[2026] JMSC Civ 07

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. SU2024CV02842

BETWEEN	**LA SONJA HARRISON**	**CLAIMANT**
AND	**JAMAICA TEACHERS' ASSOCIATION**	**DEFENDANT**

IN CHAMBERS

Mr Hugh Wildman instructed by Hugh Wildman and Co attorneys-at-law for the Claimant

Mrs Caroline Hay KC and Mr Zurie Johnson instructed by Hay McDowell attorneys-at-law for the Defendant

November 7, 2025 and January 19, 2026

***Company Law - Trial in Chambers – Articles of Association – Special Resolution – Effect of not filing special resolution at the Companies Office – Companies Act, Sections* 10, 11, 12, 130, 133A(1), 139, 212 and 352.**

JUSTICE T MOTT TULLOCH-REID

BACKGROUND

1. The Claimant is the former president of the Jamaica Teachers' Association (the "JTA"). Her previous tenure was for the year 2022 to 2023. She has been re-elected to the position, and her new term is scheduled to begin in 2026.

2. Ms Harrison has filed a claim challenging the validity of a special general meeting which was convened and, according to her, purportedly held on March 12, 2023. She challenges the validity of that special general meeting on the basis that it was not convened in accordance with the Articles of Association of the JTA and is therefore null and void and of no legal effect.

3. To that end her claim seeks several declarations:

    a. a declaration that the purported special conference of the JTA, held on March 12, 2023, is unlawful in that the vote that took place at the said conference was not in keeping with the constitution of the JTA.
    b. a declaration that the constitution of the JTA does not provide for a special meeting to be conducted by online voting.
    c. a declaration that the online voting that was done on March 12, 2023, at the purported special conference of the JTA, to accept the Government's wage offer is unlawful, null and void and of no effect, in that the delegates did not vote in keeping with section 14 of the constitution of the JTA.
    d. a declaration that under the constitution of the JTA, any special conference convened must be held with the physical presence of all delegates who participated in the vote, and not by virtual voting.
    e. a declaration that under the constitution of the JTA, there is no provision for a virtual conference to be convened as a form of special conference, pursuant to section 14 of the constitution of the JTA.

4. The claim was made on several bases which were repeated in the Affidavit supporting the claim and so I will set them out as part of the Claimant's evidence.

5. The trial was determined on the basis of the evidence of the Claimant and Defendant filed in their respective affidavits and the written and oral submissions which were made on behalf the parties. There was no cross-examination of the parties.

The Claimant's evidence

6. The Claimant's evidence is contained in her Affidavit in Support of Fixed Date Claim Form filed on July 10, 2024, and her Affidavit in Response to the Affidavit of Mark Nicely filed on March 28, 2025. Ms Harrison's evidence is that she was

inaugurated as president of the JTA in August 2022. As president of the JTA, she was in charge of salary negotiations with the Government of Jamaica on behalf of the JTA. The JTA was engaged in salary negotiations with the Ministry of Finance and Public Service since 2021. That process was begun by the former president, Mr Winston Smith, and continued under the Claimant's leadership in 2022.

7. Under the chairmanship of the Claimant, consultations were had with teachers in the 14 parishes of Jamaica in January 2023. The purpose of the consultations was to get the response of the teachers to the Ministry of Finance's proposals with respect to the salary increase. After consultation among its members, the Central Executive of the JTA convened a special conference on February 3, 2023, to allow for the delegates of the JTA to meet at Wolmer's Boys School. At that meeting the delegates voted to reject the Government's offer. Following the rejection of the Government's offer the teaching community demanded a better remuneration package from the Government. On March 8, 2023, another special conference was convened but this time it was held at the Mico Teacher's College. At that meeting the teachers again rejected the Government's offer.

8. When the teachers again rejected the offer made by the Ministry of Finance concerning their salaries, the Ministry of Labour intervened and on March 10, 2023, the JTA was invited to a meeting at the Ministry of Labour. The meeting took place at the Ministry of Labour's North Street office. At that meeting the Minister of Finance made a counteroffer which had to be taken back to the delegates. Another special conference was therefore convened by the Central Executive of the JTA. It was the Claimant herself who proposed that the special conference be held online as this had been the practice throughout the Covid 19 pandemic and because of advice, she had received from the JTA Secretariat.

9. At that special conference, which was held virtually on March 12, 2023, 776 persons participated. 629 persons voted to accept the offer of Ministry of Finance and 147 voted to reject it. Based on the majority vote of the delegates, the Government's proposal was accepted and the signing done on March 13,

2023. The Claimant did not sign the proposal instead it was signed by the President Elect.

10. Ms Harrison's evidence is that she has a duty to ensure that what was done at the special conference was in keeping with the JTA's constitution. To that end she sought and obtained legal advice and based on the advice she received she came to find that the voting was not done in keeping with section 14 of the JTA constitution which mandates that all voting at a special conference must be done in the physical presence of all the delegates. This is similar to what obtains for annual conferences which is dealt with by section 13 of the JTA's constitution. In both instances, the delegates are allowed to vote, they being physically present and by a show of hand or where secret ballots are allowed. The constitution of the JTA is exhibited to Ms Harrison's Affidavit and forms a part of her evidence. Since the special conference did not conform to sections 13 and 14 of the constitution, the vote taken at that special conference was unlawful, null and void and of no effect. This means that the salary package which was accepted by delegates and given to the members is void as the JTA was not properly constituted in carrying out the vote to accept the Government's offer.

11. Ms Harrison says that she informed Dr Mark Nicely of the error that was made. An email chain was exhibited to her affidavit referring to documents attached. I am only able to see one letter attached from Dr Nicely to the Claimant in which he acknowledges receipt of her email requesting that a special conference be convened to examine the legality of the JTA's operations. He informed Ms Harrison that he was seeking legal advice, suggested that a special conference may not be the first step to be taken, recommended engagement with the Central Executive and General Council and informed her that other key stakeholders were notified of the issue due to its sensitive nature.

Evidence of Dr Mark Nicely

12. Dr Nicely is the Defendant's Secretary General. His evidence is that the JTA is a company and a trade union with responsibility for the enhancement and

protection of the economic welfare, professional development and personal well-being of its members. It promotes educational interests in Jamaica. He says that the Defendant does not dispute much of the Claimant's factual assertions and his admissions would therefore be in relation to dates, times and the reasons for the meetings mentioned by the Claimant in her Affidavit. He neither admitted nor denied that the Secretariat advised the Claimant that the meeting of March 12, 2023, should be done online but admits that it was the Claimant who proposed that the meeting be held in this manner. He disagrees with the Claimant's count of delegates at the meeting, stating that there were 784 delegates, but he agrees with the number put forward by the Claimant of those who agreed to accept the Government's offer. Those delegates voted virtually by show of hand and it was on that basis that it was decided that the wage agreement with the Ministry of Finance would be accepted.

13. Dr Nicely went on to say that on March 13, 2023, the JTA received from the Ministry of Finance the draft Heads of Agreement for the period April 2022 to March 2025. The document was circulated to the Claimant, Dr Nicely and two other persons. All 4 of them reviewed the document and edited and modified the document as they thought fit at their head office. At no point did they receive any indication from the Ministry of Finance that they would object to any terms in the edited document, nor did the Claimant indicate that she had any challenges with signing the document.

14. When they went to the Ministry of Finance, they went in good faith expecting the Claimant to carry out the mandate of the special conference in her role as President of the JTA. He says he was present on March 13, 2023, when the representatives of the JTA met with the Minister of Finance for the signing of the edited document. The Claimant was also present. At the commencement of the meeting, the Claimant took out a 2-page pre-prepared document and proceeded to read it. He does not have access to the document. At the conclusion of the document reading, the Claimant announced that the JTA had the facility wherein should the President is unavailable to sign and carry out her duty, then the President Elect could act in her stead. She said she was "therefore unavailable" and that the President Elect should attend to the signing.

She referred to section 40(3) of the Articles of Association. She then left the meeting.

15. Upon her departure, the President Elect, Leighton Johnson, who was present at the special conference, was aware of the mandate and his role in the absence of the President signed the wage agreement which was in the terms approved at the special conference by the majority vote on March 12, 2023.

16. Dr Nicely said "we" were surprised when the Claimant left the meeting. I am not sure who specifically comprises that "we".

17. Dr Nicely also said in his evidence that the Companies Act was amended in 2021 to allow companies to hold virtual and hybrid meetings unless their articles of association prohibited meetings from being held in that manner. The Companies (Amendment) Act 2021 is exhibited to Dr Nicely's Affidavit. By the amendment, the definition of "show of hands" was expanded to include a show of hands by electronic means.

18. Dr Nicely's evidence is also that Article 15(2) of the JTA's Articles of Association gives the General Council the power between conferences to initiate and implement measures affecting the welfare of the JTA by a simple majority of members present and voting. The General Council would then report the results of its action to the full conference. The General Council is authorized to interpret the JTA's regulations, and it has the power to deal with other matters as may arise from time to time.

19. On March 27, 2021, he was present at a meeting of the General Council of the Defendant, with 117 members present and able to vote, when there was a proposed amendment to Article 13(3) of the Articles of Association. It was proposed that the word "form" be included which would enable the JTA to hold meetings virtually. The motion was accepted. The minutes of the meeting form a part of his evidence.

20. Dr Nicely says he is also an *ex-officio* member of the Defendant's Policy Committee. He says that the Claimant is also a General Council appointee to that committee. He states further that in 2021 in its report to the Defendant's 57th Annual Conference, it was indicated that the Policy Committee had a meeting in October 2020 which reviewed the Defendant's Memorandum and Articles of Association and tabled a resolution for the amendment to Article 13(3) to insert the word "form". The resolution for the amendment was passed, and this allowed the Defendant to conduct its conference virtually. This means that the Defendant was entitled to hold the March 12, 2023, meeting online and so the vote made there was regular and effective. The Claimant knows all of this because of her position in the JTA.

21. It is Dr Nicely's view that at the material time the Defendant held the view that it faced no bar within its Articles to hold virtual meetings and could rely on the Companies (Amendment) Act to do so. It could hold the meetings at a place decided on by the Conference or by the General Council, Central Executive or the President. A copy of Article 13 of the JTA's constitution forms a part of Dr Nicely's evidence.

22. Dr Nicely admits that the amendment was not filed at the Companies Office but says that that does not invalidate the amendment. He is of the view that the Claimant's claim is intending to unravel the special conference vote and return the governing administration to the wage negotiations table – the same table she opted to leave when she had the mandate to lead the JTA delegates to a decision. He is of the view that the wage agreement of March 13, 2023, represents the majority view of the delegates and any attempt to undermine the will of the delegates is difficult to justify. He is of the view that the Claimant's claim is without merit and asks the Court not to grant the orders sought therein.

Claimant's response to Dr Nicely's Affidavit

23. In the Claimant's response to Dr Nicely's Affidavit, the Claimant asserts that the amendment to allow virtual meetings to take place can only occur when the

constitution of the company allows for it. Since the convening of the special conference required the physical presence of the delegates, any decision to be made is to be done by show of hands and the amendment which Dr Nicely refers to does not affect that. As it relates to the amendment to Article 13 put forward by the Policy Committee, it was to insert the word "form". Although the resolution was debated and passed it was not carried through by way of an amendment to the constitution. Her checks at the Companies Office reveal that no such resolution was carried out. In the past resolutions amending the articles were submitted to the Companies Office to effect the change as required and since the resolution amending Article 13 was not submitted to the Companies Office, the resolution in question had no effect.

Claimant's submissions

24. The submissions made on behalf of the Claimant by Mr Wildman were made orally and in writing. Mr Wildman states that at the two meetings where the Government's salary package was rejected, the delegates had met in person and had voted with a show of hands. Physical presence as required by the Defendant's constitution was satisfied. He submits that the Defendant's constitution, Memorandum of Association and Articles of Association do not contain any express or implied authority for the holding of virtual or hybrid meetings. Sections 13 and 14 of the constitution govern the procedure for annual and special meetings but make no provision for attendance, quorum or holding virtual meetings. The special meeting held virtually was therefore *ultra vires* the constitution and should be declared improperly convened and the decisions arising therefrom should be set aside.

25. Mr Wildman relies on the case of **Carlton Smith v Lascelles Taylor, Commissioner of Police and Attorney General of Jamaica [2015] JMCA Civ 58** to support his position. He argues that in that case, the Inspector of Police terminated the District Constable Smith's employment. Section 2 of the Constables (District) Act provided that termination could only be done by the Commissioner of Police. Justice Brooks said that since the evidence pointed to the Inspector sending home District Constable Smith and not the Commissioner, District Constable Smith had not been terminated, and he

remained a District Constable. Mr Wildman argued that similar principles arose in the case of **Strachan v The Gleaner Company Limited and anor [2005] UKPC 33** wherein reliance was placed on the judgment of Lord Millet who said that non-compliance with a statutory requirement renders any proceedings null and void and of no effect.

26. Mr Wildman is of the view that failure to provide for virtual attendance is not a mere procedural irregularity, but a substantive breach of the governing rules that define member participation and quorum and resembles a manifest noncompliance of statutory instruments. He also argues that the Companies (Amendment) Act 2021, only allowed companies to adopt hybrid or virtual only meetings if the articles allowed them to do so. He refers to section 133A(1) of the Companies (Amendment) Act 2021 which provides that:

> *"Subject to subsection (2), unless the articles of a company otherwise provide, a company may hold a general meeting as a virtual only meeting or a hybrid meeting."*

Mr Wildman says section 133A(1) must be read with Article 15(b) of the Defendant's Articles of Association which provides that

> *"The Conference shall normally meet during the third full week in August each year but may be convened at any time and place decided upon by the Conference itself or by the General Council, Central Executive or the President acting on their behalf. Twenty-one days' notice at least specifying the place, date, and the time of the Conference shall be given to the secretaries of District Associations, Delegates and Representatives for the convening of any annual conference…".*

27. Mr Wildman emphasized the fact that the Articles require notification of a place at which the meeting is to be held and since this demand is made, physical presence is a requirement. There had to be an amendment to the provision for the meeting to be held virtually. This, he says, was not done. Since the Defendant's governing instrument is its constitution, a breach of the constitution

would result in any proceedings and decisions made therefrom to be rendered illegal, null and void and of no effect.

28. Lord Cairns' decision in **The Directors, & C of the Ashburn Railway Carriage and Iron Company Limited (1875) LR 7 HL** was also prayed in aid of his position. For there, argued Mr Wildman, the Court held that an incorporated association may only act within the powers conferred by its governing documents. Any act or decision beyond such powers is *ultra vires* and void. On page 672 of the decision, Lord Cairns had this to say

> *"In a case such as that which your Lordships have now to deal with, it is not a question whether the contract sued upon involves that which is malum prohibitum or malum in se, or is a contract contrary to public policy, and illegal in itself. I assume the contract in itself to be perfectly legal, to have nothing in it obnoxious to the doctrine involved in the expressions which I have used. The question is not as to the legality of the contract; the question is as to the competency and power of the company to make the contract. Now, I am clearly of opinion that this contract was entirely, as I have said, beyond the objects in the memorandum of association. If so, it was thereby placed beyond the powers of the company to make the contract. If so, my Lords, it is not a question whether the contract ever was ratified or was not ratified. If it was a contract void at its beginning, it was void because the company could not meet the contract. If every shareholder of the company had been in the room, and every shareholder of the company had said, "that is a contract which we desire to make, which we authorize the directors to make, to which we sanction the placing the seal of the company," the case would not have stood at any different position from that in which it stands now. The shareholders would thereby, by unanimous consent, have been attempting to do the very thing which, by the acts of parliament, they were prohibited from doing."*

Mr Wildman submits that if Lord Cairns' position is adopted, the special meeting convened on March 12, 2023, which was conducted virtually was not held in

compliance with the procedures laid out in the Defendant's governing instruments, thus rendering all resolutions arising therefrom, void *ab initio* even though the majority of members voted to accept the salary package.

29. Mr Wildman argues that the case of **Garth Dyche v Juliet Ricards and Michael Banbury [2014] JMCA Civ 23** supports his position. His submission is that Section 36 of the Stamp Duty Act requires that every promissory note must be stamped within 7 days of its execution. Because the promissory note was not stamped within the time frame stipulated by the Stamp Duty Act, Phillips JA said that failure to comply with the language of section 36 rendered the promissory note illegal. If that reasoning is to be applied to the case at bar, the Defendant's failure to register the special resolution within 15 days at the Companies Office, made the entire process unlawful. He argued further that the amendment to the Companies Act allowed for meetings to be held virtually when the company's constitution says it can be done. When the constitution does not allow it, the meetings cannot be held virtually. The Defendant's constitution does not allow for virtual meetings to be held and so the amendment to Companies Act does not help it because where there is a failure to follow statutory provisions, anything done otherwise is null and void and of no effect. The Defendant is not able to convene virtual meetings and disregard its own constitution. According to Mr Wildman all the cases relied on by Claimant support the position that a company cannot act outside of its constitution.

30. With respect to the fact that the Claimant participated in the meeting, Mr Wildman submitted on her behalf that this is not a waiver situation and not because the Claimant participated in the meeting would mean that she is unable to seek the declaration because a nullity cannot be cured. The virtual meeting is irregular under the constitution irrespective of who called it. If it is a nullity, it is a nullity. The Companies Office is the repository of all information concerning the registration of a company. Documents filed at Companies Office are public documents. It is not a defence to say you planned to register the resolution. It has to be registered within 15 days of it being passed. The

Defendant acted unlawfully when it did not comply with its constitution. It is a company, a public entity with a duty to follow the law.

The Defendant's submissions

31. The Defendant's submissions are contained in written submissions filed on August 28, 2025, and oral submissions made by Mrs Hay at the hearing. It is the Defendant's position that the Court has to deal with a single issue, which is whether the Defendant had power within Clauses 13 and 14 of the Articles of Association to virtually hold a special conference and pass resolutions. It is her submission that the decision at the annual conference which Dr Nicely refers to at paragraph 22 of his Affidavit supports the viewpoint that there was an amendment to the Defendant's constitution which allowed for meetings to take place in any form. Mrs Hay points out that the Claimant has conceded that the resolution to amend Article 13 which speaks to how meetings are to be held was debated and passed in 2021 but that she is saying that the resolution was not carried through by way of amendment to the constitution. The Defendant is uncertain as to how the Claimant can make that submission when her own Affidavit refers to and exhibits the amended constitution. It was only when it was pointed out to the Claimant that she had indeed admitted that the Defendant's Articles of Association had been amended that she changed her complaint to say that the amended resolution had not been lodged at the Companies Office of Jamaica.

32. Mrs Hay referred the Court to section 10 of the Companies Act. She noted that section 10 of the said statute does not mention registration of the special resolution as a condition for the validity of the amendment. She argues further that the Claimant is inviting the Court to find that a failure of a company to lodge an amendment to its Articles of Association invalidates the amendment, but that the Claimant has provided no authority to support that position. It is the Defendant's view that the proposition put forward by the Claimant is neither sustainable under the Companies Act nor at common law.

33. Counsel for the Defendant made reference to section 139 of the Companies Act and focused her attention on section 139(5) which reads as follows:

> *"If a company fails to comply with subsection (1) the company and every officer of the company who is in default shall be liable to a default fine of fifty thousand dollars".*

She went on further to say that the Companies Act sets out the consequence for failure to register the amending resolution – it being a fine to every officer of the company. She says that the consequence contended for invalidity of the decision of the majority is ill-conceived since it is asking a court to disclaim the decision of the majority validly made by its members, without any statutory authority to do so. There is nothing in the statute that invalidates an amending resolution for a failure to register same with the Companies Office.

34. Reliance is placed on the case of **Scott Bevan v Paul Walker [2018] EWHC 265 (Ch)** in which joint liquidators appointed upon the conversion of a members' voluntary winding up to a creditors' winding up became concerned about the validity of their appointment because statutory notice of the members' voluntary winding up resolution had not been given to HSBC, the holder of a floating charge, by the prior appointed liquidator under the members' voluntary winding. The giving of the statutory notice was an administrative step set out by the statute. HHJ Purle QC in his judgment at paragraph 10 stated that

> *"… The power to wind up voluntarily is vested in the members, derives from legislation which predates administration by many decades, and enjoys the simple requirement of a special resolution. I am most reluctant to conclude that Parliament, by inserting a requirement of notice to a third party, must be taken to have intended that a special resolution to wind up should be of no effect whatsoever even where that third party is unaffected and does not object. In re Centrebind Limited [1967] 1 WLR 377, a liquidator was found to be validly appointed notwithstanding the failure to hold a creditors' meeting. Although the statutory language there under consideration relating to the giving of notice to a qualifying charge*

holder, I would adopt the approach of Plowman J who simply gave effect to the plain language of section 278(1) of the Companies Act 1948 requiring (then) an extraordinary resolution. The practical effect of that decision has now been qualified by parliament in section 166 of the Insolvency Act 1986, which limits abusive applications, but recognises the correctness of the Centrebind decision."

35. Reference was then made to **Re Centrebind Ltd v Inland Revenue Commissioners [1967] 1 WLR 377** where Plowman J said the following about the decision of a company by its members:

> *"I take the view that where a meeting of the members has nominated or appointed a liquidator and no meeting of creditors has been held, nevertheless, until something is done about it at the instance of the creditors, the person nominated or appointed as liquidator by the members at their meeting is the liquidator of the company, and therefore, in my judgment, the preliminary point taken by Mr Bromley that Mr Phillips has no locus standi before me fails."*

According to Mrs Hay, the cases on which she relies underscore the position that a company's decision, once taken in a manner consistent with the Companies Act, stands despite any subsequent or attendant procedural breach or omission unless the statute says otherwise. The plain language of the provisions in the Companies Act reflects the intention of Parliament and must be given effect to. Mrs Hay submits that what the Claimant's claim boils down to is a complaint of one member seeking declarations from a court to manage or direct the affairs of a company. She says that what the Claimant is seeking to do is to challenge decisions taken by a company in a meeting which would affect all members of the company, particularly those who voted in favour of the wage proposals.

36. Counsel further submits on behalf of the Defendant that the Court should ask itself whether the Claimant is a proper party before the Court and further what loss or harm has been done to the Claimant who on the evidence, participated

in the decision to amend the Articles, participated in the wage negotiations as well as in the decision to settle the terms of the wage agreement. The Defendant's members, in a majority vote, voted to allow the Defendant to have virtual meetings and accept the Government's wage offer. The Claimant has not shown any wrong done to her but is asking the Court to step into the affairs of the Defendant and overrule a resolution passed by the majority of its members so that the meeting which was held by the Defendant where its members voted to accept the Government's wage offer is deemed invalid. This action is usually frowned upon by the Court. The Claimant's claim is frivolous and without merit and so the claim should therefore be dismissed with costs.

Rebuttal arguments – Mr Wildman

37. In rebuttal Mr Wildman was of the view that the cases relied on by the Defendant were not helpful in interpreting section 139 of the Companies Act as they dealt with mere irregularities in the conduct of companies' meetings. He submitted that the **Scott Bevan case** shows that where notice is required by Parliament and none is given this is a mere irregularity which does not invalidate proceedings. However, he argued that the failure to register an amendment to a company's constitution is not an irregularity when the Act specifically says registering an amendment shall be done and gives a period within which to do so. Section 139(5) of the Companies Act says if you register it late you can be fined. If you do not register it, you cannot be fined. The fine cannot come into play if there is no registration. If you amend the constitution and file the amendment after 15 days then you will be fined. A failure to comply with a statute carries certain consequences because you disobey the statute and it is the Court that determines what the consequence is, not the statute.

38. Reference was made to the case of **R v Monica Stewart 12 JLR 465** wherein the Resident Magistrate who was required under the Judicature (Resident Magistrates) Law to sign an order of indictment directing that the appellant be tried with an offence under the Larceny Law, Cap 212, failed to do so. The Court of Appeal held that the result of that failure, rendered any trial on indictment relating to the charge laid in the information, a nullity. Mr Wildman

also relies on this case to show that the specific requirements of the statute must be complied with for a thing done to be considered effective and valid. The requirement for lodging the amendment with the Registrar is to safeguard the public which must know what the constitution of the company is. He is of the view that the **Scott Bevan case** on which the Defendant relies is therefore not relevant and argues that what the Defendant is asking the court to do is subvert section 139 of the Companies Act. It is his submission that statute cannot be subverted by the Court. Both cases cited by the Claimant say you must conform with the constitution. Contrary to what the Defendant is saying the passage of time and consequences should not affect the Court's decision because the Court must preserve the sanctity of the company's constitution.

39. Lastly, Mr Wildman sought to clarify the Claimant's position before the Court regarding the claims being sought. Mrs Hay had in her submissions been uncertain as to whether the Claimant's claim fell under public or private law based on how the pleadings were tailored and the submissions in support made. Mr Wildman made it clear, that the claim was a claim in private law and not public law. Public law remedies were not being sought and all that the Claimant was saying was that the resolution passed by the Defendant accepting the Government's wage offer has no effect because the amendment on which it has its foundation is tainted because the resolution amending the constitution to allow for virtual meetings was not filed at the Companies Office and therefore has no effect. He reiterated that the case for the Claimant is strong and should succeed. No defence has been put forward, and the Court should rule in favour of the Claimant with costs.

Rebuttal arguments – Mrs Hay

40. In responding to the **Monica Stewart Case** King's Counsel Mrs Hay submitted that the principle that was established in that case is that a parish court judge has jurisdiction to try matters when the order for indictment is signed by the judge. That, she says, is a statutory position. However, she continued that that position does not assist the Claimant because it does not demonstrate that a court can substitute an outcome which the statute already provides for. A

company and a court are two different things. Court process is governed by statute, regulations and gazetted codes. The Company is governed by the Companies Act and its regulations. Proceedings in court are not akin to and transferable to or applicable to companies. The companies' registry is not a policing body. It is a registry at which documents are lodged. The way Parliament polices companies is set out in the Companies Act. The **Monica Stewart case** dealt with a sitting jurist in a trial. The case at bar concerns a legal person that failed to file a document at the Companies' Office. The proposition that the manner in which the Resident Magistrate was dealt with should set the example for how the Defendant in this case is dealt with, is questionable and so neither the **Strachan case** nor the **Monica Stewart case** can assist the Court.

Analysis

41. The issue the Court has to consider is whether the Defendant was authorised by its constitution to accept the Government's wage offer. Out of that issue arise three sub-issues:

    a. Whether the Claimant is a proper person to bring the claim;
    b. Whether the meeting of the Defendant could have been conducted virtually; and
    c. Whether the resolutions passed at the virtual meeting held by the Defendant were valid, they not having been registered at the Companies Office.

    The answer to the sub-issues will answer the main issue because if the meeting could not be conducted virtually, then the resolutions passed in the meeting would be null and void and of no effect. Similarly, if the resolutions were properly passed but had to be registered to be effective, the fact that they were not registered, would mean that the amendment allowing virtual meetings was not effective and any decision made at the virtual meeting would be null and void and of no effect. Finally, if the Claimant has no *locus standi* to bring the claim, then she cannot have the remedies which she seeks from the Court.

Issue 1: Whether the Claimant is the proper person to bring the claim

42. By its Articles of Association, the Defendant is a company incorporated under the laws of Jamaica and limited by guarantee. A company limited by guarantee is usually not set up for the purpose of profit-making. It has no shareholders but is guaranteed by guarantors who agree to pay sums towards the liabilities of the company. In this situation, the members would finance the company, by paying dues. A company limited by guarantee is a corporate entity used to shield the members from personal financial risks while at the same time providing a formal and legal framework within which the members can operate. Like a regular limited liability company, the company limited by guarantee has an Articles of Association, which is the body of rules that governs its operations.

43. Section 14 of the 1991 Articles of Association, which is described as "LH-1" in the Claimant's Affidavit provides that

> *"The following groups and individuals shall be responsible for the administration of the Association: The Annual Conference, Special Conference, the General Council, Central Executive, the Board of Trustees, Finance Committee, other Standing and Ad Hoc Committees, Officers and Administrative Personnel as set out in these Articles."*

The following sections then set out in detail the roles of each of the various groups and their composition and how proceedings that take place at the various levels should be carried out.

44. The Articles were amended in 1994. Sections of the 1994 Articles were exhibited to the Affidavits of both the Claimant and the Defendant, but the full document was not made available to the Court. Section 13 of the 1994 Articles make it clear that "*the Annual Conference is the Annual General meeting of the Association and is the supreme authority on all matters."* It comprises officers and administrative personnel, the General Council, Delegates and observers from District Associations and representatives from student groups and

affiliates. The rules concerning quorum, meetings and voting are also contained in section 13.

45. Section 14 of the 1994 Articles speaks to special conference, which is any general meeting of the Association other than the Annual Conference. The composition, method of convening, quorum required and special powers are similar to that of the annual conference. It can also be convened at the discretion of the President or at the written request of not less than 500 members of the Association or not less than 50% of the members of the Central Executive or the General Council, addressed to the Secretary General not less than 14 days before the proposed date on which the special conference is to be held.

46. The wording of the various articles appears to be similar to that which existed in the 1991 Articles. For each of the bodies responsible for administering the Defendant, there are a group of people selected from among different divisions of the membership to represent the members' interests as a whole with checks and balances imposed on the leadership. In my reading of the Articles that have been presented to the Court, I have not come across any instance in which any one person can act on behalf of the Defendant without the Defendant approving of that action by a meeting of its members. And so, in such an instance, one would have to turn to the common law for guidance as to whether such an action is allowed.

47. The Claimant says she has a duty to ensure that what was done at the special conference was in keeping with the JTA's constitution. She alleges that a vote was taken improperly and that this renders the vote null and void. She concedes that that rendering will affect the membership but is keen on preserving the sanctity of the Defendant's constitution. I will rely on the reasoning of Jenkins LJ in the case of **Edwards and anor v Halliwell and ors [1950] 2 All ER 1064, 1066** who had this to say

> *"The rule in Foss v Harbottle, as I understand it, comes to no more than this. First, the proper plaintiff in an action in respect of a wrong alleged*

to be done to company or association of persons is prima facie the company or the association of persons itself. Secondly where the alleged wrong is a transaction which might be made binding on the company or association and on all its members by a simple majority of the members, no individual member of the company is allowed to maintain an action in respect of that matter for the simple reason that, if a mere majority of the members of the company or association is in favor of what has been done, then ***cadit quaestio***[1]*. No wrong had been done to the company or association and there is nothing in respect of which anyone can sue. If, on the other hand, a simple majority of members of the company or association is against what has been done, then there is no valid reason why the company or association itself should not sue. In my judgment, it is implicit in the rule that the matter relied on as constituting the cause of action should be a cause of action properly belonging to the general body of corporators or members of the company or association as opposed to a cause of action which some individual member can assert in his own right."*

48. I am aware that the rule in **Foss v Harbottle** relates to minority shareholders, but I am of the view that it is useful here as the Claimant is one member, in a body of many members, who has raised an issue. There is a Central Executive as described by Section 19 of the Defendant's Articles of Association, which is the *"chief instrument of the Association's policy as laid down by its Annual General Meeting and has the authority to take action on all matters within such policy."* There is also a General Council to which the Central Executive reports and which has *"the power between Conference to initiate, implement by a simple majority of members present and voting measures affecting the welfare of the Association, reporting the results of its action to the full Conference."* If, however, a fraud was perpetrated on a minority of the shareholders or where the wrongdoers themselves were in control of the company, then the exception

[1] cadet quaestio is a Latin phrase meaning the case closed as the matter has been resolved or is settled. It indicates that an issue has reached a point where no further argument is necessary or possible.

to the **Foss v Harbottle** rule would come into play and a derivative action could be brought.

49. Section 212 of the Companies Act Jamaica states that:

> *"(1) Subject to subsection (2), a complainant may, for the purpose of prosecuting, defending or discontinuing an action on behalf of a company, apply to the Court for leave to bring a derivative action in the name and on behalf of the company or any of its subsidiaries, or intervene in an action to which any such company or any of its subsidiaries is a party.*
> *(2) No action may be brought, and no intervention in an action may be made under subsection (1) unless the court is satisfied that –*
> *(a) the complainant has given reasonable notice to the directors of the company or its subsidiary of his intention to apply to the court under subsection (1) if the directors of the company or its subsidiary do not bring, diligently prosecute or defend, or discontinue, the action;*
> *(b) the complainant is acting in good faith; and*
> *(c) it appears to be in the interest of the company or its subsidiary that the action be brought, prosecuted, defended or discontinued.*
> *(3) In this section and section 213 and 213A, "complainant" means –*
> *(a) a shareholder or former shareholder of a company or an affiliated company;*
> *(b) a debenture holder or former debenture holder of a company or a or an affiliated company;*
> *(c) a director or officer or former director or officer of a company or an affiliated company.*

I have scoured the Claimant's documents, but I am unable to find any evidence that notice that this claim would be made was given to the Defendant and neither did I find any evidence that that permission was sought for this claim to be brought.

50. The question of whether the Claimant is acting in good faith is answered by considering whether the claim is frivolous or vexatious and whether there is a

serious issue to be tried. This of course will depend on the evidence that both parties put before the Court. The evidence given by both the Claimant and the Defendant is that the majority of the members voted to accept the pay package that was offered by the Ministry of Finance in their salary negotiations. The majority was a substantial one – on the Claimant's case 629 voting to accept the offer and 147 voting to reject the offer and on the Defendant's case 629 voting to accept and 155 voting to reject the offer. The decision was overwhelmingly in favour of accepting the Government's proposed salary package. If the majority of the members were of the view that the salary package offered by the Ministry of Finance was a reasonable one, this Court is unable to comprehend the basis on which this claim is being made by a sole member acting on her own initiative with no instructions from the group of which she is a part.

51. It is also to be noted that the Claimant in bringing this claim is not acting in a representative capacity. She makes the claim on her own behalf and seeks relief on her own behalf. Her Affidavit is sworn on her own behalf as a member of the Defendant, and an immediate past president, there is nothing in her evidence which suggests to this Court that the remedies she seeks are being sought on behalf of the membership as a whole – although it is clear that any decision made will affect the membership as a whole.

52. Notwithstanding, all of the above, the issue of standing did not feature in the Defendant's Affidavit in Response to the Fixed Date Claim Form. This means that *locus standi* does not form a part of its defence. CPR 10.7 provides that:

> *"The defendant may not rely on any allegation or factual argument which is not set out in the defence, but which could have been set out there, unless the court gives permission."*

For the Defendant to rely on the argument that the Claimant has no standing to bring the claim, it would have to have pleaded that in its Affidavit in Response. The Defendant's failure to do so would suggest to the Court, that it had no issue with the Claimant bringing the claim as it did not join issue with the Claimant in that regard.

Issue 2: Whether the meeting of the Defendant could have been conducted virtually

53. The evidence of both parties is that the Claimant suggested that a special conference be convened online to consider the counter proposal made by the then Minister of Finance with respect to the salary negotiations. The special conference was convened and a vote taken virtually. The Claimant is of the view that the online voting, which was done on March 13, 2023, was not in keeping with Clause 14 of the Defendant's Articles of Association. Clause 14 of the said Articles refers the reader back to Clause 13 and in particular Clause 13(3) which reads as follows:

> *"**Meetings.** The Conference shall normally meet during the third full week in August each year but may be convened at any time and place decided upon by the Conference itself or by the General Council, Central Executive or the President Acting on their behalf. Twenty-one days' notice at least specifying the place, date and time of the conference shall be given to Secretaries of District Associations, Delegates and Representatives for the convening of any annual conference. The accidental omission of notice or its non-receipt by Secretaries, Delegates or Representatives shall not invalidate the proceeding of any Annual Conference.*

Clause 13(7) deals with voting procedures at the Annual Conference and the Special Conference. Of special note is Clause 13(7)(e) which provides that a vote shall be conducted in accordance with the following procedure…

> "*… (e) Upon a show of hands or upon a poll every person present and entitled to vote shall have one vote only."*

This is the portion of the Articles that has caused the Claimant some concern. There was no "show of hands" in person as the meeting took place online. In addition, the meeting did not take place at a specified place.

54. The Defendant is of a different view. By virtue of an amendment to the Companies Act in November 2021, section 2 of the principal Act was amended so that virtual only meetings were allowed. A virtual-only meeting is defined as

> *"a meeting in which the attendees participate from numerous physical locations, whether inside or outside of Jamaica, through the facility of the internet or intranet by use of integrated audio and video, chat and messaging tools, and application sharing software, by electronic means".*

Show of hands was also defined and included "*a show of hands through or by electronic means".*

Section 130 of the principal Act was also amended to remove the words "*personally present*" at section 130(1)(c) and replacing them with "*present in-person or participating by electronic means*." Section 133A was inserted to allow a company to hold a general meeting as a virtual-only meeting or a hybrid meeting provided the company's articles of association allowed it to do so. Section 133B was also inserted and of note is section 133B(2) which provides that a hybrid or virtual-only meetings shall have the full effect in all respects and to the same extent as if it was an in-person meeting.

55. Prior to the amendment to the Companies Act, the General Council of the Defendant met on March 27, 2021, and held a virtual meeting. By its Articles, the General Council has the power between Conference to initiate and implement by a simple majority of its members present and voting, measures affecting the welfare of the Association, reporting the results of its actions to the Full Conference. Dr Mark Nicely was present at that meeting in his capacity as Deputy Secretary General, Member Services and Industrial Relations. The Claimant was not present. She does not appear to have been a member of the General Council at that time. At that meeting it was proposed that changes be made to the Defendant's Articles of Association. Those changes were recommended by the General Council. The following was noted in the minutes of the meeting

"BE IT RESOLVED THAT this Honourable General Council, duly constituted in accordance with the Memorandum and Articles of Association and meeting in accordance with the provisions of therein, consider and, if thought fit, approve for recommendation to Annual Conference, the following amendments:

1. *That Article 13(3) of the Memorandum and Articles of Association cited above be hereby amended to read as follows:*

   Meetings – *The Conference shall normally meet during the third full week in August each year but may be convened at any time, form and place…*

   The insertion of "form" would facilitate the convening of meetings in the virtual sphere….

   Amendment 1 was accepted on motion moved by Mr Eaton McNamee seconded by Ms Jean Brown."

In passing the resolution, the General Council appears to have been acting in its mandate to implement and initiate measures that affected the welfare of the Defendant. As the Covid-19 pandemic was in full swing and persons could not meet face to face, it seemed a sensible way to proceed.

56. In August 2021 the 57th Annual Conference was held and a report of the Policy Committee tabled. I see no such Committee noted in the Articles exhibited as "LH-1". The existence of the Policy Committee is not in dispute. Dr Nicely and the Claimant are both noted as members of that Committee. The report stated that the Policy Committee, pursuant to its mandate proposed certain changes to the Articles of Association recommended to the General Council. Paragraph 5 of the report reads as follows:

"As part of the remit of the Policy Committee, it was decided at a meeting convened on October 15, 2020, to review elements of the Memorandum and Articles of Association. The following resolutions were tabled:

Be it resolved that this honorable annual conference duly constituted in accordance with the memorandum and articles of association and meeting in accordance with the provisions therein, consider and, if thought it, approve the following amendments:

- ***Article 13.0(3): Annual Conference – Meetings***

  That "form" be inserted in the sentence - the Conference shall normally meet during the third full week in August each year but may be convened in any form, place and time decided upon by the Conference itself or by the General Council, Central Executive or the President acting on their behalf."

The report ends with the resolutions which were passed, the first of which related to the amendment proposed by the Policy Committee on the recommendation of the General Council and reads as follows:

"WHEREAS, Article 13.0(3) Currently states that, "The Conference shall normally meet during the third full week in August each year but maybe convened at any time and place to set it upon by the Conference itself or by the General Council, Central Executive or the President acting on their behalf. Twenty-one days' notice at least specifying the place, date and time of the conference shall be given to Secretaries of District Associations, Delegates and Representatives for the convening of annual conference. Accidental omission of notice or its non-receipt by Secretaries, Delegates or Representatives shall not invalidate the proceeding of any Annual Conference.'

BE IT RESOLVED that Article 13.0(3) be amended to read "The Conference shall normally meet during the third full week in August each year but may be convened in any form, time and place decided upon by the conference itself or by the General Council, Central Executive or the President acting on their behalf. Twenty-one days' notice at least specifying the date, place and time of the conference shall be given to Secretaries of District Associations, Delegates and Representatives for the convening of annual conference. Accidental omission of notice or its

non-receipt by Secretaries, Delegates or Representatives shall not invalidate the proceeding of any Annual Conference.'

Moved by: Itena Williams

Seconded by: Patrick Smith"

57. It is clear on the reports and minutes of meetings that the resolution was passed to amend the Articles of Association to permit the amendment to be made to allow meetings to take place "in any form, time and place decided on by the Conference, the General Council, Central Executive or the President acting on their behalf". It was the Claimant herself who on her own evidence called the meeting and recommended that it be done online. She says she did so on the recommendation of the General Council. That is neither here nor there, she is a person who is fit and proper to call the meeting. The General Council could also have called the meeting. If the Claimant had an issue with the calling of the meeting, and was unsure of whether or not she could do so, then perhaps she should have sought legal advice before the meeting was called and not after the meeting was called, the vote taken, the package accepted and members had started to receive their new salaries and had been doing so for approximately 21 months.

58. The meeting at which the decision was taken to accept the counteroffer proposed by the Minister of Finance which was done virtually and which vote was taken by a show of hands virtually in 2023, was in accordance with the resolutions passed in 2021 and in keeping with the amendment to the Companies Act also passed in 2021.

Issue 3: Whether the resolutions passed at the virtual meeting held by the Defendant were valid, they not having been registered at the Companies Office.

59. Mr Wildman is of the view that in order for an amendment to take effect the special resolution which was passed to amend the Articles must be registered at the Companies Office and that this must be done within 15 days of the resolution being passed in keeping with section 139 of the Companies Act. The

Defendant admits that the resolution amending the Articles of Association, were not deposited at the Companies Office. According to Mr Wildman, since the resolution amending the Defendant's Articles of Association had not been deposited at the Companies Offices in accordance with the governing statute, there has been no amendment in law and therefore the meeting held virtually to accept the salary package offered by the Government of Jamaica was not valid. In Mr Wildman's words, the meeting is an "illegality". He argues that section 139(1) of the Companies Act is a serious obstacle for the Defendant because following the decision in **Garth Dyche** and **Carlton Smith**, where there is a failure to follow statutory provisions, anything done otherwise is null and void and of no effect.

60. Mr Wildman relied on the case of **Strachan v The Gleaner Company Limited and anor [2005] UKPC 33** and in particular paragraphs 25 and 26 of the decision of Lord Millet to show that the failure to comply with the statutory requirements makes the resolution and any decision flowing therefrom a nullity which cannot be cured. In fact, Mr Wildman likens the resolution resulting from failing to comply with statutory requirements as not even qualifying as a "*dog licence"*. He says that resolution is "*ineffective. It does not exist"* because the Defendant, being a creature of its own constitution "*has no inherent powers to breach its own constitution".* He argued that it was no defence to say that the resolution was going to be registered because it had to registered within 15 days of being passed. The Defendant acted unlawfully when it did not comply with its constitution. It is a public entity which has a duty to follow the law.

61. As great reliance has been placed on paragraphs 25 and 26 of the **Strachan decision** I feel it is prudent to set them out. In those paragraphs Lord Millet said:

> *"25. The distinction between orders which are often (though in their Lordships' view somewhat inaccurately) described as nullities and those which are merely irregular is usually made to distinguish between those defects in procedure which the parties can waive and which the Court has a discretion to correct and those defects which parties cannot waive and which give rise to proceedings which the defendant is entitled to*

have set aside ex debitio justitiae. The leading example is Craig v Kanssen [1943] 1 KB 256, where the proceedings were not served on the defendant at all. The Court of Appeal held that the proceedings were a nullity which the defendant was entitled as of right to have set aside. Unfortunately, Lord Greene MR expressed the view that the court of first instance had an inherent jurisdiction to set aside an order made in such proceedings and that it was not necessary to appeal from it. But this was expressed in cautious terms, was obiter, and has since been doubted. Moreover, Lord Greene left open the question, on which there was clear authority and which would seem to be highly relevant, whether the order had sufficient existence to found an appeal. Their lordships respectfully think that he was mistaken.

26. In re Pritchard [1963] 1 Ch 502, 520 Upjohn LJ observed that

> *'Part of the difficulty is that the phrase 'ex debito justiciae' had been taken as equivalent to a nullity, but, with all respect to Lord Greene's judgment in Craig v Kanssen, it is not. The phrase means that the [defendant] is entitled as a matter of right to have it set aside.'*

Upjohn LJ distinguished between defects in proceedings which could and should be rectified by the Court and those which were so fundamental that they made the whole proceedings a nullity. These included (i) proceedings which ought to have been served but which have never come to the notice of the defendant at all; (ii) proceedings which have never started at all owing to some fundamental defects in issuing them; and (iii) proceedings which appear to be duly issued but fail to comply with a statutory requirement. These are all examples of orders of the court made in proceedings which are nullities because they have not been properly begun or served. None of them is an example of a case where an order has been made in proceedings which have been properly begun and continued. In re Pritchard itself was an example of the second class; the proceedings had never been started at all.

According to Danckwerts LJ, the originating process had no more effect to commence proceedings than a dog license."

Given this reasoning, Mr Wildman is of the view that the resolution is a nullity and any decision made as a result of it, ought to be set aside as the Court cannot rectify it. The Court cannot rectify it as it is not a procedural defect, which the parties can waive.

62. The Court must determine whether the failure to lodge the resolution amending the Defendant's Articles of Association amounted to a procedural irregularity or was so fundamental that it made the whole proceedings a nullity.

63. Mrs Hay submits that in order to determine the consequence of failing to file the resolution at the Companies Office, the Court should look to the governing statute. If the Act itself specifies the consequence, then there is no need to look further as that is the only consequence that can flow from a failure to comply with the statutory provision. Section 139(5) was already mentioned in paragraph 33 above and the consequence for failing to comply with the statutory requirement of lodging the resolution is simply the payment of a $50,000 default fine.

64. Section 10 of the Companies Act reads as follows

"(1) Subject to the provisions of this Act, a company may by special resolution alter or add to its articles.
(2) Any alteration or addition so made in the articles shall, subject to the provisions of this Act, be as valid as if originally contained therein, and be subject in like manner to alteration by special resolution."

Section 11 speaks to the registration of the articles and provides that

"The articles shall be delivered to the Registrar who shall –

(a) retain and register them if the articles comply with the provisions of this Act, or

(b) where the articles are not in compliance, require that they be amended to ensure such compliance."

Section 12(1) of the statute speaks to the effect of registration of the articles of a company which is simply a certification by the Registrar that the company is incorporated and in the case of a limited company, that it is limited.

65. The rulings in the **Carlton Smith case, Strachan case** and **Monica Stewart case** all point to the need to comply with statutory requirements. In **Monica Stewart**, the sentence of the Resident Magistrate was declared a nullity because the condition precedent on which she should act, was not complied with. The Defendant, in failing to deliver the resolutions amending the Articles to the Registrar of Companies, failed to comply with the section 139(1) statutory requirement. This, however, does not mean that the failure to do so invalidates the resolution. The Companies Act does not stipulate a condition precedent of filing the amendments with the Companies Office in order to give them validity. Similarly, in the **Carlton Smith case**, the Inspector's decision was invalid because he acted outside the scope of his duties. This is not the issue here. In the case at bar, the Defendant failed to fulfil a filing requirement (not a condition precedent) and the consequence for doing so is set out clearly in section 139(5) of the Companies Act. In the **Directors of Ashburn Railway case** the contract was outside of the company's objects as set out in its Memorandum of Association and that rendered the contract void from the get-go.

66. In **Garth Dyche**, the consequence for not stamping the promissory note was that it could not be relied on as evidence in a trial. Failing to stamp the document did not render the document null and void and of no effect or illegal, as Mr Wildman submits. I understand Phillips JA to be saying that if the document was stamped in excess of 7 days it would not have been stamped according to the law and could not be admitted into evidence in order to recover on or enforce it. However, if the document was stamped later and the relevant penalties paid, the document could be used for the purpose of evidence. Failure to stamp the document rendered it useless at trial but outside of trial, its

contents could be relied on by its makers. I am of the view that a similar conclusion can be reached in the case at bar. A third party may say any decision made consequent to that resolution does not bind him, but I dare say that the members of the company remain bound by the decision. If the Defendant wishes to bind third parties, it must pay the relevant fees and penalties. It can do so tomorrow. The failure to follow a procedural step does not, in my view, invalidate the resolution itself so that it is rendered null and void and of no effect.

67. On the face of sections 10, 11 and 12(1) of the Companies Act it appears that the purpose of delivering the articles, whether in their original form or in an amended form *via* special resolution, is for the Registrar of Companies to retain them and register them or require that they be amended to conform to statutory requirements. The Registrar of Companies appears to be tasked with registering and regulating companies incorporated in Jamaica, acting as keeper of documents relating to the registered companies for the benefit of the public in general and the members/shareholders of the company itself. This makes sense as having the documents in a central location would allow the public and members/shareholders to know how a company is functioning, who is leading it, what shares are issued, among other things so that they can be informed fully as to how and whether to do business with the registered company. Section 352(1) of the Act supports the position that the Registrar of Companies is the keeper of the records as any person who wishes to inspect the documents kept by the Registrar may do so if the relevant fees are paid.

68. The role of the Registrar of Companies is important in this context as it sets the stage for the consideration of whether the resolutions have to be lodged with the Registrar for them to be valid and effective. So, we go back to the age-old question, if a tree falls in the forest and we do not hear it, does it mean that it did not fall? A similar question can be asked here, if the resolution was passed and was not registered, does it mean that it does not bind the members? The Act does not say that registration of the amendment is what makes it effective. It merely says that the amendment should be registered. The registration would allow the public to know that there was in fact an amendment – the members

would have already been alerted, they having been present and voted when the resolution was being considered. It seems to me then that the special resolution takes effect immediately when passed. It is effective *per se* and nothing else is needed to prove that it is so. Lodging it with the Registrar of Companies in keeping with section 11 of the Companies Act does nothing more than formalize the act. Simply put, the act of amending the articles was complete when the resolution was passed, what should follow later with the lodgment and registering of the amendment with the Registrar at the Companies Office would be but ceremony.

69. I agree with Mrs Hay's submission that section 10 of the Companies Act does not mention registration of the special resolution as a condition for the validity of the amendment. While it does not do so, section 11 requires delivery of the articles for registration. Where I part company with Mr Wildman is that I am not of the view that the delivery for the purposes of registration is what makes the amendment valid. I am of the view that delivery for registration is to engage the Registrar in her function as keeper of the record for the benefit of the public. I find support in this position in section 139(1) of the Companies Act which says that the resolution is to be forwarded to the Registrar and recorded by him, a copy of the resolution is to be embodied in or annexed to every copy of the articles issued after the passing of the resolution, if the articles have not been registered, a copy of the resolution is to be forwarded to any member at his request on payment of the requisite fee (all procedures aimed at ensuring that the public and company members are aware of the fact that the company has altered its articles) and finally if the resolution is not delivered to the Registrar so that he can record it, then the company and every defaulting officer is liable to pay a default fine of $50,000. There is nothing in Act, which says the amendment is invalid if the requirements for delivering it to the Registrar are not met and so while the submissions made by Mr Wildman on the Claimant's behalf were carefully considered, they ultimately fell short and were insufficient to persuade me.

70. In light of the above, I am of the view that the Defendant was authorized by its own constitution to accept the wage package that was offered by the Government of Jamaica. My orders are therefore as follows:

    a. The orders sought by the Claimant in the Fixed Date Claim Form filed on July 10, 2024, are refused.
    b. The Claimant is to pay the Defendant costs in the claim which are to be taxed if not agreed.
    c. The Defendant's attorneys-at-law are to file and serve the Judgment.