlement, notwithstanding that the earlier rectification orders had been set aside solely for want of jurisdiction, the unfair prejudice claim having failed. The appellants were accordingly estopped from relitigating that entitlement, or the underlying question of consideration or investment, on any basis other than that already determined by the High Court and the Court of Appeal.
Powell et al v Powell, NEVHCV2001/0026 applied; **Belize Bank Ltd v Attorney General of Belize** (1991) 91 WIR 175 applied.

4. The summary trial complied with CPR 27.2(4), which requires that evidence whether oral or by affidavit be adduced before a fixed date claim is disposed of summarily. Once entitlement had been settled by the judge's earlier ruling, the only live issue remaining at the summary trial was rectification of HPC's register, on which the judge properly directed that affidavit evidence be provided, considered the affidavits and heard submissions. Nothing on the record showed that cross-examination had been requested or was necessary, or that the judge otherwise departed from the summary procedure contemplated by the rule.

   Edson Lewis v Hilary Ghansah (as Executrix of the Estate of Ruth Victoria Thomas, deceased) [2022] ECSCJ No. 321 applied; **Travis Augustin v Choc Estates Ltd**, SLUHCVAP2014/0002 considered; **Richard Frederick et al v Comptroller of Customs et al**, SLUHCVAP2008/0037 considered.

5. Rectification of a company's register is an appropriate summary remedy once entitlement to the shares has been established on a balance of probabilities; only where ownership is heavily contested, or the matter raises complex questions of contract law, will the court decline to deal with it summarily. Entitlement having already been authoritatively determined, what remained was the procedural correction of the register to reflect the parties' established legal rights.
Nilon Ltd and another v Royal Westminster Investments SA and others [2015] UKPC 2 applied.

6. The pending applications for specific disclosure, leave to appeal and a stay did not preclude the judge from proceeding with the summary trial or from granting the relief sought; none of them reopened issues already conclusively determined.

7. The interim stay granted pending the appeal fell away on the appeal's dismissal. As the respondent did not participate in the appeal, it was appropriate that the appellants bear their own costs.

JUDGMENT

Introduction

[1] **HENRY JA:** This appeal was filed on 15th January 2024 against the order of the learned judge dated 11th December 2023 ('the Order'). It arises from what is described in the Order as a summary trial of a fixed date claim conducted pursuant to **the Eastern Caribbean Supreme Court Civil Procedure Rules (Revised Edition) 2023** ('CPR') 27.2(4). The claim was brought by Doche and Doche Inc. ('Doche and Doche' or 'the respondent') against Heritage Plantation Condominiums Ltd ('HPC'), Heritage Plantation Inc. ('HPI') and Mervin Grant (collectively 'the appellants').

[2] This appeal raises three principal questions. Firstly, whether the learned judge failed to give adequate reasons for her decision; secondly, whether the proceedings conducted by the judge satisfied the requirements of a summary trial under CPR 27.2(4); and thirdly, whether the appellants are entitled to relitigate issues regarding the respondent's entitlement to certain disputed shareholdings in HPC which were considered in earlier judgments.

[3] The appeal arises against a lengthy procedural and factual background involving several earlier proceedings in both the High Court and this Court. It is necessary to summarise that background to place the issues in their proper context.

Background

[4] The original Fixed Date Claim Form ('FDCF') was superseded by an Amended Fixed Date Claim Form[2] filed by Doche and Doche on 12th May 2021. Doche and Doche

[2] At pgs. 120 – 139 of the Record of Appeal ('RA') filed on 7th June 2024. The original Fixed Date Claim Form was filed on 10th May 2021.

pleaded[3] among other things, that by Order of the High Court in Consolidated Civil Claims numbered 186 of 2018 (between Mr. Grant and HPI as claimants and Doche and Doche as defendant) ('the unfair prejudice claim') and claim numbered 343 of 2017 (between HPI as claimants with HPC and Doche and Doche as defendants)[4] ('the mortgage claim'), Ventose J. made certain critical findings of fact regarding the ownership, controlling and shareholding of HPC [paras. 11, 13, 14, 15, 20, 29, 32, 34]. These findings placed beyond dispute that Doche and Doche is the legal (albeit unregistered) shareholder of 90% of the shares in HPC and is entitled to be issued, allotted and registered as such in the Register of Members and Companies Registry. Doche and Doche asserted further that similarly, 'Ventose J's findings equally entitle HPI to be issued, allotted and registered as the 10% minority shareholder of HPC.'

[5] Doche and Doche claimed that this Court in its judgment in **Civil Appeal SKBHCVAP2020/006 Mervin Grant and HPI v HPC and Doche and Doche**[5],authored by Webster JA ('the Webster JA judgment'), affirmed Ventose J's decision that the claim of unfair prejudice was not made out; that Doche and Doche was the unregistered 90% shareholders of HPC (at paragraph 59); that on HPI's behalf Mr. Grant received substantial payments (of approximately US$739,812.66) on account of HPI's entitlement to 10% profits in HPC (paras. 55 and 66) and thereby determined definitively the shareholding in HPC.' However, it noted that this Court refrained from making rectification orders since its jurisdiction to do so was not triggered.

[6] Doche and Doche pleaded further that there is therefore no factual dispute to be resolved regarding its and HPI's legal ownership and entitlement to 90% and 10% shareholding respectively in HPC. Further, the only outstanding live issue triable summarily in the present case is the procedural or summary step to reflect those respective interests, being the true ownership and shareholding in HPC by an order

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[3] At paragraphs 26 – 36 of the Amended Fixed Date Claim Form. Pgs. 133- 137 of the RA.
[4] Judgment delivered on 27th January 2020. Pgs. 27 - 53 of Hearing Bundle ('HB') 2.
[5] Judgment delivered on 29th April 2021. Pgs. 54-92 of HB 2 filed on 21st November 2025.

for rectification. It was submitted that the Court could make those orders pursuant to section 47(1) and (3) of the **Companies Act**[6] or alternatively under sections 23 and 24 of the **Eastern Caribbean Supreme Court (Saint Christopher and Nevis) Act** ('the **Supreme Court Act**')[7], or by specific performance under the 2014 Shareholder's Agreement and/or the conduct of the parties and the judicial findings of the Court in the unfair prejudice claim. The supporting affidavit of Rafik Doche was filed on 5th December 2023.

[7] The appellants filed a defence on 6th May 2022 in which they denied the claim, contended that there is nothing to show that Doche and Doche provided consideration for the 90% shareholding in HPC, and asserted that aspects of the claim were adjudicated by this Court in the Webster JA judgment (by refusing to order rectification of the registers) rendering those matters *res judicata*. Mervin Grant's affidavit dated 5th December 2023 was filed in support of the defence.

[8] By the Order, the learned judge declared that Doche and Doche has an existing legal right to be issued and allotted 90% of the shareholding in HPC ('the first appellant') and to be registered as a member of HPC with retrospective effect from 20th November 2015 and that HPI ('the second appellant') has an existing legal right to be issued and allotted 10% of the shareholding in HPC and be registered as a member of HPC retrospectively from 20th November 2014.

[9] The judge further ordered HPI (as the registered shareholder of HPC's one common share to hold a general meeting of HPC within seven days of the order or otherwise pass resolutions that a) 90 common shares of US$1.00 each fully paid, be issued and allotted to Doche and Doche with retrospective effect from 20th November 2014, and b) 9 common shares of US$1.00 each fully paid up be issued and allotted to HPI with retrospective effect from 20th November 2014. HPC was directed to cause the relevant acts required by those orders, to be delivered to the Registrar of

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[6] Companies Act, Cap 21.03 (Saint Christopher and Nevis).
[7] Eastern Caribbean Supreme Court (Saint Christopher and Nevis) Act, Cap. 3.11.

Companies within 14 days of the Order. Prescribed costs pursuant to the **CPR** 65.5(2)(d) in the sum of $10,000.00 were awarded against HPI and Mervin Grant ('the third appellant' or 'Mr. Grant').

[10] The sixth recital of the Order states: '[a]nd Upon the issue of the shareholding in Heritage Plantation Condominiums Ltd. being 90% to the Claimant [Doche and Doche] and 10% to Heritage Plantation Inc. being previously determined;'. The judge thereby signified this to be one of the bases on which the orders were made. She added that she had read the affidavit of Rafik Doche filed on 5th December 2023, and the affidavit of Mervin Grant filed on 5th December 2023, and was satisfied on the evidence that the orders sought by the Claimant ought to be granted. Both affidavits clearly informed the court's determination of the claim. Neither Rafik Doche nor Mervin Grant gave oral evidence. The judge determined the matter on affidavit evidence and submissions.

[11] Being dissatisfied with the Order, the appellants by this appeal seek inter alia orders (a) setting aside the 11th December 2023 Order; (b) that Doche and Doche be ordered to produce and deliver the Audited Financial Statements of HPC to HPI/Mervin Grant within 7 days of the court's decision, failing which the Amended Claim filed by Doche and Doche dated 12th May 2021 ought to be struck out.

[12] The appellants set out twelve grounds of appeal. They may be summarised as follows: (a) no proper summary trial was conducted before the orders were made and they were therefore denied due process of the law; (b) the judge erred in law and without evidential basis in holding that Doche and Doche had an existing legal right to be issued and allotted 90% of the shareholding in HPC and to be registered as a member of HPC with effect from 20th November 2014, resulting in a grave injustice to them; (c) the judge misinterpreted the effect of the order of Ventose J in the consolidated claims and this Court's order in the Webster JA judgment; (d) the judge erred by making an order for specific performance without a trial on the merits as to whether Doche and Doche was entitled to the relief claimed; (e) the learned

judge was obliged to give reasons for her decision; she erred by giving no or no adequate reasons for the Orders; by failing to appreciate that the parties and this Court were entitled to know her reasoning and by not being mindful that the failure to give adequate reasons robs this Court of the opportunity to make its own findings of fact, if appropriate and to arrive on conclusions of law based on such factual findings; (f) the judge erred by failing to appreciate that Doche and Doche, on its own evidence, made no capital investment in the Joint Venture Project ('JVP') as required by the 2014 Agreement between them and HPI; and Doche and Doche's failure to deliver the Audited Financial Accounts as directed by this Court (at paragraph [70] of the Webster JA judgment) constitutes a collateral estoppel within the comprehension of section 36 of the **Supreme Court Act** and as a result Doche and Doche is barred for asserting a claim or right to the 90% shareholding in HPC; and further (i) up to 11th December 2023 an outstanding application filed on 8th December 2023 for specific disclosure (of audited HPC's Financial Accounts) remained undetermined; and (ii) on 11th December 2023 the court's attention was directed to the fact that an application had been filed on 8th December 2023 for leave to appeal the Court's decision dated 21st November 2023, to no avail.

Issues

[13] The grounds of appeal raise both procedural and evidentiary issues, namely:

(1) Whether the judge failed to give reasons;

(2) Whether the proceedings on 21st December 2023 satisfied the requirements of CPR 27.2(4);

(3) Whether the judge erred in concluding that Doche and Doche was entitled to a 90% shareholding in HPC and directing the register of members and the Companies register be rectified to reflect same; and

(4) Whether any outstanding applications prevented the court form granting relief to Doche and Doche.

Stay of Further Proceedings

[14] On 17th January 2024 the appellants applied for a stay of the Order and all further proceedings in the matter pending determination of its appeal. The stay was granted on 23rd April 2024 by order of a single judge of the court. It was subsequently set aside by the Full Court.[1]

Non-Participation by the Respondent

[15] The appellants filed their skeleton arguments in support of the appeal on 1st March 2024. Doche and Doche filed none.

[16] Doche and Doche filed no notice of opposition to the appeal. By notice of application filed on 5th December 2025, it sought an adjournment to April 2026 of the hearing of the appeal scheduled for 11th December 2025. The application was considered on 11th December 2025 and refused. The appeal proceeded with no further involvement by Doche and Doche.

Appellants' Submissions

[17] The appellants submitted that Doche and Doche did not plead or otherwise assert that it had given any consideration for the 90% shareholding in HPC while the appellants categorically denied in their defence that any consideration had passed from Doche and Doche for those shares. It reasoned that consideration therefore became a live issue in the claim. They argued that Doche and Doche's avowed entitlement to a 90% shareholding in HPC based either on the 20th November 2014 Agreement between HPI/Mervin Grant and Doche and Doche or on the Webster JA judgment is not sustainable. They asserted that this is fatal to its claim for entitlement and specific performance, consequently the substratum of its assertions falls away as a matter of fact.

[18] It was submitted further that the learned judge made the Order on 11th December 2023 in chambers without conducting a trial and she provided no reasons for the

Order. The appellants contended that either one or both of these irregularities were fatal to the life of the Order.

[19] Regarding the importance of the duty to give reasons, it was submitted that the obligation mandated by **CPR** Part 62, is a function of due process and justice in that fairness requires that the parties, especially the losing party, should be left with no doubt why they won or lost. They argued that the duty is fundamental to the administration of justice; is inextricably bound up with natural justice, the right to be heard is fundamentally important both as a private law and public law principle because reasons enable a losing party to determine on what evidence the Order was made, whether the court has misdirected itself and whether an appeal is available on the substance of the case. They submitted further that the duty to give reasons prevents an aberrant, unreasonable or irrational decision, in particular where a litigant's rights are being negatively affected. They cited in support **R v Knightsbridge Crown Court ex parte International Sporting Club (London) Ltd** [8], **R v Crown Court at Harrow, ex parte Dave**[9], **Wolf, Protection of the Public**[10], **Flannery v Halifax Estate Agencies Ltd**[11] and **Breen v AEY**.[12]

[20] The appellants contended that the parties and the wider public have a legitimate expectation that the dispute in court is decided in accordance with existing rules and principles. Further, it would be expected that the Order which had serious implications for Mr. Grant's life, livelihood and family would be accompanied by an explanation of the court's reasoning process thereby furthering judicial accountability. In addition, Doche and Doche contended that it was wrong that its application for specific disclosure which was applied for in aid of its defence had not yet been disposed of at the date that the Order was made.

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[8] [1982] QB 304
[9] [1994] 1 All E. R. 315.
[10] At pg. 92.
[11] [2000] 1 WLR 337.
[12] [1971] 1 All E.R. 1148.

[21] More fundamentally, the appellants attacked the Order as being one that could not have been legitimately made in light of the underlying legislative framework. It was submitted that the judge could not make an order as to a party's legal title to shares, to transfer shares or for rectification of the company's share register under the **Companies Act**, without first determining that the register of members was inaccurate. It was pointed out that the judge made no such finding. Additionally, it was emphasised that the judge did not take account of the fact that there was no evidence that Doche and Doche gave consideration for the disputed 90% shareholding in HPC. Therefore, the court's jurisdiction to order rectification was not triggered.

[22] From an evidentiary perspective, the appellants argued that no evidence was led that any of the appellants was in breach of contract to procure or issue shares to Doche and Doche. Further, the three elements of a simple contract – offer, acceptance and consideration - were said to be lacking in the present case. Therefore, in the absence of such evidence, Doche and Doche could not be said to be entitled to the 90% shareholding in HPC as pleaded in its claim and this was fatal to the Order. It was submitted that the court could not merely select bits and pieces of information from previous decisions and rely on them in the place of evidence to support findings of fact or opinions in law.

[23] Further, the entitlement to shareholding in HPC could not be determined on the basis of conflicting affidavits and submissions in circumstances where no witnesses testified in the matter. Additionally, the appellants submitted that the judge did not indicate what treatment was accorded to the defence or the affidavit evidence, particularly as regards the lack of consideration. The appellants contended that this was wrong and unreasonable.

[24] As to the non-delivery of the financial accounts, the appellants contended that this was both material and deliberate. They argued that it is difficult to envisage circumstances where it could be proper to exercise the court's discretion in Doche and Doche's favour by granting it 90% of HPC's shares without those accounts

which are in its possession, where there is no documentary evidence of any investment by Doche and Doche, even if the non-delivery was not deliberate.

[25] The appellants invoked sections 22 and 36 of the **Supreme Court Act**, arguing that the Court is enjoined to ensure that as far as possible all relevant matters in dispute among the parties (including the delivery of the audited financial accounts of HPC to HPI and the entitlement of shares in HPC) may be determined completely and finally to avoid the multiplicity of legal proceedings. It was submitted that such finality could not be achieved without the referenced audited financial accounts, because without them Doche and Doche cannot prove that it gave consideration for the 90% shareholding in HPC. They argued that this Court demonstrated its recognition of this by its direction in the Webster JA judgment for those accounts to be 'produced and delivered to HPI, a shareholder of HPC, without further delay.'[13] The appellants submitted that the effect of this direction was to signal to any other court that there can be no fair determination without the accounts. I must interject here that I do not accept that this is the proper reading of the Webster JA judgment.

[26] In any case, the appellants submitted that the audited financial statements are crucial in providing corroborative evidence to support their defence on the consideration point. They reiterated that the learned judge did not explain in the Order how this contention was resolved. Therefore, this Court is unable to conduct any meaningful review of the Order (on this issue). As a result, the lack of reasons is fatal.

[27] As to collateral estoppel, the appellants argued that Doche and Doche's claim to entitlement to 90% shareholding in HPC has not been established. Noting that this Court in the Webster JA judgment opined that it found no documentary evidence of the amounts that Doche and Doche invested in HPC, the appellants contended that this was a finding of fact against which no appeal was brought. It therefore remains

[13] At. para. [70].

undisturbed and based on the doctrine of collateral estoppel cannot be displaced by the Order.

[28] It was submitted that collateral estoppel is closely related to the doctrine of *res judicata* also known as 'claim preclusion' which prevents a party from asserting a claim or cause of action after it is the subject of a final judgment. Further, while *res judicata* deals with questions of law, collateral estoppel applies equally to issues of law or fact. They contended that Doche and Doche is prevented from re-litigating the findings and orders made by this court in the Webster JA judgment. The appellants characterised the setting aside orders of this court in that judgment as the court '[taking] back the 90 shares given to D&D by Ventose J.'. They submitted that there was no appeal against those orders therefore, by virtue of the collateral estoppel doctrine, Doche and Doche cannot seek to relitigate the underlying issues before the judge in another legal action, given the findings of the High Court and this Court's Orders. They argued further that no shares were ever allotted to Doche and Doche because it never paid for any shares.

[29] The appellants contended that this court restored HPI/Mervin Grant as HPC's sole shareholder since it could not in the absence of the audited financial statements properly do anything more. It was submitted that nothing has changed since then to undermine that Order. Therefore, on the question of whether Doche and Doche has invested capital in HPC that created an entitlement to 90% of its shareholding as a matter of fact and law, in the face of this Court's pronouncement that there was no documentary evidence of such investment, the appeal ought to be dismissed.

Discussion

Reasons for Decision

[30] It is settled law that a judicial officer has a duty to give reasons for his decision on matters that are critical to determining the dispute between the litigants. The failure to do so will not automatically invalidate the decision but it may constitute a distinct ground of appeal. This principle is foundational to the administration of the justice

system and has been recited and applied in countless cases to invalidate a decision or order which is not supported by adequate reasons concerning material contentions in the case. In the English case **English v Emery Reimbold & Strick Ltd**[14] the Court of Appeal explained:

> "…the judgment must enable the appellate court to understand why the judge reached his decision. This does not mean that every factor which weighed with the judge in his appraisal of the evidence had to be identified and explained. But the issues the resolution of which were vital to the judge's conclusion should be identified and the manner in which he resolved them explained. It is not possible to provide a template for this process. It need not involve a lengthy judgment. It does require the judge to identify and record those matters which were critical to his decision. If the critical issue was one of fact, it may be enough to say that one witness was preferred to another because the one manifestly had a clear recollection of the material facts or the other gave answers which demonstrated his recollection could not be relied upon."

[31] This duty was examined in the case of **Amazing Global Technologies v Prudential Trustee Co Ltd.**[15] where Gordon JA, citing **Ipoc International Growth Fund Limited v LV Finance Group Limited et al**[16] and adopting the learning in **Flannery v Halifax Estate Agencies Limited**[17] detailed the rationale behind the necessity for a judge to give reasons for his/her decision. At paragraph 8 of **Amazing Global Technologies**, this court framed the learning in **Ipoc** thus:

> "… (i) The first reason for a judge to give reasons for a decision is that the duty is part of due process, and therefore of justice. The rationale of that statement has two principal aspects. Firstly, the parties should be left in no doubt as to why they have lost or won, especially the losing party. Without reasons given, the losing party is in no position to know whether the court has misdirected itself, and thus whether he may have an available appeal. The second is that the giving of reasons concentrates the mind of the judge.
> (ii) The first principal aspect recited above, that the parties be left in no doubt as to why they have lost or won, implies that want of reasons may be a good self-standing ground of appeal. If it is impossible to tell whether the trial judge has gone wrong on the facts or the law, the losing party would be deprived of his chance of appeal unless the appellate court entertains

[14] [2002] EWCA Civ 605 at para.19, per Lord Phillips MR.

[15] SKBHCVAP2008/0008 (delivered 4th May 2009, unreported).

[16] BVI Civil Appeal No. 20 of 2003 and 1 of 2004 (delivered 19th September 2005, unreported).

[17] [2000] 1 W.L.R 377.

an appeal based on the lack of reasons itself. (iii) The extent of the duty to give reasons will depend on the complexity of the matter to be resolved. It may be enough where there is a straightforward dispute as to simple fact after summarizing the evidence for the judge to simply state that one version of the facts is preferred to another. However, where the dispute is more complex, and both sides have canvassed differing analyses of the circumstances, the judge must explain why one side is preferred to the other. The learning expressed in **Flannery** is gratefully adopted in this jurisdiction."

[32] It is important to emphasise that a judge's failure to provide reasons for his or her decision does not, in itself, dictate that an appeal must succeed. In **Capital Bank International Limited v Eastern Caribbean Central Bank and Sir Dwight Venner,**[18] this Court was able to consider and determine the substantive issues on the appeals notwithstanding the absence of reasons from the learned judge.

[33] These authorities demonstrate that the Court of Appeal has two options in circumstances where the trial judge failed to provide reasons. They were outlined in **Brilla Capital Investment et al v John Greenwood et al[19].** At paragraph 15 of the judgment, it was explained:

> "The passages cited above highlight the importance of the judge providing reasons for his or her decision. The amount of detail that should be given will depend on the circumstances of the case and no rigid guidelines or tests should be established. If the judge does not provide reasons, or sufficient reasons, this gives the appellant a free-standing ground of appeal, which if successful, will result in either remitting the case to the trial court for a retrial as in Flannery and Another v Halifax Estate Agencies Ltd. (trading as Colleys Professional Services) or the Court of Appeal dealing with the issue de novo without the benefit of having the trial judge's opinion on the issues as in the Amazing Global Technologies case."

[34] It is equally important to note that it is well-established that a judge is not required to address every argument raised in a matter whether by the claimant or defendant. It suffices if the judgment discloses the reasoning and the factual and legal bases on which the judge made his determination in respect of the vital issues in the

[18] Grenada Civil Appeal Nos. 12 and 14 of 2002 (delivered 10th March 2003, unreported).
[19] AXAHCVAP2013/0007 (delivered 24th November 2014, unreported).

case.[20] In **SFC Swiss Forfaiting Co v Swiss Forfaiting**[21] this Court held that when considering an appeal based on the inadequacy of reasons, the appellate court must review the judgment 'in the context of the material evidence and submissions' to determine whether the reason is apparent and it affords a valid basis for the judgment or order.

[35] These principles are echoed in **R v Knightsbridge Crown Court ex parte International Sporting Club (London) Ltd.**, **R v Crown of Harrow, ex parte**, **Wolf, Protection of the Public**, **Flannery v Halifax Estate Agencies Ltd** and **Breen v AEY**, the authorities relied on by the appellants. They establish that the adequacy of reasons depends on the circumstances of the case. The judgment must explain the path of reasoning but need not address every submission advanced by the parties. I bear them in mind in considering the grounds of appeal that raise the issue of inadequate reasons.

[36] The Order[22] contained nine recitals which may elucidate the judge's reasons for her decision. It is useful to set them out fully. They are as follows:

> "**UPON** the matter coming on for summary trial pursuant to CPR 27.2(4);
> **AND UPON HEARING** Kings Counsel for the Defendants reporting that on December 6, 2023 the Defendants filed an application for leave to appeal and a stay of the decision of this Court dated November 26, 2023;
> **AND UPON HEARING** Counsel for the claimant indicating that an application for stay must be served on the Claimant which has not been done and insisting that the Court ought to proceed with summary trial;
> **AND UPON HEARING** Kings Counsel for the Defendants maintain that the audited accounts should be produced for the determination of this matter and indicating that on December 8, 2023 the Defendants filed an application for specific disclosure;
> **AND UPON** the Court being of the view that the summary trial ought to proceed;
> **AND UPON** the issue of the shareholding in Heritage Plantation Condominiums Ltd. being 90% for the Claimant and 10% to Heritage Plantation Inc. being previously determined;

[20] Emmerson International Corporation v Renova Industries Ltd. et al, (unreported, decision delivered 23rd March 2017, at para. [15] per Thom JA.

[21] BVIHCMAP2015/0012 (delivered 4th July 2016, unreported) at para. [67].

[22] See sealed Order at pgs. 65 – 68 of the RA.

AND UPON reading the affidavit of Rafik Doche filed on December 5, 2023 and the affidavit of Mervin Grant filed on December 5, 2024;
AND UPON HEARING Counsel for the Parties; **AND UPON** the Court being satisfied on the evidence that the orders sought by the Claimant ought to be granted;" (Emphasis added)

[37] The recitals disclose three essential findings. First, the learned judge determined that the summary trial ought to proceed notwithstanding the pending applications for leave to appeal, for a stay of the Court's order dated 26th November 2023 and for specific disclosure of the audited accounts. Second, the judge found that the issue of shareholding had been previously determined. Third, Doche and Doche was found to own 90% of the shareholding in HPC with HPI owning 10%.

[38] The Order reflects that the judge entertained submissions by Counsel for the parties and concluded that, based on the evidence, she was satisfied that the orders sought ought to be granted. Not only was Rafik Doche's Affidavit missing from the Record of Appeal, so too was Mervin Grant's affidavit dated 5th December 2024. Similarly, the submissions that were considered by the learned judge were also not available for consideration on appeal. The only relevant material from which this Court could evaluate the judge's reasons for her decision are the referenced judgments of Ventose J dated 27th January 2020 ('the Ventose J. Judgment') and of the Webster JA judgment, in particular the paragraphs relied on in Doche and Doche's pleaded claim.

[39] A review of paragraphs 11, 13, 14, 15, 20, 29, 32, 34 of the Ventose J. judgment reveals that in the paragraphs preceding paragraph [32] he recounted the parties' respective positions and described the contents of the agreements executed by them in 2010, 2012 and 2014. At paragraph [29] he noted:

> "… The 2014 Agreement provides for the following shareholding in HPC: 90% to D&D and 10% to HPI. This is reflected in the purported unanimous written resolution of the directors of HPC dated 30 September 2014 and in an email from Mr. Grant to V. Doche and R. Doche dated 13 November 2014."

[40] At paragraph [32] Ventose J. stated: '… HPI is and remains the only shareholder of HPC.' He concluded in paragraphs [34] and [35] as follows:

> "[34] The intention of the Parties as evidenced in the 2014 Agreement is that the shareholding in HPC should be 90% to D&D and 10% to HPI. HPI is the current holder of one common share in HPC. HPI must now pass appropriate resolutions to reflect the intention of the parties as evidenced in the 2014 Agreement and as outlined in the now void unanimous written resolution of the directors HPC (sic) dated 30 September 2014.
>
> [35] Having found that HPI is and remains the holder of the only one common share in HPC, its claim for unfair prejudice fails and should be dismissed. As a matter of law, an unfair prejudice claim cannot be brought by a person who has 100% control of a company. This is because they would have the sole power to appoint the directors of the company and therefore control of its management. … However, the case proceeded at trial on the basis that R. Doche and V. Doche controlled in fact the affairs of HPC. The following will proceed on that basis."

[41] In the orders made at paragraph [58](3) to (6) of the judgment he determined that Doche and Doche was the owner of and entitled to 90% of HPC's shareholding. However, this Court set aside those orders at paragraph [78](2) of the Webster JA judgment on the ground that since the unfair prejudice claim had failed the court had no jurisdiction to grant such relief.

[42] Regarding the issue of ownership of the HPC shares, this Court in the Webster JA judgment noted that it was common ground that Mr. Grant is the sole shareholder of record of HPC and that the parties agreed in their 2010 Agreement that the shares of HPC would be split equally between HPI and Doche and Doche – paragraph 31 of the judgment. It continued:

> "That arrangement was varied in the 2014 Agreement to say that D&D would own 90% of the shares and HPI 10%. The shares have not been allotted and issues to reflect any of the positions in the two Agreements. The effect of this is that HPI, on its case, is an unregistered shareholder of 50% of the shares of HPC, and on D&D's case HPI is and unregistered shareholder for 10% of the shares. In either case, HPI is an unregistered minority shareholder of HPC."

[43] Significantly, this Court remarked in the next paragraph that the trial in the lower court proceeded on the basis that Rafik Doche and Victor Doche controlled HPC's affairs and no appeal was lodged against that posture by the judge. The appeal therefore proceeded on the basis that HPI is an unregistered minority shareholder entitled either to 10% or 50% of HPC's shares, which entitled it to apply for relief under section 142 of the **Companies Act**.

[44] The court revisited the issue of ownership of shares at paragraph [59], stating:

> "…The entitlement to shares was changed in the 2014 Agreement when the parties agreed that D&D would own 90% of the shares to D&D (sic) and HPI 10%. However, the shares were not issued to reflect the new shareholding and the records of HPC at the Companies Registry were not updated. I dealt with this issue in paragraph 31 above and **noted that D&D <u>owns either 90% or 50% of the shares of HPC</u>. D&D's entitlement to its shares came about as a result of its financial contribution to and participation in the joint venture project**. Its ownership is reflected in the Agreements. All of which were prepared by Mr. Grant. There is no suggestion that he did not understand what he was agreeing to." (Emphasis added)

[45] Regrettably, the learned judge did not indicate in the Order, which paragraph of which judgment she relied on to conclude that the shareholding in HPC was previously determined. From referenced paragraphs above it was difficult to ascertain categorically. If one considers only the documents in the Record of Appeal and Hearing Bundles this difficulty lends support to the appellants' contention that the judge did not ground the Order in adequate reasons.

[46] However, that is not the end of the matter. Following the hearing on 11th December 2025 the Court became aware of a decision by the learned judge dated 21st November 2023 in which she gave a ruling on an application by Doche and Doche to conduct a summary trial of the Amended Fixed Date Claim Form which is the subject of this appeal. That ruling was delivered in the same proceedings, between the same parties, and determined the respondent's application that the amended

fixed date claim would be disposed of by way of summary trial pursuant to **CPR 27.2(4).** It immediately preceded the summary trial which culminated in the Order under appeal and forms part of the procedural history of these proceedings, notwithstanding that it was not reproduced in the formal Record of Appeal.

[47] In that ruling, the judge addressed contentions that are repeated by the appellants in this appeal that touch and concern the issues in this appeal. The obvious consideration concerns how the Court of its own volition can have regard to the ruling and refer to its own procedural record or earlier proceedings in the same litigation in resolving this appeal, without a) either party bringing the ruling to the court's attention; and/or b) inviting the appellants to address the Court on the import of the ruling to the issues at hand.

[48] Incidentally, it is worth noting that during the hearing of this appeal, learned King's Counsel who appears for the appellants was reminded by the panel of the judgment dated 11th April 2022 authored by Ward J. (as he then was) in High Court claim numbered **SKBHCV2021/0088 Doche & Doche Inc. v. Heritage Plantation Condominiums Ltd, Heritage Plantation Inc and Mervin Grant** and this Court's judgment in the Appeal against that decision, numbered **SKBHCVAP2022/0006** dated 25th November 2022 authored by Price-Findlay JA (as she then was) ('the Price-Findlay JA judgment') both of which were considered by the judge below in her 21st November 2023 ruling.

[49] There can be no doubt that a court may take judicial notice of its own earlier proceedings in related litigation. It is settled law that the court is entitled to take judicial notice of a fact that is sufficiently notorious or of such common knowledge that it requires no proof and may do so without recourse to any extraneous sources of information, and treat it as established, notwithstanding that it has not been

established by evidence.[23] In **Commonwealth Shipping Representative v Peninsular and Oriental Branch Service** the UK House of Lords explained:

> "**Judicial notice** refers to facts, which a judge can be called upon to receive and to act upon, either from his general knowledge of them, or from inquiries to be made by himself for his own information from sources, to which it is proper for him to refer."[24]

[50] In my judgment, the circumstances of this case fall squarely within the foregoing description. Customarily, judicial notice of such matters is facilitated by the presentation or production of the relevant judgment as a part of the Record. The procedure is set out in section 131 of the **Evidence Act**.[25] However, in light of the learning in **Commonwealth Shipping Representative v Peninsular Oriental Branch Service**, it is self-evident that this Court in appropriate cases is entitled to take judicial notice of its own decisions and those of the first instance courts that it considers necessary to give effect to the overriding objective, even if it came by those decisions through its own inquiries from publicly available sources.

[51] Indeed, section 128 effectively codified the summary definition of judicial notice articulated by the House of Lords in **Commonwealth Shipping Representative v Peninsular Oriental Branch Service** by dispensing with proof about matters of common knowledge or information that is capable of verification that may be acquired by the court in any manner it thinks fit, provided that it is not reasonably open to question and no party is unfairly prejudiced by being deprived of an opportunity to make submissions about such matters. Section 128 provides:

> "**Matters of common knowledge, etc**.
> 128.(1) Proof shall not be required about knowledge that is not reasonably open to question and is -
> (a) common knowledge; or
> (b) capable of verification by reference to a document the authority of which cannot reasonably be questioned.

[23] Blackstone's Criminal Practice 2026, para. F1.6. See also Halsbury's Laws of England, Volume 96 (2024) at para. 362.
[24] [1922] ALL E.R. Rep 207 at 219.
[25] Cap. 3.12 of the Laws of Saint Christopher and Nevis.

(2) The court may acquire knowledge of the kind referred to in subsection (1) in any manner that the court thinks fit.

(3) The court, including the jury if any, shall take knowledge of the kind referred to in subsection (1) into account.

(4) The court shall give a party such opportunity to make submissions, and to refer to relevant information, in relation to the acquiring or taking into account of knowledge of the kind referred to in subsection (1) as is necessary to ensure that the party is not unfairly prejudiced."

[52] Section 128 makes clear that the Court is not invariably confined to the formal Record of Appeal and Hearing Bundle where, as in this case, it becomes necessary to understand the procedural context of the order under appeal. A superior court is entitled to examine its own records, and those of the proceedings below, where they from part of the same litigation and their authenticity is beyond dispute.

[53] Applying those principles, I am satisfied that reference by this Court to the 21st November 2023 ruling would not occasion any unfairness to the parties. It cannot be denied that it was delivered in proceedings in which all parties were represented by experienced King's Counsel. No one can dispute its existence, authenticity or contents. Obviously, the Court cannot rely upon it as fresh evidence, nor to determine any factual issue not ventilated before the learned judge. Rather, it may be considered only to understand the legal and procedural foundation of the Order under appeal.

[54] It is clear to me that this Court in the furtherance of the administration of justice is entitled in an appropriate case to refer to one of its decisions or judgment of the court at first instance which is publicly available, if as in this case, it involves the parties in the case under consideration, the parties were represented by competent legal counsel throughout all of the proceedings and if the court is satisfied that no party would be prejudiced thereby.

[55] The 21st December 2023 ruling was known to the parties weeks before the hearing of this appeal and was expressly concerned with the very procedure which the appellants now challenge. The parties to this appeal are all represented by eminent senior counsel and have always been so represented throughout the several layers of proceedings in the High Court and at the appellate level. Undoubtedly, the parties and their respective legal practitioners would have been aware of the referenced judgments, decisions and rulings since they participated in those hearings. Additionally, the ruling formed part of the same proceedings between the same parties; it was publicly available on the court's website and on the court record in the High Court and it was referenced implicitly in the chronology leading to the Order.

[56] In my opinion, none of the parties would be prejudiced if the court considered those decisions, for the simple reason that the subject matter giving rise to the present appeal, the parties, the underlying background and central factual and legal dispute (regarding Doche and Doche's entitlement to shareholding in HPC) remained unchanged and were ventilated in those earlier legal skirmishes and the parties (and their legal practitioners who have remained the same throughout the several proceedings) would be well-acquainted with them. I consider it just that in resolving the issues in the present appeal, the Court must have regard to those decisions and judgments, and I am satisfied that in the circumstances the Court is entitled to take judicial notice of them. I will therefore refer to them in this decision. However, I feel constrained to state the obvious – these judgments ought to have been brought to the court's attention by the appellants and should have formed part of the Record of Appeal. That would have been preferable to omitting them from the Record. Nothing further needs to be said on that score.

[57] The learned judge's ruling dated 21st November 2023 outlined her determination as to whether the court could properly deal with the Amended Fixed Date Claim Form summarily. In answering that question, the judge concluded that it was necessary to determine (a) whether the issue of HPC's entitlement to 90% of the shareholding

in HPI has been settled; (b) whether the court can grant the relief sought by the claimant [Doche and Doche]; (c) whether the defendants [appellants] are estopped from relitigating the issue of HPC's entitlement to 90% of the shareholding in HPC; and (d) whether the procedure for rectification is of a summary nature.

[58] In her comprehensive and succinct ruling, the judge addressed and made substantive findings on a) the function and procedure prescribed for a summary trial under **CPR 27.2(4)**[26]; b) whether the issue of Doche and Doche's entitlement to a 90% shareholding in HPC had been settled[27]; c) whether the court can grant the relief sought;[28] and d) whether the defendants [appellants] are estopped from relitigating the issue of the claimant's [respondent's] 90% shareholding in HPC.

[59] Regarding the issue of Doche and Doche's entitlement to shares in HPC, the learned judge in her 21st November 2023 ruling reviewed the critical findings in Ventose J.'s judgment, Webster JA's judgment, Ward J.'s judgment, Price-Findlay JA's judgment and her earlier judgment dated 15th June 2023. She concluded that the judgments are clear on the issue of the shareholdings. It is helpful to summarize her analysis of those decisions.

[60] The judge noted and reproduced paragraph 34 of Ventose J.'s judgment, paragraphs [23] to [25] of Ward J.'s judgment, paragraphs [39] to [41] of Webster JA's judgment and indicated that she had fully considered the other excerpts from the judgments that were highlighted by the respondent, as well as the parties' respective submissions. Certain portions have been set out earlier in this judgment.

[61] Of particular significance are Ward J.'s statements about Webster JA's judgment and Ward J.'s interpretation of the same. He remarked:

> "[23] **Clearly, the orders were set aside for want of jurisdiction to make them. That the Court of Appeal did not disturb the findings of fact**

[26] At paragraphs 7 – 10.

[27] At paragraphs 11-17.

[28] At paragraphs 18 – 25.

made by the learned judge in relation to D&D's entitlement to a 90% shareholding in HPC is clear from the following paragraphs:

> **[59] The history of the parties' agreements regarding the shares of HPC is that they first agreed to be equal shareholders as reflected in the 2010 agreement. In the 2012 Agreement, it was agreed that HPI would deliver all the shares in HPC to D&D but this was on a conditional basis and I do not regard it as an agreement to transfer the beneficial interest in all the shares to D&D. The entitlement to shares was changed in the 2014 Agreement when the parties agreed that D&D would own 90% of the shares to D&D and HPI 10%. However, the shares were not issued to reflect the new shareholding and the records of HPC at the Companies Registry were not updated. I dealt with this issue in paragraph 31 above and noted that D&D owns either 90% or 50% of the shares of HPC. …**

[24] **These paragraphs affirm the finding of Ventose J at paragraph 34 that D&D is entitled to a 90% shareholding in HPC pursuant to the 2014 agreement. The Court of Appeal did not expressly or by necessary implication set aside the findings of the learned judge at paragraph 34 relating to D&D's entitlement to a 90% shareholding; indeed, they affirmed it.**

[25] **I therefore do not read the judgment of the Court of Appeal as disagreeing with or setting aside the conclusion of Ventose J that D&D were entitled to the reliefs he purported to grant them. The Court of Appeal simply held that he could only have made those orders if he had found unfair prejudice. Having found that there was no unfair prejudice he lacked the jurisdiction to make the orders and for that reason they were set aside. His findings of fact were not. Indeed, practically all of his findings of fact were found to be unimpeachable**." (Emphasis retained from the judgment)

[62] The judge declared that having conducted the review of all of those materials, she was still satisfied (as she found in her 15th June 2023 decision) that the issue of the shareholding in HPC had been determined. She stated emphatically at paragraph [17] that the referenced findings by the courts supplied an adequate basis to pronounce on the entitlement to shareholdings in HPC. Her exact words were:

"[17] … Notwithstanding the absence of specific orders or declarations to that effect, the findings of the courts in the various decisions are

> sufficient for a trial judge, on the amended claim, to conclude and make orders and/or declarations as to the relief sought in respect of the shareholding. Contrary to the defendants' submissions, I do not consider these conclusions and findings of fact to be *obiter dicta*. Therefore, there is no need for further evidence or submissions on the claimant's entitlement to 90% of the shares in HPC as prayed in the amended fixed date claim.

[63] On the question of whether the court could grant the reliefs claimed, the judge considered the parties competing submissions. She concluded that the 2014 Shareholders' Agreement suffices as an instrument of transfer in writing for the purposes of section 42(1) of the **Companies Act**. Therefore, the court was empowered under section 47 of the **Companies Act** to grant the reliefs sought. The learned judge's evaluation and conclusions capture her explanation regarding why she found (in the November 2023 ruling) that the dispute as to Doche and Doche's shareholding in HPC was a non-issue. This explanation was not reversed by any subsequent decision or in the Order. Undoubtedly, it would have informed the Order.

[64] Likewise, the judge analysed the appellants' contention that Doche and Doche was estopped from relitigating the issue of its entitlement to shareholdings in HPC. The judge examined the elements of the doctrine of issue estoppel as adumbrated and considered in **Powell et al v Powell**[29] and **Belize Bank Ltd. v Attorney General of Belize.**[30] She ruled that the defendants [appellants] were estopped from relitigating the issue of the claimant's [respondent's) entitlement to 90% of the shares in HPC, including the issue of the claimant's investment in HPC, on any other basis than that determined by the High Court and this Court.

[65] The learned judge then considered the matter of rectification of the company's register. She remarked that the defendants [appellants] have 'repeatedly ignored the findings of the various courts, including this court, on the shareholdings in HPC.' She ruled that 'in light of the almost *ad nauseam* judicial pronouncements on the

[29] NEVHCV2001/0026.

[30] 91 WIR 175.

claimant's 90% shareholding in HPC, … the only issue left to be resolved is the rectification of the Register of Members to reflect the respective shareholdings of the claimant and HPI.'[31] She then considered what was the appropriate procedure to effect such rectification.

[66] The foregoing extracts from the learned judge's ruling predated her determination of the Amended Fixed Date Claim at the summary trial and the Order by less than a month. The decision would therefore have been fresh in the minds of the litigants, their legal practitioners and the judge. It would have served no useful purpose to rehash them in the Order, simply to record those reasons again. Read fairly and in context, the Order was not an isolated judicial decision. It implemented conclusions already fully explained in the ruling delivered less than a month earlier. The appellants could have been in no doubt that the judge relied on those reasons to ground the Order, chronicling as they did the previous findings of the High Court and this Court as to Doche and Doche's entitlement to a shareholding in HPC and their impact on the estoppel concern.

[67] Furthermore, it is trite law that a court of first instance is bound by the decision of an appellate court that has authoritatively determined a particular issue between litigants. This was the course adopted by and clearly articulated by the judge in the present case regarding Doche and Doche's entitlement to shareholdings in HPC. On the matters of estoppel and rectification, the judge likewise set out clear, logical and fulsome reasons which support her ultimate conclusions in the Order. The judge was therefore entitled consistently with the doctrine of precedent and issue estoppel to proceed on the basis that those matters were no longer open for determination, as she clearly signalled in the ruling. By stating in the Order that those issues were previously determined, she clearly was referring to the previous judgments as rehearsed in her 21st November ruling. There could be no doubt in the appellants' minds about that. I am satisfied that by making that reference, she properly

[31] At paragraph 52 of the judgment.

discharged her judicial duty to provide reasons for every operative paragraph of the Order.

[68] Importantly, it must be emphasised that the court cannot treat the earlier ruling as supplying new reasons for the Order retrospectively. The central question is whether adequate reasons existed for the decision under appeal. The significance of the November ruling is whether it demonstrates that the judge had considered in it the effect of the earlier judgments, the legal questions concerning the appropriateness of summary disposal and/or issue estoppel. The procedural foundation outlined above illustrates that the Order of 11th December 2023 implemented conclusions already explained in that earlier ruling. Read together, the decisions disclose a coherent chain of reasoning underpinning the Order.

[69] I accept that the determination that Doche and Doche has an existing legal right to be issued and allotted a 90% shareholding in HPC and to be registered as a member with retrospective effect from 20th November 2014 while HPI has an existing right to a 10% shareholding in HPC are so central to the case that full and proper reasons had to be provided to explain the rationale for those orders. However, I am satisfied that the learned judge did not err in law by failing to articulate her reasoning for that Order or the related orders directing that a general meeting of HPC be held within seven days to pass resolutions to effect the issuance, and allotment of shares to Doche and Doche and HPI and registration at the Companies Registry. Inferentially, those reasons are incorporated in the Order by the statements that the matter was 'previous determined'. The appellants' contention that the judge failed in her duty to provide reasons is simply not made out.

[70] Based on the learned judge's careful and well-reasoned analysis of the orders in Ventose J.'s Judgment and the orders of the Webster JA judgment, the holdings in Ward. J.'s judgment and the Price-Findlay JA judgment, I am not persuaded that she misinterpreted Ventose J.'s judgment or Orders. Similarly, the judge's analysis contradicts the appellants' contentions that she erred in law in holding that Doche

and Doche had an existing legal right to the shares … without any evidential basis, or that there was no evidential support for the findings made in the Order or that Doche and Doche asserted that it made no capital investment in the JVP as required by the 2014 Agreement. I would therefore dismiss grounds of appeal iii), iv), vi), vii), viii), ix). x) and xi). Having rejected the appellants' inadequacy of reasons challenge I turn to the other complaint that the proceedings did not constitute a summary trial under **CPR** 27.2(4).

Summary Trial

[71] **CPR** 27.2(4) empowers the court to dispose of a fixed date claim by a summary trial if it is undefended or if the court considers that it can be dealt with summarily. In **Edson Lewis v Hilary Ghansah (As Executrix of the Estate of Ruth Victoria Thomas, Deceased)**[32] that provision was considered by this Court and it was held that the sub-rule mandates that a trial be conducted in which evidence has to be adduced either orally or through affidavits. The Court explained:

> "12 So there must be a trial. The statement in rule 27.2(3) (sic)[33] of the CPR about the court treating the first hearing as the trial of the claim if it is not defended 'or it considers that the claim can be dealt with summarily' must not be understood to mean that there can be a summary judgment without a trial on a fixed date claim, because rule 15.3 specifically states that '[t]he court may give summary judgment in any type of proceedings except … (c) proceedings by way of fixed date claim.
>
> 13 Once there is a trial, there must be evidence by or for at least one of the parties to the proceedings; and this evidence must satisfy the court to the requisite standard of the merits or demerits of the claim, as the case may be. …
>
> 16 In the present case, the judge was obliged to take evidence, whether viva voce or by affidavit, to prove the claim which was made by the respondent. The judge did not do so, and ground one of the appellant's grounds of appeal, … is accordingly made out."[34]

[32] [2022] ECSCJ No. 321. See also Travis Augustin v Choc Estates Limited SLUHCVAP2014/0002 and Richard Frederick et al v Comptroller of Customs et al SLUHCVAP2008/0037.
[33] It seems that CPR 27.2(4) was intended.
[34] At paragraphs 12, 13 and 16.

[72] As part of her consideration in the 21st November 2023 ruling, as to the procedure to be adopted for rectification of a company's register, the judge examined **CPR** 27.2(2) and (4) beginning in paragraph 55. She noted that the procedure described there, required the court to take evidence either orally or on affidavit 'in relation to the current state of HPC's register' in order to be satisfied that the procedural and summary remedy of rectification … is required.'[35] She added in the next paragraph:

> "[56] I have already determined that the claim for rectification is not premature. Being satisfied that the issue of the claimant's entitlement to 90% of the shareholding in HPC has been settled, I find that this is a proper case for the application of CPR 27.2(4) and the matter will be dealt with summarily. I will order the necessary affidavit evidence."

[73] When viewed in light of her earlier pronouncement that the sole issue left to be determined was rectification of the register, those two excerpts make it abundantly clear that even before the summary trial, the judge had ruled on the shareholding dispute, so that it was no longer a live issue at the summary trial when the Order was made. This is confirmed by the orders made in the November 2023 ruling which were fourfold. In it, the judge a) granted Doche and Doche's request for the matter to be disposed of summarily pursuant to **CPR** 27.2(4); b) directed the parties to file affidavit evidence limited to the state of HPC's register; c) adjourned the matter for summary trial and d) made the costs award.

[74] From the foregoing review of the learned judge's reasoning in the November 2023 ruling, it is pellucid that she understood what a summary trial pursuant to **CPR** 27.2(4) entailed. She harboured no misunderstanding as to what was required. Furthermore, her directions that affidavit evidence be filed by the parties as to the remaining live issue demonstrated that she intended to conduct the summary trial in accordance with the procedure she described in the ruling – i.e. by consideration of affidavit testimony in respect of outstanding live issue only, i.e. the company's register of members.

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[35] At para. 55 of the ruling.

[75] The factual narrative running through the several judgments and decisions considered by the judge was consistent as to the registered shareholding in HPC as reflected in the company's register. In the present appeal no dispute arose on that point, and it was not contended by the appellants that the affidavits by Rafik Doche and Mervin Grant diverged on that point or that any other material in the affidavits on that subject necessitated cross-examination. Furthermore, no assertion was advanced that the appellants requested and were denied cross-examination on that issue. Instead, the appellants sought in this appeal to relitigate the issue of Doche and Doche's unregistered shareholding although it had been determined in the Order.

[76] The appellants' contention in this appeal that the learned judge did not conduct a summary trial before making the Order is unsupported by evidence. The appellants did not place the transcript of the proceedings in the lower court into the appeal record. Although the 21st November 2023 ruling does not supply evidence as to what transpired in court on 11th December 2023 at the summary trial, it foreshadows the court's thinking and direction regarding the procedure it intended to adopt. The Order itself records that the judge considered the affidavits of Rafik Doche and Mervin Grant and heard submissions from counsel. Nothing in the record demonstrates that the judge departed from the procedure contemplated by **CPR 27.2(4)**. I am not persuaded that she failed to follow the prescribed procedure for a summary trial under **CPR 27.2(4).**

[77] In addition, it is worth noting that the proceedings before the learned judge lent themselves to a summary disposal since they were concerned largely with rectification of HPC's share register. Rectification is a summary remedy deployed in the quick resolution of patent errors (such as inserting a missing name, removing a name that was inserted in error or adding a name that was omitted without good reason) provided that the undisputed right to the shares has been established on a balance of probabilities: **Nilon Ltd and another v Royal Westminster**

Investments SA and others.[36] It is the law that only where ownership of shares is heavily contested or the subject of complex contract law arguments that the court will decline to engage the summary process and direct that a full trial be conducted. A full trial was not required in the circumstances of this case because one had already taken place and the central issue as to the ownership of the shares authoritatively decided as chronicled above. For all of these reasons, grounds of appeal i), ii) and v) fail.

Stay

[78] The stay was granted to hold the ring until determination of this appeal. The stay would fall away, the appeal having now been determined.

Costs

[79] The appellants have not succeeded on appeal. The respondent having not participated in the appeal it would ordinarily not be appropriate to award costs in its favour. Accordingly, I would make no order as costs since the respondent did not participate in the appeal.

Disposition

[80] For the foregoing reasons, I would dismiss the appeal filed on 15th January 2024 and affirm the orders of the learned judge in the Order dated 11th December 2023. ~~The Stay granted by a single judge of the Court by Order dated 23rd April 2024 falls away and is set aside~~. The appellants shall bear their own costs of the appeal.

Miscellaneous

[81] The Court is grateful to learned King's Counsel for his submissions. The delay in completing the judgment was unavoidable and is regretted.

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[36] [2015] UKPC 2.

The Court gratefully acknowledges the forbearance and understanding of the parties.

I concur.
Vicki Ann Ellis
Justice of Appeal

I concur.
Gerard St. C. Farara
Justice of Appeal [Ag.]

By the Court

Deputy Chief Registrar