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**NOTICE TO PARTIES OF THE COURT'S
MEMORANDUM OF REASONS FOR DECISION**

SUPREME COURT CIVIL APPEAL COA2022CV00009

APPLICATION NO COA2025APP00107

BETWEEN	ALTON-LEE BRAMWELL	1st APPELLANT
	ROCHELLE BRAMWELL	2nd APPELLANT
	NEVILLE MCFARLANE	3rd APPELLANT
	VINCENT ATKINSON	4th APPELLANT
AND	JAMAICA NORTH-SOUTH HIGHWAY COMPANY LIMITED	1st RESPONDENT
AND	CHINA HARBOUR ENGINEERING COMPANY LIMITED	2nd RESPONDENT

TAKE NOTICE that this matter was heard by the Hon Mr Justice F Williams JA, the Hon Mrs Justice Dunbar Green JA, and the Hon Mr Justice Brown JA on 23 and 24 April 2026, with Mark-Paul Cowan, Ms Allyandra Thompson and Ms Dionne Samuels instructed by Nunes, Scholefield, DeLeon & Co for the applicants, Ms Khadine Nurse instructed by Dixon and Associates appearing amicus for the appellants, and Phillip W Bernard for the interested party, the ancillary defendant.

TAKE FURTHER NOTICE that the court's memorandum of reasons, as delivered orally in open court by the Hon Mrs Justice Dunbar Green JA, is as follows:

[1] The applicants, with the concurrence of the other parties, applied for clarification of the orders of this court comprised in the certificate of result of appeal dated 27 March 2023. Specifically, they sought guidance on whether the orders setting aside the judgment and orders of Wiltshire J (‘the trial judge’) and directing a new trial extended to non-appealing claimants, and on the effect of those orders upon the judgment entered in favour of the ancillary defendant, who was not a party to the appeal.

[2] In summary, 19 claimants jointly instituted claim no 2016 HCV 02151 in the Supreme Court against the applicants, alleging nuisance arising from the construction of the North South Highway. MIDAC Equipment Limited was joined as an ancillary defendant. The trial judge excluded expert evidence relied upon by the claimants, dismissed the claim, and awarded judgment and costs to the applicants and the ancillary defendant.

[3] Four of the 19 claimants appealed. The ancillary defendant, although served with the notice of appeal, did not participate in the proceedings. This court held that the exclusion of the expert evidence relied on by the appellants was erroneous, and made the following orders:

- “1. The appeal is allowed.
2. The judgment of Wiltshire J, delivered on 20 December 2021 and orders are set aside.
3. A new trial is hereby ordered to take place as soon as possible before a different judge.
4. Costs of this appeal to the appellants to be agreed or taxed.”

[4] The applicants submitted that appellate relief does not extend to non-appealing parties absent an enabling rule, an application to regularise an appeal, or the existence of indivisible rights. To hold otherwise, they argued, would undermine procedural fairness and the time-limit regime, by conferring benefits on parties who bore none of the attendant procedural burdens. Reliance was placed on **Deutsche Bahn AG and others**

v Morgan Advanced Materials plc [2014] UKSC 24 and **Teo Chee Yeow Aloysius and Another v Tan Harry and Another** [2004] SGCA 31.

[5] They further contended that this court's orders benefited only the four appellants, and the non-appealing claimants remained bound by the trial judge's judgment and orders unless they take proper procedural steps to displace them.

[6] As to the ancillary defendant, the applicants submitted that fairness required restoration of the ancillary claim for the retrial, since its indemnity nature made it derivative of the applicants' liability to the appellants.

[7] Ms Nurse, appearing as *amicus curiae* for the appellants, submitted that clarification was impermissible under the slip rule or otherwise. She argued that the court's reasoning, anchored in fairness, demonstrated an intention to set aside all orders and confer relief on all claimants, including those who did not appeal. Reliance was placed on **American Jewellery Company Limited and Others v Commercial Corporation Jamaica Limited and Others** [2014] JMCA App 16, **Laing and Another v Lucille Rodney (Executor of estate Sandra McLeod deceased)** [2013] JMCA Civ 27, and **Dalfel Weir v Beverly Tree** [2016] JMCA App 6.

[8] Mr Bernard, appearing for the ancillary defendant as an interested party, submitted that this court's orders should not extend relief to non-appealing claimants. He argued further that the same principles apply with equal force to the ancillary defendant, which was not a party to the appeal. His position was that the appellants had no claim against the ancillary defendant, and, therefore, their successful appeal could not operate as an appeal against dismissal of a separate claim (ancillary) owned by another party. Counsel contended that a general order setting aside "the judgment and orders" of the trial judge does not automatically reverse perfected judgments in favour of non-parties to the appeal. By parity of reasoning, if the non-appealing claimants remain bound because they did not appeal, then the ancillary defendant is equally bound by the dismissal of its ancillary claim.

[9] This court's jurisdiction to clarify perfected orders was affirmed in **Advantage General Insurance Co Limited (formerly United General Insurance Company Limited) v Marilyn Hamilton** [2021] JMCA App 25. That authority establishes that clarification is permissible to ensure orders are accurately implemented, provided such clarification does not alter the sense, substance, and effect of the orders. Applying that principle, this court reaffirms its jurisdiction to clarify the scope of the orders made. Such clarification is confined to the court's intention at the time of judgment, and does not extend to altering the substance or effect of the orders.

[10] It is evident from the language of this court's judgment and orders that no relief was conferred on the non-appealing claimants. The benefit of the appellate orders is directed exclusively to the four appellants, who assumed the attendant risks of appeal and succeeded on the relevant points. The non-appealing claimants remain bound by the trial judge's judgment and orders unless and until they take proper procedural steps to displace them.

[11] The ancillary defendant is juridically tethered to the applicants, and its position necessarily tracks the outcome of the main action. The retrial ordered is confined to the claims of the four appellants. Because the ancillary claim is consequential upon the applicants' liability to those appellants, it is restored solely for the purposes of that retrial. The trial judge's judgment and consequential orders in relation to the ancillary claim remain intact and binding upon the non-appealing claimants.

[12] Accordingly, the orders of this court are clarified as follows:

1. The order dated 16 March 2023 operates only as between the four appellants and the applicants and does not disturb Wiltshire J's judgment and orders against the non-appealing claimants.
2. The ordered new trial relates solely to the claims of the four appellants.

3. The ancillary claim is restored only insofar as it is consequential upon, and for the purposes of, the retrial of the appellants' claims; and that Wiltshire J's judgment and consequential orders in relation to the ancillary claim remain undisturbed as regards the non-appealing claimants.
4. By consent no order as to costs.