[2026] JMCA Civ 26

JAMAICA

IN THE COURT OF APPEAL

BEFORE: THE HON MR JUSTICE F WILLIAMS JA
THE HON MRS JUSTICE DUNBAR-GREEN JA
THE HON MR JUSTICE BROWN JA

BETWEEN	**ANDREW HOLNESS**	**1ST APPELLANT**
AND	**IMPERIUM HOLDINGS LIMITED**	**2ND APPELLANT**
AND	**POSITIVE MEDIA SOLUTIONS LIMITED**	**3RD APPELLANT**
AND	**POSITIVE JAMAICA FOUNDATION LIMITED**	**4TH APPELLANT**
AND	**CRAIG BERESFORD**	**1ST RESPONDENT**
AND	**KEVON STEPHENSON**	**2ND RESPONDENT**
AND	**THE INTEGRITY COMMISSION**	**3RD RESPONDENT**

Written submissions filed by Henlin Gibson Henlin for the appellants

Written submissions filed by Hylton Powell for the respondents

31 July 2026

Civil Procedure – Judicial review – Striking out – Whether the learned judge erred in failing to strike out paragraphs in affidavit – Whether the learned judge erred in failing to strike out portions of amended fixed date claim form – Specific disclosure – Whether the learned judge erred in failing to make orders for the production of unredacted documents – Requirements for making order for specific disclosure – Whether documents requested for specific disclosure are directly relevant to the issues in dispute – The Civil Procedure Rules, Rules 26.3(1)(b), 28.6, 28.7, 30.3(1) and (3) – Integrity Commission Act, section 56

PROCEDURAL APPEAL

(Considered on paper pursuant to rule 2.4(3) of the Court of Appeal Rules 2002)

F WILLIAMS JA

Background

[1] The claim in the Supreme Court giving rise to this appeal was commenced by fixed-date claim form filed on 20 December 2024 and amended on 3 February 2025, the appellants having obtained leave to apply for judicial review against the respondents in relation to two reports. They are headed as follows:

(i) a. "Investigation Report into the Statutory Declarations submitted by The Most Honourable Mr. Andrew Holness, Prime Minister, for the years 2019-2022, in respect of concerns that he owns assets disproportionate to his lawful earnings, and that he made false statements in his Statutory Declarations, by way of omissions, contrary to law". That report is dated 30 August 2024.

b. "Addendum- Investigation Report into the Statutory Declarations submitted by The Most Honourable Mr. Andrew Holness, Prime Minister, for the years 2019-2022, in respect of concerns that he owns assets disproportionate to his lawful earnings, and that he made false statements in his Statutory Declarations, by way of omissions, contrary to law" dated 9 September 2024.

(ii) "**<u>Special Report</u>**- Submitted by the Integrity Commission under Section 36(3) of the Integrity Commission Act in the matter of an Investigation Report of an Investigation Conducted into the Statutory Declarations submitted by The Most Honourable Mr. Andrew Holness, Prime Minister, for the years 2019-2022, in respect of concerns that he owns assets disproportionate to his lawful earnings, and that he made false statements in his Statutory Declarations, by way of omissions, contrary to law”. This report (referred to as the ‘Special Report’), is dated 5 September 2024.

[2] For completeness, I will set out a brief background of the parties to this matter. Dr The Most Honourable Andrew Holness, the Prime Minister of Jamaica, is the first appellant (‘the first appellant’). The second appellant, Imperium Holdings Limited (‘IHL’), is a limited liability company incorporated in Jamaica, of which the first appellant is the sole director and shareholder. The third appellant, Positive Media Solutions Limited (‘PMSL’), is also a limited liability company in which the first appellant is one of two shareholders. The fourth appellant, Positive Jamaica Foundation Limited (‘PJFL’), is a company limited by guarantee, incorporated by the first appellant. Craig Beresford, (‘the first respondent’), is the Director of Information and Complaints at the Integrity Commission (‘IC’). Kevon Stephenson, (‘the second respondent’), is the Director of Investigations at the IC, and the IC is the third respondent.

[3] The appellants filed an amended notice of application for court orders for permission to apply for judicial review on 17 October 2024 and sought several judicial review remedies primarily aimed at overturning the findings, conclusions, and recommendations made by the second respondent and the IC in the investigation reports dated 30 August 2024, and 5 September 2024. The appellants requested multiple orders of certiorari to quash the reports on the basis that they were inconsistent with the Integrity Commission Act (‘the ICA’), constituted an improper or abusive exercise of statutory powers, and included recommendations that should not have been made, except for matters already dismissed by the Director of Corruption Prosecution.

[4] In addition, the appellants sought orders of mandamus compelling the first and second respondent and the IC to properly examine the first appellant’s statutory declarations for 2021, 2022, and 2023 and to recommend exoneration where appropriate, in accordance with the ICA. The appellants also sought several declarations that the submission of the reports to parliament was unlawful because the statutory requirements of section 54 of the ICA were not met, in particular, there was an absence of reasonable

suspicion of corruption and the failure to refer the matters to the Director of Corruption Prosecution. They challenged the constitutionality of section 14(5) of the Corruption Prevention Act and argued that a reverse onus is placed on the appellants, and that violates the presumption of innocence, the right to liberty and security of the person, and due process guarantees under the Charter of Fundamental Rights and Freedoms. They further contend that the investigative and prosecutorial functions within the commission lacked the necessary separation and independence, resulting in unfairness, bias, and breaches of natural justice.

[5] Additional declarations were sought alleging that the respondents acted *ultra vires* by referring matters to the Financial Investigations Division, improperly disclosing private information about the appellants, and failing to provide notice of a hearing before making adverse recommendations or referring the reports to other authorities. They assert that the investigation and the methods used were unreasonable, unfair, irrational, and breached their legitimate expectations of procedural fairness. They requested that any ongoing investigation be brought to an end and that certain provisions of the ICA be struck down due to structural unfairness in the IC's operations.

[6] After the appellants filed their list of documents on 30 April 2025 and the respondents filed theirs on 9 May 2025, the appellants' attorneys-at-law requested that the respondents' attorneys-at-law provide documents that had been omitted and unaltered copies of documents that had been previously supplied with obliterations and redactions. Those were not provided.

[7] The outcome of that was that the appellants' attorneys-at-law, on 11 June 2025, filed a notice of application for court orders, seeking that paras. 5, 6, 10–19, 21 and 26 of the Second Affidavit of Craig Beresford, filed on 14 March 2025, be struck out. The appellants also sought an order for specific disclosure by the first to third defendants (now respondents) of a broad range of documents relating to the examination and investigation of the first appellant's 2021 statutory declaration, including: unredacted minutes and memoranda, email and WhatsApp communications, forensic accounting

contracts, reports and related agreements, correspondence transmitting reports, IC meeting minutes, documents prepared by specified investigators and officers, and transcripts of certain disclosed documents. The appellants also sought inspection of the unredacted documents, electronic disclosure of all relevant minutes in both in Microsoft Word format and portable document format ('PDF'). They sought an order that costs be costs in the claim, and such further or other relief as the court considers just.

[8] The filing of that notice of application coincided with the respondents' attorneys-at-law providing some of the documents that had been requested, but they re-stated their decision not to provide the requested minutes and memoranda in unredacted form.

[9] On 19 June 2025, the third respondent filed a notice of application, seeking the following orders:

> "1. The time for serving this application be abridged.
>
> 2. The 1st, 2nd and 3rd Defendants be granted relief from sanctions and an extension of time respectively to May 9 and 18, 2025 to give Standard Disclosure and Inspection.
>
> 3. The following parts of the Amended Fixed Date Claim Form be struck out:
>
>> a. Order 1: The words "Addenda including that dated the 5th September 2024".
>>
>> b. Order 2: To the extent that it seeks an order based on a claim that there is more than one "Investigation Report".
>>
>> c. Order 7 and ground 55: The word "purported".
>>
>> d. Ground 36: To the extent that it claims that the 3rd Defendant conducted an investigation or made any findings, conclusions or recommendation in the Investigation Report dated August 30, 2024.
>
> 4. The costs of the application to be costs in the claim."

[10] Having heard both applications over three days, Jarrett J ('the learned judge') made the following orders in the Supreme Court on 31 July 2025:

"**The claimant's [sic] application**

1. Order No. 1 is refused.

2. Order No. 2(a) is refused.

3. Order No. 2j- if the report referred to in the memorandum dated July 19, 2024, is a draft then within 7 days of this order, the 1st 2nd and 3rd defendants are to disclose the draft. Within 14 days of this order, a search is to be conducted by the 1st, 2nd and 3rd defendants to determine whether documents that have already been disclosed include the documents in the 14 files referred to in the memorandum of July 19, 2024. If the search reveals documents not disclosed but which should have been disclosed, disclosure is to be made within 7 days of the completion of the search.

4. Order number 2 (k), (l) and (m)- within 14 days of this order a search is to be conducted to determine whether there exists any documents prepared by Mrs. Stephanie Fiddler-Blake, Mr Ron-Odade Johnson and Ms Kema Medford, which contain their respective analysis, conclusions and/or recommendations, touching and concerning the investigation and the report and any such document must be disclosed within 7 days of the completion of the search.

5. Costs are costs in the claim.

6. Leave to appeal granted to the claimants; stay of proceedings is granted pending the outcome of the appeal and I ask that the Court of Appeal give this matter an expedited hearing.

<u>The 1st, 2nd and 3rd Defendants' application:</u>

1. The word 'purported' in order number 7 and ground 55 of the Amended Fixed Date Claim form is struck out.

2. The words 'and or 3rd defendant' in line 1 of ground 36 of the Amended Fixed Date Claim Form is struck out.

3. Costs are costs in the claim."

Grounds of appeal

[11] Being dissatisfied with the orders of the learned judge, the appellants filed a notice and grounds of appeal on 14 August 2025, seeking to have the learned judge's orders set aside. The grounds of appeal are reproduced below:

> "a. The learned judge erred as a matter of fact and/or law when she refused to strike out paragraphs 10-16 of the Second Affidavit of Craig Beresford filed on March 14, 2025 having regard to the fact that the contents of said paragraphs:
>
> i. are not relevant to the issues to be determined in the claim as they concern matters prior to filing and consideration of the 1st Claimant's 2021 statutory declaration;
>
> ii. do not form part of the body of information that was considered and/or examined by the Defendants in their examination and/or investigation into the 1st Claimant's 2021 statutory declaration;
>
> iii. introduce material that are scandalous, frivolous, vexatious and their prejudicial effect outweigh their probative value; and
>
> iv. are otherwise irrelevant to the real matters in controversy between the parties.
>
> b. The learned judge erred as a matter of fact and/or law in failing to strike out paragraph 21 of the Second Affidavit of Craig Beresford filed on March 14, 2025 as the content

of the said paragraph is not directly relevant to the resolution of any of the issues in the claim and its inclusion adds information that is scandalous, frivolous and/or vexations [sic] and its prejudicial effect outweighing [sic] its probative value.

c. The learned judge erred as a matter of fact, and/or law in accepting the Respondents' assertion of confidentiality in its response, dated the 11th June 2025, to a request for specific disclosure in relation to documents 16, 19, 20, 21, 24, 26, 34, 36, 49, 51, 53, 56, 59, 64, 67, 68, 71, 77 and 85 of their List of Documents filed on May 9, 2025 without first examining the unredacted documents.

d. The learned judge misdirected herself on the law when she found that disclosure in judicial review proceedings is circumscribed because public bodies have a duty of candour and because judicial review typically raise [sic] questions of law and the application of law to facts that are generally not in dispute.

e. The learned judge misdirected herself on the law when she found that because disclosure in judicial review proceedings is circumscribed because public bodies have a duty of candour and judicial review typically raise [sic] questions of law and the application of law to facts that are generally not in dispute she would not order the disclosures that she refused in this case and in particular those in relation to the remaining redacted documents.

f. The learned judge erred as a matter of fact and/or law in striking out the use of the word 'purported' in order number 7 and ground 55 of the Amended Fixed Date Claim Form filed on February 3, 2025 on the basis that the Appellants are bound in the judicial review claim by her findings of fact made during the hearing of the application for permission for leave to commence the claim for judicial review.

g. The learned judge erred as a matter of fact and/or law in striking out the words 'and/or the 3rd Defendant' in ground 36 of the Amended Fixed Date Claim Form on the basis that the 3rd Defendant did not participate in any investigation. In striking out the said words, the learned judge exceeded her jurisdiction vis a vis the Full Court. It is a matter for the Full Court, taking into account all matters including documents disclosed, as to whether the Investigation Report is to be attributed to or was adopted by the 3rd Defendant having regard to the facts of this case, the full terms and effects of Section 14(5) of the Corruption Prevention Act and the Integrity Commission Act.

h. The learned judge erred as a matter of fact and/or law when she failed to grant disclosure of the resignation letter and documents setting out her communications, concerns, statements relative to the investigation report - (Document part of 2k in the application of the 11th June 2025) for Stephanie Fiddler-Blake without satisfying herself by examination of the matters in issue in the judicial review proceedings.

i. The learned judge erred as a matter of fact and/or law in failing to consider the orders sought in paragraph 4 of the Notice of Application for Court Orders dated the 11th June 2025."

This court's remit

[12] Before embarking on a consideration of the individual grounds of appeal and their related submissions, it is useful to place at the forefront the "guardrails" within which this court is required to operate when considering an appeal from the exercise of the discretion of a judge in the court below, as in this case. The starting point must be the principles stated in **Hadmor Productions Ltd v Hamilton** [1983] 1 AC 191, a decision of the House of Lords. In that judgment, Lord Diplock, at page 220, made the following observation:

> "[T]he function of an appellate court, whether it be the Court of Appeal or your Lordship's House, is not to exercise an independent discretion of its own. It must defer to the judge's exercise of discretion and must not interfere with it merely upon the ground that the members of the appellate court would have exercised the discretion differently. The function of the appellate court is initially one of review only. It may set aside the judge's exercise of his discretion on the ground that it was based on a misunderstanding of the law or of the

> evidence before him or upon an inference that particular facts existed or did not exist, which, although it was one that might legitimately have been drawn upon the evidence that was before the judge, can be demonstrated to be wrong by further evidence that has become available by the time of the appeal; or upon the ground that there has been a change of circumstances after the judge made his order that would have justified his acceding to an application to vary it. Since reasons given by judges for granting or refusing interlocutory injunctions may sometimes be sketchy, there may also be occasional cases where even though no erroneous assumption of law or fact can be identified the judge's decision to grant or refuse the injunction is so aberrant that it must be set aside upon the ground that no reasonable judge regardful of his duty to act judicially could have reached it."

[13] Though Lord Diplock spoke then specifically about interlocutory injunctions, it is recognized and accepted that these principles apply to appeals generally. That this is so may be seen in the case of **The Attorney General of Jamaica v John MacKay** [2012] JMCA App 1. In that case, Morrison JA (as he then was), at paras. [19]-[20] opined as follows:

> "[19] It is common ground that the proposed appeal in this case will be an appeal from Anderson J's exercise of the discretion given to him by rule 13.3(1) of the CPR to set aside a default judgment in the circumstances set out in the rule. It follows from this that the proposed appeal will naturally attract Lord Diplock's well-known caution in **Hadmor Productions Ltd v Hamilton** [1982] 1 All ER 1042, 1046 (which, although originally given in the context of an appeal from the grant of an interlocutory injunction, has since been taken to be of general application): '[The appellate court] must defer to the judge's exercise of his discretion and must not interfere with it merely on the ground that the members of the appellate court would have exercised the discretion differently.'
>
> [20] This court will therefore only set aside the exercise of a discretion by a judge on an interlocutory application on the ground that it was based on a misunderstanding by the judge of the law or of the evidence before him, or on an inference - that particular facts existed or did not exist - which can be

> shown to be demonstrably wrong, or where the judge's decision 'is so aberrant that it must be set aside on the ground that no judge regardful of his duty to act judicially could have reached it'."

Ground a: The learned judge erred as a matter of fact and/or law when she refused to strike out paragraphs 10-16 of the Second Affidavit of Craig Beresford filed on March 14, 2025 having regard to the fact that the contents of said paragraphs:

i. **are not relevant to the issues to be determined in the claim as they concern matters prior to filing and consideration of the 1st Claimant's 2021 statutory declaration;**

ii. **do not form part of the body of information that was considered and/or examined by the Defendants in their examination and/or investigation into the 1st Claimant's 2021 statutory declaration;**

iii. **introduce material that are scandalous, frivolous, vexatious and their prejudicial effect outweigh their probative value; and**

iv. **are otherwise irrelevant to the real matters in controversy between parties.**

Summary of submissions

For the appellants

[14] Counsel submitted that the learned judge erred in treating paras. 10–16 of the first respondent's affidavit as relevant. It was argued in the written submissions that a proper reading of para. 22 of the first appellant's affidavit in support of the fixed date claim form, shows that the first appellant was merely providing context about the statutory declaration requirements and confirming that he had filed declarations which have been certified and published since becoming a member of Parliament. Counsel maintained that the first appellant did not assert that those declarations were free of challenge or issue with the respondents. Further, even if the court were to infer that the first appellant had said the statutory declarations were without challenge by or issue with the respondents; counsel contended that the material still bears no relevance to the matters actually in dispute.

[15] Relying on rules 10.5, 26.3(1)(b) and 30.3(1) of the Civil Procedure Rules ('CPR'), counsel submitted that evidence is only relevant if it is necessary to resolve a fact in issue. It was contended that paras. 10–16 of the first respondent's affidavit did not address any such fact. Counsel further noted that these paragraphs concerned the first appellant's 2019 and 2020 statutory declarations, thus, they contained material that predated the claim and did not form part of the information contained in the reports under review in the proceedings. Since no decision was to be made regarding those reports, counsel argued that the evidence in those paragraphs was inadmissible and that its prejudicial effect outweighed its probative value.

[16] Counsel further argued that, given the framework of the ICA, once the statutory declarations were certified and published, the matters were effectively concluded. Accordingly, the first respondent's statements attempted to introduce material that is extraneous, particularly since the appellants were contesting only issues arising from the 2021 declaration, the Special Report, the Investigation Report and the Addendum. The case of **Private Power Operators Ltd v Industrial Disputes Tribunal and Others** [2025] UKPC 7, ('**Private Power Operators v IDT**') was also cited, and in counsel's submission, the case made it clear that, in matters of judicial review, the court should only have regard to the reasons for the decision that is being challenged and should avoid considering extraneous material. Upon the authority of **Private Power Operators v IDT**, it was submitted that the learned judge erred in failing to find that paras. 10-16 of the first respondent's affidavit were irrelevant and an abuse of process that would obstruct the disposal of the matter and thus should be struck out.

<u>For the respondents</u>

[17] It was submitted that the evidence in paras. 10–16 of the first respondent's affidavit directly responded to para. 22 of the first appellant's affidavit in support of the fixed date claim form filed on 20 December 2024. Counsel argued that it was the first appellant who introduced the historical context of his statutory declarations from 1997–2020, thereby entitling the respondents to reply. It was further submitted that those

paragraphs were relevant because they formed a central part of his defence to the allegations made against him. One such allegation was that the first respondent acted in bad faith when he failed to certify the first appellant's 2021 statutory declaration. Counsel contended that the first appellant's affidavit created a narrative that from 1997–2020 (a period preceding the first respondent's tenure), his statutory declarations were consistently filed and certified, implying that no issues had arisen prior to the first respondent's appointment as Director of Information and Complaints.

[18] In arguing his position, counsel submitted that the first respondent could not have certified the first appellant's 2021 declaration without information concerning the source of funds, and his response simply clarified the point that similar concerns had arisen with previous declarations but were resolved once information was requested and investigations were completed. It was, therefore, contended that the first respondent could only certify the 2021 declaration after receiving the necessary information and investigations were completed. Consequently, it was argued that, if the appellants wished to insist that the first respondent acted in bad faith in relation to the 2021 certification, then he was entitled to demonstrate that the first appellant's earlier declarations had been certified after investigations were conducted and that it would be the same for the 2021 declaration.

[19] It was additionally submitted that paras. 13–16 of the first respondent's affidavit were relevant because they set out the challenges he encountered while reviewing the 2020 statutory declaration. Counsel argued that, in light of para. 42 of the first appellant's affidavit, it was clear that it was the appellants who placed these matters in issue, and they should not be permitted to rely on them selectively while seeking to strike out the first respondent's account of the same events. Counsel also submitted that **Private Power Operators v IDT**, was inapplicable, as the Board's observations in that case concerned the involvement of tribunals in litigation challenging decisions they made in their adjudicative capacity. It was argued that a point of difference was that the decision in the instant appeal was made in a non-adjudicatory context, and the rationale in that

case did not extend to public authorities participating in such proceedings. Accordingly, it was submitted that the learned judge correctly found that paras. 10–16 of the first respondent's affidavit were neither frivolous nor vexatious and were relevant. Counsel, therefore, contended that the judge did not misapprehend the law or the evidence before her.

Discussion

[20] Ground a concerns the issue of whether the learned judge erred by refusing to strike out paras. 10-16 of the first respondent's second affidavit filed on 14 March 2025. To resolve this issue, I will explore the rules of the CPR relating to the court's power to strike out pleadings in their entirety or parts of them. In this regard, rules 26.3(1)(b) and 30.3(1) and (3), are relevant. They are reproduced below:

Rule 26.3(1)(b) states:

> "26.3 (1) In addition to any other powers under these Rules, the court may strike out a statement of case or part of a statement of case if it appears to the court –
>
> …
>
> (b) that the statement of case or the part to be struck out is <u>an abuse of the process of the court or is likely to obstruct the just disposal of the proceedings</u>;" (Emphasis added).

Rule 30.3(1) and (3) reads:

> "30.3 (1) The general rule is that an affidavit may contain only such facts as the deponent is able to prove from his or her own knowledge.
>
> …
>
> (3) The court may order that any <u>scandalous, irrelevant or otherwise oppressive</u> matter be struck out of any affidavit." (Emphasis added).

[21] Rules 26.3(1)(b) and 30.3(1) and (3) of the CPR enable the court to establish thresholds for evidence adduced in court proceedings in order to ensure that only relevant materials that are directed to resolving factual issues are admitted.

[22] The appellants relied on **Private Power Operators v IDT** to argue that the court should avoid allowing to stand extraneous material not forming part of the challenged decision. However, this court accepts the submission of counsel for the respondents that **Private Power Operators v IDT** concerned the impropriety of a tribunal placing reliance on material outside its record when defending its adjudicative decision. By contrast, the first respondent in the present case is a representative of a public authority acting in a non-adjudicatory context and is entitled, when defending allegations of bad faith, to present contextual material necessary to explain his conduct. Therefore, even if that case had been cited to the learned judge, she, on that basis, would have been entitled to conclude that its rationale did not govern the admissibility of affidavit evidence in ordinary civil proceedings.

[23] Counsel for the respondents submitted that paras. 10-16 of the first respondent's second affidavit filed on 14 March 2025, was a direct response to para. 22 of the first appellant's affidavit. For completeness it is necessary to quote both para. 22 of the first appellant's affidavit and paras. 10-16 of the first respondent's affidavit.

[24] Para. 22 of the first appellant's affidavit reads as follows:

> "22. Over the period 1997 to 2020, I have submitted my statutory declarations as required, and they have been certified and/or published, as required."

[25] Paras. 10-16 of the first respondent's affidavit read thus:

> "10. I refer to paragraph 22 of the Holness Affidavit. The records at the Integrity Commission show that after it was established under The Parliament (Integrity of Members) Act, 1973 and up to its operation under the Integrity Commission Act, there were challenges with the statutory declarations Mr. Holness submitted.

11. By way of letter dated January 25, 2019 to the then Chairman and Commissioners, the Acting Director of Information and Complaints referred her findings to them for further and necessary action pursuant to Section 42(4) of the Integrity Commission Act. As a consequence, the then Chairman, by way of letter dated July 30, 2019 to the Acting Director of Investigation, advised that the members of the Commission agreed that an investigation should be conducted in the matter of Statutory Declarations for Mr. Holness. The investigation resulted in a '**Report in Relation to the Statutory Declaration of The Most Honourable Andrew Holness**' by the then Acting Directors of Investigation and of Information and Complaints, in 2019. Exhibit **'CB-1'** includes copies of the letters and that report.

12. As the information in that report was dated at the time when the 2nd Defendant ('the Director of Investigation') assumed office and the issues raised in it had not been fully addressed or resolved, he requested that I update the information and submit an updated financial analysis report to him. I submitted the updated financial report in respect of Mr Holness by a memorandum dated June 2, 2021. A copy of the memorandum is included in exhibit **'CB-1'**.

13. During the examination of Mr Holness' 2020 statutory declaration, I discovered that he had not disclosed that he was a director and shareholder of the 2nd Claimant ('Imperium'). Mr Holness later confirmed his interest in Imperium and that it was a **'holding vehicle for all [his] assets, and the liabilities, income, and expenses they generate.'** Exhibit **'CB-1'** includes copies of my letter dated June 30, 2021, to Mr Holness and his response to me dated July 22, 2021.

14. I also requested that Mr Holness provide me with financial statements of ADMAT Incorporated for the year 2020 and that if he believed he omitted any other information he should also provide it. Exhibit **'CB-1'** includes copies of my letter dated June 30, 2021, to Mr Holness and his response to me by email dated July 22, 2021.

15. After he complied with my requests for additional information, by letter dated December 31, 2021, I confirmed to Mr Holness that the examination of his 2020 Statutory Declaration was completed. Exhibit **'CB-1'** includes my letter

> dated December 31, 2021, Mr Holness' letter dated January 3, 2022, to the Chairman of the Commission and email exchange dated January 10-11, 2022, between the Reporting and Compliance Officer in the Information and Complaints Division and Mr Holness.
>
> 16. Following these exchanges, I concluded the examination of Mr Holness' statutory declarations for 2019 and 2020 and they were certified and subsequently summaries were gazetted and published respectively on November 27, 2020, and January 10, 2022." (Bold as in the original)

[26] The learned judge also explored the relevant paragraphs quoted above and, in her reasons, (reported as: **Andrew Holness & Ors v Craig Beresford & Ors** [2025] JMSC Civ 102), at paras. [8]- [11], she said:

> "8. I will start with the 1st order in the claimants' application. As both counsel indicated to me in submissions, what remains in issue are paragraphs 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 21, and 26 of the 2nd affidavit of Craig Beresford filed on March 14, 2025, in response to the claim. In relation to **paragraphs 10-16**, these paragraphs are the 1st defendants (Craig Beresford's), response to paragraph 22 of the affidavit of Andrew Holness filed on December 20, 2024 in support of the fixed date claim form. In paragraph 22 of his affidavit, Mr. Holness references the period 1997-2020 and he says that he submitted his statutory declarations as required, and they were certified and/or published as required. Mr Holness argues in his affidavit filed on April 4, 2025, in response to Craig Beresford's 2nd affidavit, that paragraphs 10-16 of Mr Beresford's affidavit are irrelevant, an abuse of process, scandalous, frivolous, vexatious and that their prejudicial effect outweighs their probative value. He also says in paragraph 8 that he was not told that there were any challenges with his statutory declarations for the referenced period.
>
> 9. I understand Mr. Beresford's response in those paragraphs, that is, 10-16, to be as follows. In paragraphs 10 and 11, he says that the declarations referred to by Mr. Holness in his paragraph 22, were submitted but there were challenges with them. Then he expands on paragraph 10, and he states what those challenges were. In paragraph 11 he speaks to a letter

dated January 25, 2019, from his predecessor to the Integrity Commission (IC), indicating that a review was done of Mr. Holness' statutory declarations since he became a parliamentarian. The objective was to decide whether the declarations were true representations of his assets and liabilities, and it was observed that his assets increased substantially over the period 2009-2012. Other areas of concern were also identified and Mr. Holness was written to, seeking clarification. Mr Holness' responses, however, were not considered adequate. There were further correspondences between Mr. Holness which followed, and Mr Holness wrote in August 2018, seeking more time to respond. Time was extended to October 2018. Mr Holness was written to again in December 2018, advising him that he had not met the October 2018 deadline, to date, that is, the date of the letter of January 25, 2019. As there was no response from Mr Holness, a referral to the Commission was made under s.42(4) of the Integrity Commission Act (ICA).

10. Mr. Beresford exhibits the January 25, 2019, letter, as well as the report on that investigation. So, he exhibits both things. In paragraph 12 he says, when the 2nd defendant assumed office, the issues had not been fully addressed or resolved and he, Mr. Beresford, was asked to provide an updated financial analysis report, which he did dated June 2, 2021. He also exhibits that report. In paragraph 30 he says he examined Mr. Holness' 2020 declarations, he discovered that Mr. Holness had not disclosed that he was a shareholder and director in the 2nd claimant, that is Imperium Holdings Limited, but he, Mr Holness, later confirmed this. Mr Beresford includes as exhibits to his affidavit his letter dated June 30, 2021, to Mr. Holness and Mr. Holness' response dated July 22, 2021.

11. In **paragraphs 14-15**, Mr Beresford speaks to further correspondences with Mr. Holness, and his confirmation in letter dated December 31, 2021, that the examination of Mr. Holness' 2020 statutory declaration was complete. At paragraph 16 he says that the declarations for 2019 and 2020 were certified, summarized and published." (Bold as in original)

[27] Having found that paras. 10–16 constituted a direct response to the appellants' own assertions, the learned judge further analysed whether their probative value was

outweighed by any prejudicial effect, as contemplated by rule 26.3(1)(b) of the CPR. She found that the evidence demonstrated prior challenges to certifying statutory declarations and the first appellant's involvement in resolving them, and that such matters shed light on the reasonableness of the first respondent's conduct in refusing to certify the 2021 declaration without supporting information. This was plainly probative of the issues the appellants placed before the court, specifically, the allegation of the first respondent's bad faith and improper motive.

[28] At paras. 12-13 of her reasons, the learned judge, having reviewed the evidence before her, made her findings which are also reproduced below:

> "12. I find that the response of Mr. Beresford in paragraphs 10-16 of his affidavit are relevant. Mr Beresford had a duty to disclose in his affidavit evidence in response to Mr. Holness' claim, information that relate [sic] to all matters that arise in the proceedings. It was Mr Holness who raised the issue of his statutory declarations for the period 1997-2020, in his affidavit in support of his claim. He introduced the fact of these filings for that period. He said he submitted them, and they were 'certified as required'. The clear implication from this evidence of Mr. Holness, is that prior to 2021, he filed his declarations without any concerns being raised in relation to them by the 1st, 2nd and 3rd defendants, and they were accordingly certified. In my view, Mr. Beresford's response is that there were in fact difficulties with the filings for the period referenced by Mr Holness, Mr. Holness was aware of those difficulties; there were correspondences between them, and a report arising from those difficulties, but ultimately those difficulties were resolved.
>
> 13. I have found paragraphs 10-16 of Mr Beresford's affidavit to be relevant as they are a direct response to Mr Holness' own evidence. I therefore do not find that they amount to an abuse of process, are frivolous, vexatious, scandalous or that their probative value has been outweighed by any prejudicial effect."

[29] These paragraphs illustrate that the learned judge made clear and concise findings. Firstly, she found that the impugned paragraphs were "a direct response to Mr.

Holness' own evidence," and secondly, the paragraphs did not amount to an abuse of process or irrelevant material. Having read the learned judge's reasons in their entirety, I am of the view that she meticulously reviewed the affidavits, applied the correct principles of the CPR, and conducted the necessary balancing exercise. There is no basis to fairly conclude that she misapprehended the evidence or the law. Her reasoning reflects a proper exercise of discretion and is consistent with established principles governing evidential admissibility in judicial review proceedings.

[30] Contrary to the appellants' submissions, the evidence in the challenged paragraphs of the first respondent's affidavit did not introduce the risk of unfairness or prejudice. It comprised correspondence with factual information and official reports contemporaneous with prior statutory declarations in relation to a period first referred to by the first appellant. Applying the principles by which we are bound in hearing appeals, I am led to conclude that the learned judge acted well within her discretion, on the evidence that was before her, in concluding that the impugned paragraphs were neither scandalous, frivolous, nor vexatious, and that their probative value significantly outweighed any potential prejudicial effect. That was a conclusion that was open to her to arrive at, on the evidence.

[31] In light of the foregoing, this court is satisfied that the learned judge acted within the scope of the CPR and established legal principles in refusing to strike out paras. 10–16 of the first respondent's affidavit. I am also of the view that those paragraphs were relevant, responsive, and probative; they arose directly from the appellants' own assertions and assisted in resolving central factual issues, including allegations of bad faith. The appellants have, therefore, failed to demonstrate that the learned judge erred in the exercise of her discretion, thus, I find that this ground is without merit.

Ground b: The learned judge erred as a matter of fact and/or law in failing to strike out paragraph 21 of the Second Affidavit of Craig Beresford filed on March 14, 2025 as the content of the said paragraph is not directly relevant to the resolution of any of the issues in the claim and its inclusion adds

information that is scandalous, frivolous and/or vexatious and its prejudicial effect outweighing its probative value.

Summary of submissions

For the appellants

[32] Counsel submitted that the learned judge erred in declining to strike out para. 21 of the first respondent's affidavit, which recounted the first respondent's conclusion that IHL's financial statements did not comply with accounting standards and that the accountant responsible had been reported to the relevant authorities. Counsel argued that this created an implication that the statements were unreliable and cast the appellants in a prejudicial light, even though the reports revealed no such concern and confirmed that the first respondent's remarks played no role in the second respondent's investigation or recommendations. Counsel further maintained that the presence of para. 21 in the minutes that formed the subject of the disclosure order did not render it relevant to the proceedings and, on this basis, it was argued that the learned judge erred in refusing to strike it out.

For the respondents

[33] It was submitted that para. 21 of the first respondent's affidavit addressed the findings of the Complaints Committee meeting held on 23 February 2023. Those findings indicated that the financial statements of IIHL did not comply with the International Financial Reporting Standards and should, therefore, be referred to the Public Accountancy Board and the Institute of Chartered Accountants of Jamaica. Counsel contended that the appellants' own request for disclosure of the unredacted minutes underscored the materiality of para. 21. Accordingly, it was submitted that the learned judge correctly held that para. 21 was relevant, and her decision should not be disturbed.

Discussion

[34] Ground b concerns the learned judge's refusal to strike out para. 21 of the first respondent's second affidavit. The relevant rules for consideration of this issue are rules 26.3 and 30.3(3) of the CPR, which were both previously outlined at para. [20] of this

judgment. In summary, rule 26.3 provides that only relevant materials that are directed at resolving factual issues are to be admitted. Rule 30.3(3) outlines the circumstances in which parts of an affidavit may be struck out: for example, where it is scandalous, irrelevant or otherwise oppressive.

[35] The appellants contended that para. 21 of the first respondent's second affidavit (that is, the second affidavit of Craig Beresford) was irrelevant to any issue arising on the claim and that its prejudicial effect outweighed whatever probative value it may have had. They also argued that the learned judge failed to appreciate that the second respondent (the Director of Investigations), did not rely on those matters in arriving at his conclusions. For completeness, I will explore para. 21 of the first respondent's second affidavit (the para. in issue) which is reproduced below:

> "21. It was also concluded that the financial statements prepared for Imperium were not in keeping with International Financial Reporting Standards (or 'IFRS'), and the accountant who prepared them should be referred to the Public Accountancy Board and the Institute of Chartered Accountants Jamaica for having represented that they were so prepared."

[36] At para. 20 of the learned judge's written reasons (**Andrew Holness & Ors v Craig Beresford & Ors**), she found as follows:

> "... As was revealed in the hearings, this very information was included in one of the minutes for which the claimants have sought specific disclosure. It refers to discussions had relative to the 1st claimant's filings and the financial statements produced in relation to the 2nd claimant. The response is relevant to the issues in the claim and is not an abuse of process. I do not find it to be scandalous or frivolous or that its prejudicial effect outweighs its probative value. In fact, it is quite relevant and moreover, has been disclosed under a request for specific disclosure."

[37] When para. 21 of the first respondent's second affidavit is examined in its proper context, it becomes clear that the learned judge was, on the evidence and in all the

circumstances, entitled to find that it met the threshold requirement of relevance. The paragraph relates to the deliberations of the Complaints Committee meeting of 23 February 2023, at which concerns were raised regarding the second appellant's financial statements and their alleged non-compliance with the International Financial Reporting Standards. It further records that the committee determined that the matter ought to be referred to the Public Accountancy Board and the Institute of Chartered Accountants of Jamaica. These were matters forming part of the minutes of that meeting.

[38] Crucially, the appellants themselves sought disclosure of the unredacted minutes of that meeting. Their insistence that the minutes were material to the prosecution of their claim undermines the submission that a paragraph in an affidavit referring to those same minutes was somehow irrelevant. Therefore, the inclusion of para. 21 was not gratuitous; it was directed to a matter which the appellants had themselves elevated to significance.

[39] The argument that the second respondent did not rely on the findings recorded in the paragraph is equally without merit. The question before the learned judge was not whether the paragraph was determinative of the second respondent's conclusions, but whether it formed part of the factual matrix underlying the proceedings. Evidence may be relevant even though it does not directly influence the ultimate administrative decision.

[40] In the circumstances, I am unable to agree with the appellants that the paragraph was scandalous or unduly prejudicial. Even if the contents of para. 21 may reflect unfavourably on the appellants, that does not render the paragraph scandalous within the meaning contemplated by the authorities. The findings recorded in para. 21 were part of the official minutes, and their reproduction in the affidavit served the legitimate purpose of placing before the court a complete account of the committee's deliberations.

[41] Additionally, based on rules 26.3(1)(b) and 30.3(1) and (3) of the CPR, it is clear that the decision to strike out affidavit evidence is a discretionary one. The already-cited case of **Hadmor Productions Ltd v Hamilton**, which has been applied consistently by

this court, also makes it clear that an appellate court will only intervene where judges either misdirected themselves in law, misunderstood the facts, or arrived at conclusions that were plainly wrong. In the instant case I do not find that any such error has been demonstrated. The learned judge properly considered the issues in keeping with the applicable principles regarding the nature of the impugned evidence and made a determination well within the ambit of her discretion.

[42] In all the circumstances, therefore, this court finds that para. 21 was relevant to the issues before the court, was not oppressive or scandalous, and that its probative value was not outweighed by any potential prejudice (of which none can be seen). There is therefore no basis upon which this court could properly interfere with the learned judge's decision on this ground. This ground of appeal, therefore, also fails.

Ground c: The learned judge erred as a matter of fact, and/or law in accepting the Respondents' assertion of confidentiality in its response, dated the 11th June 2025, to a request for specific disclosure in relation to documents 16, 19, 20, 21, 24, 26, 34, 49, 51, 53, 56, 59, 64, 67, 68, 71, 77 and 85 of their List of Documents filed on May 9, 2025 without first examining the unredacted documents.

Ground d: The learned judge misdirected herself on the law when she found that disclosure in judicial review proceedings is circumscribed because public bodies have a duty of candour and because judicial review typically raise[s] questions of law and the application of law to facts that are generally not in dispute.

Ground e: The learned judge misdirected herself on the law when she found that because disclosure in judicial review proceedings is circumscribed because public bodies have a duty of candour and judicial review typically raise[s] questions of law and the application of law to facts that are generally not in dispute she would not order the disclosures that she refused in this case and in particular those in relation to the remaining redacted documents.

Ground i: The learned judge erred as a matter of fact and/or law in failing to consider the orders sought in paragraph 4 of the Notice of Application for Court Orders dated the 11th June 2025.

Summary of submissions

For the appellants

[43] Counsel's written submissions addressed grounds c, d and e together, as these grounds concern the learned judge's refusal to order specific disclosure in relation to the redacted and or edited documents (this included the minutes from meetings and the summary records) that were contained in the respondents' list of documents. Rule 28.6 of the CPR was cited by counsel to submit that the court has the power to grant orders for specific disclosure of documents directly relevant to the issues in the proceedings, and rule 28.7 of the CPR outlines the matters to be considered by a judge when determining whether to make an order for specific disclosure. **Diandra Bramwell v Andrene Gibson** [2023] JMCA App 25 ('**Bramwell v Gibson**') was cited by counsel who submitted that it could assist with the interpretation of these rules of the CPR.

[44] Based on rules 28.6 and 28.7 of the CPR, and the case of **Bramwell v Gibson**, counsel contended that the learned judge erred in failing to order the respondents to specifically disclose the documents that were numbered 16, 19, 20, 21, 24, 26, 34, 36, 49, 51, 53, 56, 59, 64, 67, 68, 71, 77 and 85 of their list of documents that was filed on 9 May 2025. It was submitted that she refused the order for specific disclosure on the basis that she did not find the documents to be necessary to resolve the proceedings, as the redacted matters were not connected with the first appellant. Counsel further contended that the judge accepted the respondents' argument that disclosure would breach section 56 of the ICA, and that the disclosure sought by the first appellant did not fit within the statutory exception. Counsel submitted that this approach was based on a misunderstanding of the law. The documents had already been disclosed in the respondents' list of documents, which meant they were directly relevant and met the test for disclosure. Therefore, in those circumstances, there was no basis for the judge to conclude that they were unnecessary to the fair and just resolution of the issues. Further, counsel submitted that the appellants were simply seeking inspection of the documents in their unredacted and/or unedited form.

[45] Counsel also argued that the learned judge erred by accepting the respondents' claim of confidentiality when the respondents had not originally asserted any such claim or right to redact, as required by rule 28.15 of the CPR. The IC only raised confidentiality after the appellants requested specific disclosure and inspection of the complete and unaltered documents. In counsel's submission, this late claim of confidentiality, without more, was not a lawful basis to justify withholding the documents. Rule 28.15 of the CPR was cited to explain what counsel argued was the proper procedure for withholding documents from inspection and the court's duty in such situations. Counsel relied on **Alfred Crompton Amusement Machines Ltd v Commissioners of Customs and Excise (No. 2)** [1973] 2 All ER 1169, to argue that the court must satisfy itself by inspecting the documents or by creating a "confidentiality club" to facilitate inspection.

[46] It was further submitted that, although the learned judge referred to **Tweed v Parades Commission for Northern Ireland** [2007] All ER 273 ('**Tweed**'), she misapplied the principles from that case. Counsel argued that, as in **Tweed**, the appellants in the instant case alleged breaches of their constitutional rights, and therefore the court should have been given access to the original documents as far as possible. In light of the respondents' assertion of confidentiality, counsel maintained that the documents ought to have been disclosed to the judge for her own examination.

[47] It was also contended that, because the learned judge did not review the documents herself, she had no proper basis for determining whether the respondents' reliance on section 56 of the ICA was justified. Moreover, since the documents were directly relevant, even in their redacted form, the learned judge's failure to independently inspect them demonstrated an improper exercise of discretion. Counsel submitted that no judge, acting in proper accordance with their judicial duty, would have refused specific disclosure in those circumstances. Accordingly, it was argued that this court is entitled and empowered to set aside the learned judge's exercise of discretion.

[48] Counsel also argued that the alteration of the documents without giving the appellants an opportunity to object was prejudicial and raised concerns about the authenticity of the documents.

[49] In relation to ground i, counsel argued that the learned judge failed to consider the orders sought regarding electronic disclosure. It was submitted that, on the appellants' review, many of the minutes from the meetings had been electronically redacted or altered. Instead of providing the minutes in parts with redactions, the IC edited the documents and then presented them as entirely new versions. Counsel therefore maintained that the Microsoft Word file and the PDF version prepared by Janice Williams were the documents that ought to have been disclosed.

[50] Counsel further submitted that the appellants were entitled to know the dates on which the minutes were created, as well as any alterations made and the identity of the person who made them. It was argued that the learned judge failed to appreciate that the documents provided for inspection were not merely redacted but edited, which made the authenticity of the disclosed documents a live issue that the court needed to examine.

[51] Counsel contended that the judge's failure to consider the authenticity of the documents was an error. Accordingly, it was submitted that this court should allow the appeal and grant the orders sought.

<u>For the respondents</u>

[52] It was submitted that the learned judge's decision not to order inspection of the redacted minutes and meeting records was not plainly wrong and, therefore, should not be disturbed. Counsel argued that the appellants' suggestion that the respondents relied solely on confidentiality to justify the redactions was misleading, as the respondents had made it clear from the outset that the redactions were based not only on confidentiality but also on irrelevance and the need to protect third parties who had statutory obligations. Counsel cited **Hancock v Promontoria (Chestnut) Ltd** [2020] 4 WLR 100 ('**Hancock**') to support what they contend is the principle that parties may redact

irrelevant or confidential material in disclosed documents. Reference was also made to **GE Capital Corporate Finance Group v Bankers Trust Co** [1995] 2 All ER 993, which they argue affirms the principle that when a party swears on oath that redacted material is irrelevant, the court will generally not compel disclosure.

[53] Counsel further relied on **Atos Consulting Limited v Avis PLC** [2007] EWHC 323 (TCC), where Ramsey J referred to passages from Documentary Evidence (9th ed, 2006) by Charles Hollander QC. Counsel noted that one such passage, endorsed by Ramsey J, makes it clear that, although a judge has the power to review redacted documents to determine whether privilege or irrelevance has been properly asserted, such a review should only occur in exceptional circumstances, namely where the evidence suggests that the attorney's representation regarding the grounds for withholding inspection cannot be trusted.

[54] It was submitted that, in the present case, while the appellants disagreed with the respondents' decision to withhold inspection, they adduced no evidence capable of undermining the respondents' claim that the redacted material was genuinely irrelevant and confidential. Counsel also pointed out that the IC's in-house counsel confirmed that the redactions concerned ongoing investigations involving other individuals and government contracts unrelated to the first appellant and this evidence was unchallenged. In these circumstances, it was submitted, the learned judge was correct to accept the respondents' assertions of irrelevance and confidentiality as the basis for withholding inspection of the redacted minutes.

<u>Discussion</u>

[55] Grounds c, d, e and i, collectively challenge the learned judge's refusal to order specific disclosure of the unredacted documents listed by the respondents. The appellants, in summary, contend that the learned judge misapplied the principles governing disclosure in judicial review proceedings, and erred in accepting the respondents' assertion of confidentiality without first examining the unredacted documents.

[56] Before resolving these grounds, I will explore how the learned judge dealt with the order for specific disclosure. At paras. of 22-25 of her reasons for judgment, she said:

> "22. I now move on to order number 2 sought in the application. Order number 2 is a request for specific disclosure by the claimants. I accept and confirm that the items in 2(a) that remain in dispute (because the others were resolved) are: 16, 19, 20, 21, 24, 34, 36, 49, 51, 53, 56, 59, 64, 67, 68, 71, 77 and 85. All of these documents were actually disclosed in the list of documents by the 1st, 2nd and 3rd defendants but there were redactions. These documents are all minutes of meetings of either:
>
> a. the Commission.
>
> b. the Investigation and Complaints Committee,
>
> c. The Prosecution Committee; or
>
> d. The Information and Complaints Committee.
>
> 23. The CPR 28.6(5) states that an order for specific disclosure may require disclosure only of documents that are relevant to one or more matters in issue in the proceedings. CPR 28.7(1) states that when deciding whether to make an order for specific disclosure, the court must consider whether specific disclosure is necessary in order to dispose fairly of the claim or to save costs. I find that the language of CPR 28.7(1) closely mirrors the dicta of Bingham LJ in **Tweed v Parades Commission for Northern Ireland**, a decision referred to by counsel, where Bingham LJ said the test for disclosure in judicial review proceedings, will always be whether, in a given case, disclosure appears to be necessary in order to resolve the matter fairly and justly. In **R (On the application of IAB) v Secretary of State for the Home Department [2023] EWCH 2930**, Swift J, said that the principle to be applied in an application for specific disclosure in judicial review proceedings, is that of **Tweed v Parades Commission**, as reflected in the dicta of Bingham LJ.
>
> 24. In relation to those documents in order number 2(a), that remain in issue, the explanation for the redactions given in the affidavit of Evian Ortis on behalf of the 1st, 2nd and 3rd defendants, is that what is redacted refers to matters

unconnected to the investigation of Mr. Holness. Obviously, these are minutes of meetings where I accept that under discussion would be other public officials, or other public servants or any other matter that these particular meetings would typically address within the remit of the Integrity Commission Act. I accept that the redacted information in these minutes relate to matters under investigation in other investigations. In other words- unrelated to the 1st claimant. In my view, the disclosure of the details of unconnected matters contained in these minutes, is not necessary in order to dispose justly and fairly of this judicial review claim. In addition to that, I accept the proposition of law argued by Mr. Powell, in that under s.56 of the Integrity Commission Act, it would be an offence to disclose information relating to any matter before the Integrity Commission other than that of the 1st claimant. It is my view that the disclosure required by the 1st claimant does not fall under the exception that is outlined in s.56(1).

25. In the **Secretary of State for the Home Department v IAB [2024] EWCA Civ 66**, the English Court of Appeal held that where parts of a document concerned with a wholly different subject matter from that in issue are redacted by the respondent to a judicial review claim, the redaction may be justifiable. I find in the circumstances of this case, where the public body/ public officers under challenge (the 1st to 3rd defendants), say that they have redacted aspects of the minutes relating to matters unconnected to the 1st claimant and in light of the statutory provision in s.56, I find that the redactions are justifiable." (Bold as in the original)

[57] To resolve this issue, I will explore section 56 of the ICA, the relevant rules of the CPR and a few cases.

[58] Section 56 of the ICA reads:

"56. – (1) Subject to section 42(3)(b), every person having an official duty under this Act, or being employed or otherwise concerned in the administration of this Act (hereinafter called a concerned person) shall regard and deal with as secret and confidential, all information, statutory declarations, government contracts, prescribed licences and all other matters relating to any matter before the Commission, except that no disclosure made by the Commission or other concerned person in the proceedings for an offence under this Act or under the *Perjury Act,* by virtue of section 17(2) of that Act, shall be deemed inconsistent with any duty imposed by this subsection.

(2) The obligation as to secrecy and confidentiality imposed by this section, in relation to any documents, or information obtained under this Act continues to apply to a person despite the person having ceased to have an official duty, be employed or otherwise concerned in the administration of this Act.

(3) Every concerned person who is required under subsection (1) to deal with matters specified therein as secret and confidential who at any time communicates or attempts to communicate any such information, declaration, letter and other document or thing referred to in subsection (1) disclosed to him in the execution of any of the provisions of this Act to any person-

(a) other than a person to whom he is authorized under this Act to communicate it; or

(b) otherwise than for the purpose of this Act,

commits an offence and shall be liable on summary conviction in a Parish Court to a fine not exceeding one million dollars or a term of imprisonment not exceeding one year."

[59] Rule 28.7 of the CPR is also relevant to this issue and is reproduced below:

"28.7 (1) When deciding whether to make an order for specific disclosure, the court must consider whether specific disclosure is <u>necessary in order to dispose fairly of the claim or to save costs</u>.

(2) It must have regard to-

(a) <u>the likely benefits of specific disclosure</u>;

> (b) the likely cost of specific disclosure; and
>
> (c) whether it is satisfied that the financial resources of the party against whom the order would be made are likely to be sufficient to enable that party to comply with any such order.
>
> (3) Where, having regard to paragraph (2)(c), the court would otherwise refuse to make an order for specific disclosure, it may however make such an order on terms that the party seeking that order must pay the other party's costs of such disclosure in any event." (Emphasis added)

[60] In addition, it is useful to bear in mind the previously-cited case (see para. [12] hereof) of **The Attorney General of Jamaica v John MacKay** and the well-established principle governing the manner in which the appellate court should treat with an appeal against the exercise of a judge's discretion.

[61] Counsel for the respondents referred to the case of **Hancock**, which I also find useful, excerpts from which (at paras. 85, 86 and 89) have been reproduced below:

> "85. It has been settled law in this jurisdiction for well over a century that a litigant giving disclosure of documents is entitled to redact parts of a document which are irrelevant, and in all normal circumstances a certificate to that effect by the party's solicitor will be treated as conclusive. As Hoffmann LJ explained in <u>G.E. Capital Group Ltd v Bankers Trust Co</u> [1995] 1 WLR 172 at 174B:
>
> 'It has long been the practice that a party is entitled to seal up or cover up part of a document which he claims to be irrelevant. *Bray's Digest of the Law of Discovery*, 2nd ed. (1910), pp.55-56 puts the matter succinctly:
>
> 'Generally speaking, any part of a document may be sealed up or otherwise concealed under the same conditions as a whole document may be withheld from production; the party's oath for this purpose is as valid in the one case as in the other. The practice is either to schedule to the affidavit of documents those parts only which are relevant, or to schedule the whole document and to seal up those parts which are sworn to be irrelevant; …'

> The oath of the party giving discovery is conclusive, 'unless the court can be satisfied – not on a conflict of affidavits, but either from the documents produced or from anything in the affidavit made by the defendant, or by any admission by him in the pleadings, or necessarily from the circumstances of the case – that the affidavit does not truly state that which it ought to state:' per Cotton LJ in *Jones v Andrews* (1888) 58 L.T. 601, 604.'
>
> 86. To similar effect, Leggatt LJ said in the same case, at 176H:
>
> 'The plaintiffs are obliged to disclose the relevant parts of documents, but not the irrelevant… For over a century litigants have been permitted to cover up or blank out irrelevant parts of documents. The court will not ordinarily disregard the oath of the party that the parts concealed do not relate to the matters in question.'
>
> 89 …and if, exceptionally, any redactions are made, they should be fully explained and justified by the party making the redaction, with sufficient particularity for the court to be able to rule on the need for the redaction if it is challenged."

[62] In **GE Capital Corporate Finance Group v Bankers Trust Co,** it was held that (see the headnote):

> "It was well established that a party was entitled to seal up or cover up parts of a disclosed document on the ground of irrelevance just as it could withhold an entire document on that ground, provided that the irrelevant part could be covered without destroying the sense of the rest or making it misleading. The judge had accordingly erred in distinguishing between documents which were claimed to be wholly irrelevant and those where it was claimed that only part was irrelevant. Moreover, there was no additional requirement that the parts claimed to be irrelevant had to deal with an entirely different subject matter from the rest of the document. The test to be applied in deciding whether material was relevant was not whether it was at least potentially relevant but whether it was not unreasonable to suppose that the passages contained information which might either directly or indirectly enable the defendant either to advance his own case or to damage the plaintiff's case. <u>The court</u>

> <u>would not ordinarily disregard the oath of the party that the parts concealed were irrelevant unless it appeared from the documents produced that that was not the case.</u>" (Emphasis added)

[63] In applying section 56 of the ICA and the abovementioned authorities to the instant case, it is clear that parties may redact disclosed documents or portions thereof, to exclude irrelevant or confidential material, so long as the redactions do not obscure information directly relevant to the issues to be resolved. I also considered the principles articulated in **Atos Consulting Ltd v Avis Plc**, another case cited by the respondents, which reinforces the principle that judicial inspection of redacted documents is exceptional and that the court should only resort to examining the documents if there is evidence that the document that is said to be privileged or irrelevant or confidential cannot be accepted as genuine. In the absence of such evidence that the document cannot be trusted or accepted as genuine, the court is to proceed on the footing that counsel adhered to their ethical duty in representing the basis for any redactions.

[64] Given that the respondents' in-house counsel expressly attested that the redactions concerned information about unrelated third parties, ongoing investigations, and matters falling squarely within the statutory confidentiality regime under section 56 of the ICA, and given further that this evidence stood wholly unchallenged, the learned judge was entitled to rely on it in coming to the conclusion that she did. The appellants provided no evidence that could impeach the respondents' explanation or raise legitimate doubt about the nature of the redactions. In these circumstances, and in accordance with the authorities, there was no basis upon which the learned judge could have concluded that inspection by the court was necessary. In any event, even when the cases cited by the appellants are considered, they appear to support the view that the court's decision whether to inspect or examine a document is discretionary, and not mandatory. For example, in the case of **Tweed**, cited by the appellants, paras. 38 and 40 state that:

> "38. It remains then to consider the order which should be made in respect of the documents the subject of this appeal. If Girvan J in the passage which I have quoted from paragraph

> 11 of his judgment intended to lay down the general proposition that disclosure of documents referred to in affidavits should always take place where proportionality is in issue, I could not support that. The proportionality issue forms part of the context in which the court has to consider whether it is necessary for fairly disposing of the case to order disclosure of such documents. **It does not give rise automatically to the need for disclosure of all the documents. Whether disclosure should be ordered will depend on a balancing of the several factors,** of which proportionality is only one, albeit one of some significance.
>
> …
>
> 40. Girvan J had regard to these factors and exercised his discretion in favour of disclosure. As his propositions favouring disclosure in cases involving assessment of proportionality may have gone further than I could support, I think that the House should itself consider the need for disclosure of the documents sought, while giving weight to the judge's discretionary decision." (Emphasis added)

[65] I also find no merit in the appellants' contention that the learned judge misdirected herself on the scope of disclosure in judicial review proceedings. She was required to assess, pursuant to rule 28.7 of the CPR, whether inspection of the unredacted documents was necessary for the fair disposal of the claim. She concluded that the redacted information was not relevant to any matter in dispute and that the disclosure already made and supported by in-house counsel's sworn evidence had satisfied the duty of candour. In the absence of any challenge to the accuracy of the respondents' evidence regarding the reasons for the redactions, or any indication that relevant information had been withheld, her conclusion was entirely consistent with the authorities and the CPR.

[66] In all the circumstances, I am satisfied that the appellants have failed to demonstrate any error of law, fact, or principle in the learned judge's approach to the question of disclosure. She correctly applied the governing ICA and CPR provisions, exercised her discretion in accordance with established principles, and acted within the bounds of proper judicial restraint when declining to order inspection of the unredacted documents. Grounds c, d, e and i, therefore, fail.

Ground h: The learned judge erred as a matter of fact and/or law when she failed to grant disclosure of the resignation letter and documents setting out her communications, concerns, statements relative to the investigation report - (Document part of 2k in the application of the 11th June 2025) for Stephanie Fiddler-Blake without satisfying herself by examination of the matters in issue in the judicial review proceedings.

Summary of submissions

<u>For the appellants</u>

[67] Counsel referred to **Bramwell v Gibson**, to submit that, in determining whether a document is directly relevant, the court must consider the statement of case. It was argued that a review of the pleadings would have revealed that a significant portion of the report was based on internal financial investigations overseen or conducted by Mrs Stephanie Fiddler-Blake, who resigned abruptly during the investigation concerning the first appellant. It was submitted that the reason for her resignation would have been relevant to the proportionality analysis and to assessing whether the findings and conclusions in the reports of the second respondent and IC were unreasonable. Counsel contended that the principles under rule 28.15 of the CPR were applicable and that the learned judge ought to have ordered disclosure of the resignation letter.

<u>For the respondents</u>

[68] Counsel argued that the appellants provided no explanation as to how they became aware of Mrs Fiddler-Blake's resignation, when it occurred, or why they believed it was connected to the issues in the claim. It was submitted that the learned judge properly exercised her discretion in concluding that there was nothing before her to show that Mrs Fiddler-Blake's resignation letter was directly relevant to the matters in dispute. Counsel further emphasised that there was nothing in the appellants' amended fixed date claim form or affidavits in support of the claim to support any allegation or reference relating to her resignation and that on that basis the ground must fail.

[69] In her written reasons, the learned judge dealt with this issue at paras. [29]-[32]. Her conclusion (after she considered whether the letter might be relevant to the

issues in the case and impacted on matters such as irrationality) was that the letter did not fall within those documents that might be regarded as directly relevant.

Discussion

[70] Ground h concerns whether the learned judge should have granted specific disclosure of the documents related to Mrs Fiddler-Blake's resignation. To resolve this issue, I will again first explore part 28 of the CPR, which deals with disclosure and inspection of documents. Rule 28.6(5) of the CPR states that:

> "An order for specific disclosure may require disclosure only of documents which are <u>directly relevant to one or more matters in issue</u> in the proceedings." (Emphasis added)

[71] This simply means that in any application for specific disclosure, the document sought to be disclosed must be shown to have a direct bearing on an issue in the proceedings in question. Rule 28.1(4) of the CPR is particularly relevant and states as follows:

> "28.1(4) For the purposes of this Part a document is 'directly relevant' only if -
>
> > (a) the party with control of the document intends to rely on it;
> >
> > (b) it tends to adversely affect that party's case; or
> >
> > (c) it tends to support another party's case."

[72] In **African Strategic Investment (Holdings) Limited, Randgold and Exploration Company Limited v Christopher Paul MacDonald Main** [2012] EWHC 4423 (Ch) ('**African Strategic Investment Limited**'), Mr Livesy QC (sitting as a deputy judge of the Chancery Division), at para. 6 said:

> "6. I propose to deal with the documents sought in the order in which argument was presented to me, but before doing so it is as well for me to remind myself of the scope and extent of the duty of disclosure. CPR 31 Rule 6 sets out that a party is required to give disclosure after making a reasonable search

> of only those documents on which it relies and the documents which adversely affect his own case or support another party's case. Where a party makes an application for specific disclosure, the primary exercise for the court is to identify the factual issues that would arise for decision at the trial in accordance with an analysis of the pleadings. An order for disclosure should be limited to documents which are relevant to the pleaded issues. Even there, the court must apply the overriding objective and, in particular, may, in its judgment, come to the conclusion that the disclosure of a certain class of document is not necessary for a fair disposal of the issues raised at the trial." (Emphasis added)

[73] In para. [18] of **Bramwell v Gibson**, Brooks P said:

> "[18] In considering whether the document is directly relevant, the judge is entitled to examine the respective parties' statements of case."

[74] Based on rule 28.6(4) of the CPR, and the authorities cited, it is evident that specific disclosure should only be granted in relation to information that: (i) is to be relied on by the party with control of the document (ii) adversely affects that party's case, or (iii) supports another party's case in the resolution of the issue. (See rule 28.6(4). The case of **African Strategic Investment Limited** also makes it clear that when considering an application for specific disclosure a judge is expected to consider the overriding objective and is entitled to find that disclosure is not necessary for a fair disposal of the issues. In addition to the overriding objective, the case of **Bramwell v Gibson** makes it clear that a judge may also consider the parties' statements of case in determining whether to grant disclosure. In the instant case, there is no indication that the appellants brought any such evidence to prove that the respondents would either be relying on or be adversely affected by the contents of Mrs Fiddler Blake's letter of resignation, or that it would support the appellants' case in any way. As counsel for the respondents have correctly observed, interest in the letter was indicated for the first time in the appellants' submissions in the court below and is not supported evidentially.

[75] The learned judge at paras. 29 and 32 of her reasons said:

> "29. I then go on to Order number 2 (k) to (m) which seek to have **all** documents prepared by Mrs. Stephanie Fiddler-Blake, including Mrs. Stephanie Fiddler-Blake's resignation, documents setting out her communications, concerns, statements and her contribution and or her conclusions and recommendations to the investigation and the report (the subject of the claim). I believe the same request is repeated in relation to Mr. Ron-Odade Johnson and Ms. Kema Medford, save for any reference to 'resignation'. It is my view, that since these individuals were involved in the investigative process, if there exists documents prepared by them which contain their analysis, conclusions and or recommendations touching and concerning the investigations and ultimately the report, such a document would be, in my view, directly relevant and necessary in order to resolve the judicial review claim fairly and justly.
>
> …
>
> 32. I do not believe however, that Mrs. Fiddler-Blake's letter of resignation would fall into that category. There is nothing before me to indicate that that letter of resignation would be directly relevant to the issues that arise on the claim. It is also my view that the language of k, l and m, for the disclosure of; **'all documents'**, is way too broad, and so it is to be circumscribed. But I believe, as I have said, that what would be relevant, are any documents that contain these investigators' analysis, conclusions and recommendations touching and concerning the investigation and the report which they obviously would have sent to the Director of Investigations. Of course, these documents could well be in the 14 files, and that is why I will be ordering that a search be done to ascertain if those documents exist." (Bold as in the original)

[76] Having perused the learned judge's reasons, I agree with her approach (and with the submissions of counsel for the respondents) that the appellants did not provide the court with any evidence as to how they knew of Mrs Fiddler-Blake's resignation, or why they believed it was directly relevant to the issues in the claim.

[77] In all the circumstances, the learned judge cannot be faulted for refusing to order the disclosure of Mrs Fiddler-Blake's resignation letter and related communications. The

appellants have not demonstrated that the documents were necessary for the fair determination of the judicial review proceedings or that the learned judge failed to consider their relevance before refusing disclosure. Furthermore, I do not find that there was any evidential basis upon which the learned judge could have found the documents to be directly relevant. Accordingly, her refusal to grant disclosure was a proper exercise of her judicial discretion, and no error of law has been established. Ground h, therefore, fails.

Ground f: The learned judge erred as a matter of fact and/or law in striking out the use of the word 'purported' in order number 7 and ground 55 of the Amended Fixed Date Claim Form filed on February 3, 2025 on the basis that the Appellants are bound in the judicial review claim by her findings of fact made during the hearing of the application for permission for leave to commence the claim for judicial review.

Ground g: The learned judge erred as a matter of fact and/or law in striking out the words 'and/or the 3rd Defendant' in ground 36 of the Amended Fixed Date Claim Form on the basis that the 3rd Defendant did not participate in any investigation. In striking out the said words, the learned judge exceeded her jurisdiction vis-a-vis the Full Court. It is a matter for the Full Court, taking into account all matters including documents disclosed, as to whether the Investigation Report is to be attributed to or was adopted by the 3rd Defendant having regard to the facts of this case, the full terms and effects of Section 14(5) of the Corruption Prevention Act and the Integrity Commission Act.

Summary of submissions

<u>For the appellants</u>

[78] In relation to ground f, counsel submitted that the learned judge erred in finding that the matters raised in order number seven and ground 55 breached the orders made on 6 December 2025 and amounted to an abuse of process. Counsel argued that, after hearing submissions, the learned judge refused permission to seek an order of mandamus to compel the first respondent to examine the first appellant's 2022 statutory declarations. Instead, the learned judge accepted as unchallenged the first respondent's statement that he had already examined the 2022 and 2023 declarations.

[79] Counsel contended that this approach was flawed, as the only question at the permission stage of judicial review is whether the applicant has an arguable case. Preliminary findings should not prevent a party from pursuing an issue at trial. It was submitted that the learned judge failed to consider the full state of the evidence as at 10 September 2024, including the fact that no date had been given by the first respondent for the alleged examination of the declarations.

[80] In counsel's submission, it was troubling that a public official could avoid performing a statutory duty, then later appear in court and simply assert that the duty was performed. This, counsel submitted, deprived the appellants of their right to have the issue determined at trial. On that basis, it was argued that the learned judge erred in law by striking out those paragraphs as the matter should have been left for determination by the court hearing the substantive judicial review claim. It was further emphasised that the appellants were left restricted in pursuing the remaining aspects of their claim concerning delay and fairness. The appellants should have been allowed to test the regularity of the process that the first respondent claimed to have undertaken in examining the 2022–2023 statutory declarations, rather than having the issue dismissed as not warranting further comment. In all the circumstances, counsel submitted that the learned judge erred in striking out the word "purported" and that her order should be set aside.

[81] In relation to ground g, counsel submitted that the IC adopted the findings and conclusions contained in the Investigation Report prepared by the second respondent and dated 30 August 2024. Counsel argued that whether the IC in fact adopted those findings is a question of fact that should properly be determined by the trial court. It was contended that the learned judge exceeded her remit by striking out the words in issue, thereby depriving the trial court of the opportunity of resolving that factual question.

[82] Counsel relied on the cases of: **Shah v Ul-Haq and others** [2010] 1 All ER 73 at paras. 46–50, **Excalibur & Keswick Ground Works v McDonald** [2023] 4 All ER 1060 at paras. 47–49, and **University of Oxford v Broughton** [2006] EWCA Civ 1305

at para. 30, to address the meaning of the word "obstruct". It was submitted that the learned judge erred in striking out the words complained of, as neither the words nor the letters in question posed any real risk of rendering the trial unfair.

For the respondents

[83] Counsel submitted that the learned judge was correct in refusing the appellants' application for leave to seek judicial review in relation to the request for mandamus compelling the first respondent to examine the 2022–2023 statutory declarations. Counsel argued that the learned judge properly found that the first respondent had already fulfilled his statutory obligation, and that mandamus cannot lie where the relevant duty has been discharged. It was further contended that, having previously failed in their bid to challenge the first respondent's performance of his duty, the appellants could not re-litigate the issue by reframing their pleadings through the use of terms such as "purported," which merely sought to cast doubt on a matter already judicially settled. Counsel argued that this amounted to an abuse of process, as the appellants were attempting to achieve by pleading what they were not permitted to pursue substantively. The appropriate remedy, it was submitted, would have been an appeal, which the appellants did not pursue.

[84] Counsel further argued that the same reasoning applied to the inclusion of the words "and/or the 3rd Defendant," which improperly suggested that the Investigation Report was attributable to the IC. Counsel noted that the judge had made a clear factual finding at the leave stage that the investigation was undertaken by the Director of Investigations. As the appellants did not appeal that determination, counsel submitted that this ground of appeal must fail and that the appeal should be dismissed with costs to the respondents.

Discussion

[85] Grounds f and g both raise the question of whether the learned judge exceeded her remit by striking out elements of the amended fixed date claim form filed on 3

February 2025. To resolve this issue, I will explore the paragraphs containing the words referred to in both grounds. The paragraphs related to ground f are reproduced below:

> "7. **A Declaration** that the 1st Defendant's purported examination of the 1st Claimant's Statutory Declarations for the years 2022 and 2023 is inconsistent with the provisions of the Integrity Commission Act and/or the principles of natural justice.
>
> Ground 55. Further by their actions the 2nd and 3rd Defendants have usurped or encroached on the statutory role of the 1st Defendant and the 1st Defendant has ceded his statutory role to them insofar as <u>there was inordinate delay in the purported examination</u> of the 1st Claimant's declarations for 2022 and 2023 and he has stated that he is unable to provide any information or comment on the matter <u>and none has been provided to the date hereof."</u> (Bold and underline as in the original)

[86] The paragraph related to ground g is also reproduced below:

> "Ground 36. The process utilized by the 2nd <u>and/or 3rd</u> Defendants in conducting <u>the</u> investigation, which resulted in <u>the</u> findings, conclusions and/or recommendations made in relation to the Claimants, which are contained in an Investigation Report dated the 30th August 2024, and the Special Report of the 5th September 2024 were unfair, unreasonable and irrational." (Underline as in the original)

[87] Having read the learned judge's reasons in their entirety, I find that the learned judge explored the use of the word "purported" in order number 7 and ground 55, and the words "and/or the 3rd Defendant" in ground 36 of the amended fixed date claim form filed on 3 February 2025. At paras. 35 and 36 of her reasons she said:

> "35. I then move on to order number 7 and ground 55. At the 1st hearing prior to the amendment of the fixed date claim form, I observed the use of the word 'purported' in relation to the examination of the statutory declarations for the 1st claimant for the years 2022 and 2023. I see it coming back again, in fact at the time I raised it, I inquired whether it was a collateral attack on my decision. Because, at the leave stage,

> leave was sought to bring a judicial review claim seeking mandamus as against Mr. Beresford in his capacity as the Director of Information and Complaints, directing him to examine the 2022-2023 statutory declarations of the 1st claimant. In refusing to grant leave to bring a judicial review claim seeking mandamus, in respect of Mr. Beresford's examination of the 2022-2023 statutory declarations, I found that Mr. Beresford had indeed discharged his statutory duty and therefore, I refused the order of mandamus. It therefore cannot be… that having found that the public officer discharged his public duty in this particular respect, it cannot be, that in the claim form, there is going to be a question surrounding whether or not that statutory duty was discharged. I found, in refusing to grant leave to bring a claim for mandamus, that it had been discharged. Therefore, I consider that, to raise the issue again, where you raised the question at the leave stage (which you must), and the judicial review court finds that the officer did in fact discharge his public duty, it cannot be that the claim is filed and the allegation is that that officer 'purportedly' examined the statutory declarations. The use of the word 'purportedly' finds its way in ground 55 of the amended fixed date claim form as well and therefore, it is to be struck wherever it is referenced.
>
> 36. In relation to ground 36, I am concerned by the inclusion of 'and/or the 3rd defendant' because as I found in the **Norman Brown** matter, and referenced in this matter as well, the investigation was that of the Director of Investigations. I therefore, can't see how the inclusion of '**and or the 3rd defendant**' in ground 36, is appropriate. In fact, it really doesn't add much to the very expansive claim that is already before the court, but the primary reason for my decision, is that the 3rd defendant did not participate in any investigations." (Bold as in the original)

[88] In the instant case, the record reveals that the learned judge did more than merely express a tentative view. After considering full submissions, she made a clear and dispositive finding that the first respondent had discharged his statutory duty to examine the 2022–2023 declarations. On that basis, she refused leave to seek *mandamus*. That ruling was final in effect. It disposed of a claim for relief, and the decision was open to appeal. The appellants elected not to appeal. In those circumstances, the learned judge

was entitled to treat her earlier ruling as determinative of that issue for the purpose of managing the case before her.

[89] The use of the term "purported" in order number 7 and ground 55 operated, in substance, to attempt to reopen the very issue the learned judge had already definitively decided. The appellants were not using the pleadings to advance a distinct or permissible argument on delay or fairness; rather, they were seeking to cast doubt on whether the examination was done at all. To allow such a pleading to stand would have been, in the learned judge's view, to permit the appellants to re-litigate the issue of the discharge of the statutory duty. The learned judge was entitled, under her inherent jurisdiction to prevent abuse of process, and to strike out language that sought to subvert her earlier finding.

[90] Similar considerations apply to ground 36. The learned judge had expressly found, at the leave stage and again in the substantive hearing, that the investigation giving rise to the 30 August 2024 report, was conducted by the Director of Investigation. This was a specific factual finding made after review of the material that was before the court. The appellants did not appeal that finding. They now seek to challenge it by framing a pleading that invites the court to consider whether the IC "adopted" or was otherwise responsible for the report. The difficulty with that approach is twofold. Firstly, the learned judge had already determined the investigative responsibility as a matter of fact. Secondly, and equally importantly, the attribution of the report to the IC was not pleaded as a matter of inference from later disclosed material, but rather as a direct assertion contradicting the learned judge's earlier ruling. In that light, the learned judge cannot be said to have exceeded her remit in striking out the offending wording.

[91] Contrary to the appellants' submissions, the learned judge did not deprive the Full Court of any factual inquiry properly reserved to it. What she prevented was an attempt to revive a point already judicially determined and not appealed. The Full Court's jurisdiction is not compromised or trespassed on by the removal of allegations that are untenable as a matter of law in light of prior rulings. The learned judge's intervention by

striking out the words was, therefore, well within her case-management jurisdiction. I am, therefore, unable to accept the submission that the learned judge's approach was either wrong in principle or plainly unjust. She acted consistently with the established doctrine preventing re-litigation of determined matters, and she did so in circumstances in which the appellants had a remedy available to them by way of an appeal, which they did not pursue. These grounds of appeal, therefore, fail.

Conclusion

[92] On the totality of the material placed before us, I am satisfied that the learned judge approached each issue with the requisite care and applied the governing legal principles in a manner that cannot be faulted. Her conclusions concerning the relevance of the impugned affidavit evidence, the proper scope of the judicial review proceedings, and the effect of her unchallenged findings at the leave stage were firmly grounded in established authority. Also, in striking out those portions of the amended fixed date claim form that sought, in substance, to re-litigate matters already determined, the learned judge acted within her case-management powers and correctly sought to prevent an abuse of the court's process. I do not find that any error of fact, law or principle on the part of the learned judge has been demonstrated. Accordingly, the appeal fails.

[93] In the result, I propose that we make the following orders:

i. The appeal is dismissed.

ii. The orders of Jarrett J, made on 31 July 2025, are affirmed.

iii. Costs of the appeal to the respondents, to be agreed or taxed.

DUNBAR-GREEN JA

[94] I have read, in draft, the judgment of F Williams JA and agree with his reasoning and conclusion. There is nothing that I wish to add.

BROWN JA

[95] I, too, have read the draft judgment of F Williams JA. I agree with his reasoning and conclusion and have nothing to add.

F WILLIAMS JA

ORDER

i. The appeal is dismissed.

ii. The orders of Jarrett J, made on 31 July 2025, are affirmed.

iii. The stay of proceedings ordered by Jarrett J is lifted.

iv. Costs of the appeal to the respondents, to be agreed or taxed.