,,,,,,,,,,,,,,,,,,

IN THE HIGH COURT OF BELIZE

CLAIM No. Civ 730 of 2024 (No.2)

BETWEEN:

ROODY LEWINSKEY WADE	1st Claimant
HUBERT DENNIS ENRIQUEZ	2nd Claimant
PAUL MARCEL MORGAN	3rd Claimant
WILLIAM MAHEIA	4th Claimant
GODWIN BERNARD SUTHERLAND	5th Claimant
ANTONIO GIOVANNI DEL LA FUENTA	6th Claimant
ROBERT ANTONIO LOPEZ	7th Claimant

and

ELECTIONS AND BOUNDARIES COMMISSION	1st Defendant
ATTORNEY GENERAL	2nd Defendant

Appearances:

Mr Hubert Elrington SC for the claimants
Mr Hector Guerera for the first defendant
Mr Eamon Courtenay SC appearing with Ms Samantha Matute for the second defendant

---

7 April 2025

3 July 2025

JUDGMENT

Practice and Procedure –Strike out application on the grounds of abuse of process – CPR 11.15(1)(b) – Principles on abuse of process – General procedural rule against abusive proceedings – Whether the re-litigation of the same issue against the same defendants constitutes abuse of process and engages the rules on res judicata, cause of action estoppel and merger – Law of estoppel – Consent order – Privity of interest

[1] **HONDORA, J.:** The claimants commenced legal proceedings on 21 November 2024 seeking certain declaratory and injunctive relief against the Elections and Boundaries Commission (ECB) and the Attorney General. The claimants' case is that Schedule 1 of the Representation of the People Act (ROPA) violates section 90(1) of the Constitution and that the use of that Schedule to hold general elections breaches their right to protection of the law – a right set out in section 6 of the Constitution.

[2] The defendants want the claimants' statement of case struck out on the grounds of abuse of process. They contend that:

(a) the claimants are seeking to relitigate the same cause of action (same issue) as that in Claim No. 55 of 2019, which they compromised through a 29 November 2022 Consent Order (the Consent Order);

(b) on 3 October 2023 the claimants filed an application seeking to (i) enforce the Consent Order (ii) relitigate the same substantive issues compromised in Claim No. 55 of 2019; and (iii) both applications were dismissed by Justice Nabie on 8 August 2024 (see ***Smith Jr v Attorney General***, Claim No. 55 of 2019; and

(c) in addition to being an abuse of process, these proceedings are estopped by the doctrines of res judicata, cause of action estoppel, issue estoppel and merger.

[3] The defendants also contend that although Mr Roody Lewinskey Wade (Mr Wade), the first claimant in these proceedings, was not party to Claim No. 55 of 2019, he had privity of interest in and bound by the outcomes in Claim No. 55 of 2019. They argue that Mr Wade is estopped from proceeding with this case on the grounds that the matter between the parties is res judicata.

I. Context

[4] I summarise below the key issues arising in Claim No. 55 of 2019, the Consent Order, Justice Nabie's 8 August 2024 decision and in these proceedings, i.e., Claim No. 730 of 2024 (hereafter, these proceedings).

(a) First set of proceedings/Claim No. 55 of 2019

(i) The parties

[5] Claim No. 55 of 2019 was a judicial review action. There were ten claimants in that matter, including the second to seventh claimants in these proceedings (i.e., Claim No. 730 of 2024) and Mr Frank Edward Paco Smith Jr. (who was the lead claimant), Mr Liston Mckenzie, Mr Irvin Neal and Mr Lloyd

Amstrong.

[6] The defendants in Claim No. 55 of 2019 were the Attorney General and the ECB. Lord Michael Ashcroft joined the proceedings as an interested party. He is not a party to these proceedings.

[7] Claim No. 55 of 2019 was commenced via a Fixed Date Claim Form filed on **18 December 2019**. Mr Wade was not party to those proceedings.

(ii) Issues and remedies sought

[8] In Claim No. 55 of 2019, the claimants' cause of action centred on the country's electoral divisions (constituency boundaries) set out in Schedule 1 of ROPA, which they contended were unconstitutional in that they breached sections 1 and 90(1) of the Constitution[1] and that their use in general elections breached the claimants' right to protection of the law (per section 6 of the Constitution).

[9] In addition to costs, the claimants sought the following relief (and I quote):

1. A Declaration that given the current distribution of registered voters in Belize, the electoral divisions as defined in Schedule 1 of the Representation of the People Act run contrary to Section 1 of the Belize Constitution to the extent that it undermines the practice of democracy in Belize and/or is undemocratic;
2. **A Declaration that the Defendants have failed to make proposals for dividing Belize into electoral divisions which meet the requirements of the Constitution in breach of Section 90 of the Constitution.**
3. **A declaration that the continued violation of Section 90(1)(a) is a violation of Section 6 of the Constitution**;
4. **A declaration that the Defendants are precluded by section 93 of the Belize Constitution from having resort to the electoral divisions as defined by Schedule 1 of the Representation of the People Act to conduct general elections in Belize**;

---

[1] Section 1 of the Constitution provides:

"Belize shall be a sovereign democratic State of Central America in the Caribbean region."

Section 90(1) of the Constitution provides:

"The Elections and Boundaries Commission shall, after considering the distribution of the population throughout Belize, make proposals from time to time for dividing Belize into electoral divisions in such a way that-

(a) each electoral division shall have as nearly as may be an equal number of persons eligible to vote;
(b) the total number of electoral divisions shall be not less than twenty-eight."

5. An order of mandamus compelling the defendants to make proposals to the National Assembly, pursuant to section 90 of the Constitution, for the distribution of eligible electors to be as equal as possible;

6. An injunction restraining the Defendants, whether themselves or by their servants or agents or howsoever, from conducting General Elections in Belize unless and until they comply with section 90 of the Belize Constitution. [Emphasis added]

[10] As explain below, in these proceedings, the claimants' case is based on the contention that Schedule 1 of the ROPA breaches section 90(1) of the Constitution and is consequently unconstitutional. This is similar to the issue and the relief sought in paras. 2 and 3 of the claimants' Fixed Date Claim Form filed in Claim No. 55 of 2019. The claimants also seek a declaration that section 93 of the Constitution precludes the ECB from using Schedule 1 of the ROPA to conduct elections in Belize – a contention also raised in Claim No. 55 of 2019.

[11] After the parties exchanged pleadings in Claim No. 55 of 2019, the defendants filed an application seeking an order striking out of the claimants' case. It is not clear from the record when that application was filed.

[12] On **26 April 2022**, Chief Justice Arana (A/g) (as she was then) dismissed the defendants' strike out application. In the material part of the decision, the honourable judge stated:

> "Has there been compliance by the Election and Boundaries Commission with the 'one man, one vote' principle as mandated by the Constitution of Belize as this nation's highest law? Is there malapportionment of electoral constituencies and is there a proposal laid before parliament as expressly required by the mandatory language used in section 90 of the Constitution to remedy that malapportionment? Striking out is a draconian measure of last resort and to my mind this claim is ill suited to be struck out on procedural irregularities. It is a claim of fundamental constitutional importance which calls for the court to fulfill *(sic)* its role as the vigilant and fearless watchdog of the constitutional rights of the citizenry. I therefore refuse to grant this Application to Strike Out Claim." [Emphasis added]

[13] The claimants were awarded costs for the defendants' failed strike out application. The defendants did not appeal against Chief Justice Arana (A/g)'s decision.

(iii) Dispute amicably resolved via a consent order

[14] Thereafter, on **29 November 2022**, the parties settled their dispute pursuant to a Consent Order, which was perfected and sealed.

[15] The parties' Consent Order provided as follows in the material parts:

"IT IS BY CONSENT ORDERED THAT:

1. **All further proceedings in this claim be stayed upon the terms set out in the Schedule hereto except for the purpose of carrying out those terms into effect.**
2. **Liberty to apply as to carrying out such terms into effect.**

SCHEDULE ABOVE REFERRED TO

1) The parties acknowledge that given the current distribution of registered voters in Belize it is necessary for the Elections and Boundaries Commission to consider the distribution of voters and make recommendations for the amendment of the First Schedule to the Representation of the People Act to re-define current electoral boundaries.
2) The Elections and Boundaries Commission shall identify and explain in a written report its recommendations and all proposals considered necessary for re-districting as provided by the Belize Constitution generally and section 90 of the Belize Constitution in particular, and shall share the report with the Claimants on the date the report is laid before the National Assembly or the 17th July, 2023, whichever is earlier, or such other extended date as agreed between the Parties.
3) The First Defendant shall cause the preparation of a draft bill pursuant to section 90 of the Belize Constitution to amend the First Schedule of the Representation of the People Act to reflect the recommendations of the Elections and Boundaries Commission as made in its said report, and the Elections and Boundaries Commission shall lay the proposals before the National Assembly before July 31st, 2023.
4) The Parties agree that in this process, the Defendants shall consult the guidelines set out in the Court's EXPERT REPORT OF SEAN P. TRENDE dated October 14, 2020.
5) The Defendants shall bear the reasonable costs of the Claimants to be taxed if not agreed.

[16] It is clear that the parties agreed (a) to resolve their dispute not on the basis of a judgment on the merits of their respective cases but rather based on the terms of the agreement set out in the Schedule to the Consent Order; and (b) to have the proceedings in the matter permanently stayed save for the purpose of carrying out the terms of the Consent Order.

(iv) 3 October 2023 enforcement action

[17] On **3 October 2023**, the claimants filed an application seeking (a) to enforce the terms of the Consent Order; and (b) to reopen and relitigate some of the substantive claims they had made in their 18 December 2019 Fixed Date Claim Form and compromised on 29 November 2022. As appears below, it is notable that in their 3 October 2023 application, the claimants sought once again a declaration that Schedule 1 of the ROPA was unconstitutional:

(1) A declaration that the First Schedule to the Representation of the People Act is unconstitutional and unsuitable for the holding of general elections in Belize in light of the Parties acknowledgment contained in term 1 of the Schedule to the Consent Order.

(2) An order of mandamus to compel the Respondents to carry into effect terms 2 and 3 of the Schedule contained in the Consent Order in so far as it relates to compliance with section 90 of the Constitution in the laying of proposals that meets Constitutional standards.

(3) An injunction restraining the Defendants, whether by themselves or by their servants or agents or howsoever, from using the current distribution of registered voters in Belize's electoral divisions as defined in Schedule 1 of the Representation of the People Act, to conduct General Elections in Belize.

(4) That the ELECTIONS AND BOUNDARIES COMMISSION, represented by the Defendants, be precluded whether by themselves or through their servants, officers, agents, servants or otherwise howsoever from relying on the FIRST SCHEDULE to the Representation of the People Act, for conducting General Elections in Belize, given that the definition of electoral divisions as set out in the said Schedule remains in breach of section 90 of the Belize Constitution.

(5) That the ELECTIONS AND BOUNDARIES COMMISSION represented by the Defendants, be restrained whether by themselves, their officers, agents, servants or otherwise howsoever from holding General Elections until the Consent Order is enforced or further order by this Court."

[18] On **8 August 2024,** Nabie J dismissed the claimants' conjoined applications. The honourable judge ruled that the defendants had not, contrary to the claimants' allegations, breached the terms of the 29 November 2022 Consent Order. Regarding the declaration sought that Schedule 1 of the ROPA was unconstitutional, Nabie J held at [65] that:

> "In their bid to enforce the consent order the applicants are seeking a declaration that the Schedule to the ROPA is unconstitutional...In seeking such a declaration the applicants are trying to take the matter to a point that has passed. That stage of the matter has already concluded, these are proceedings for enforcement and not for the determination of whether or not to grant the substantive relief in the main claim. I am unable to grant such a declaration on the application before me. For the avoidance of doubt even if the respondents had not complied with the Consent Order (i.e., if they were in breach of their obligations contained in the Schedule), I would still be unable to grant the reliefs sought in the application. The proper course of action would be to file fresh proceedings to obtain these desired reliefs." [Emphasis added]

[19] I share Nabie J's view that it was not open to the claimants to reopen the issue and reliefs, which had been compromised while also seeking to enforce the terms of the same Consent Order. In my view, the claimants' application engaged the equitable rule of practice against approbating and reprobating. Since the claimants elected through their 3 October 2023 application to enforce the Consent Order, they could not - without first seeking and securing an order setting it aside – sustain a request for the compromised matter to be reheard. I shall return to this issue in my analysis below.

(b) Second set of proceedings/Claim No. 730 of 2024

[20] On 21 November 2024, the claimants in Claim No. 55 of 2019 (not including Mr Frank Edward Paco Smith Jr, Mr Liston Mckenzie, Mr Irvin Neal, Mr Lloyd Amstrong but including a new lead claimant, Mr Wade) filed a Fixed Date Claim in which they seek the following remedies:

> 1. A declaration that given the current distribution of registered voters in Belize, the electoral divisions as defined in Schedule 1 of the Representation of the People Act (ROPA) run contrary to Section 90(1) of the Belize Constitution to the extent that it undermines the practice of democracy in Belize and/or is undemocratic;
> 2. A declaration that the continued violation of Section 90(1)(a) [of the Constitution] is a violation of Section 6 of the Constitution;
> 3. A declaration that The Elections and Boundaries Commission is precluded by section 93 of the Belize Constitution from having resort to the electoral divisions as currently defined by Schedule 1 of the Representation of the People Act to conduct General Elections in Belize, unless and until the said schedule is made compliant with the "nearly as may be an equal number of voters eligible to vote" requirement of section 90(1)(a) of the Belize Constitution."

[21] As noted above, the defendants say:

(a) the second to seventh claimants in these proceedings were involved as claimants in Claim No. 55 of 2019;

(b) the second to seventh claimants' cause of action and the reliefs they seek in these proceedings are the same as those in Claim No. 55 of 2019;

(c) the current proceedings are an abuse of process since the claimants are seeking to relitigate against the defendants the same issue and reliefs they sought in Claim No. 55 of 2019, which were resolved pursuant to the Consent Order;

(d) these proceedings are, among others, res judicata and are estopped by the principles of merger, cause of action estoppel and issue estoppel;

(e) Mr Wade, although not a party to Claim No. 55 of 2019, had privity of interest in and should be bound by the outcomes in that matter.

II. Issues arising

[22] The main issues arising for determination are:

(a) whether the claimants' cause of action and the reliefs sought in these proceedings are the same as those in Claim No. 55 of 2019;

(b) whether there is merit in the defendants' strike out application on the grounds of abuse of

process;

(c) whether there is any merit in the defendants' law of estoppel-based pleas; and

(d) whether the first claimant should be deemed to have a privity of interest with the second to seventh claimants' cause of action in Claim No. 55 of 2019 and is barred by the doctrine of res judicata from relitigating in these proceedings the issue and the relief sought in Claim No. 55 of 2019.

III. Discussion

(a) Whether the same issues arise in both sets of proceedings between the same parties

[23] The second to seventh claimants have not disputed the defendants' contention that (i) the issues that formed the subject of the parties dispute in Claim No. 55 of 2019 are the same as in these proceedings (i.e., Claim no 730 of 2024); and (ii) the reliefs requested by the claimants in Claim No. 55 of 2019 are the same as those set out in their Fixed Date Claim Form filed in these proceedings.

[24] The second to seventh claimants have not filed affidavits in answer to the defendants' plea that they are seeking to relitigate in these proceedings the same issue and the relief they sought and compromised in Claim No. 55 of 2019. Mr Wade, the first claimant, is the only one that filed affidavits in this matter. In para. 3 of his second affidavit, Mr Wade stated that he was deposing "*the affidavit in support of the Claimants in claim 730 of 2024*." He filed that affidavit (without leave) following my case management order directing the parties to file and exchange written submissions on whether the court should or should not strike out Claim No. 730 of 2024 for the reasons expressed by the defendants in their letter dated 4 December 2024 complaining that the new claim was a repeat of Claim No. 55 of 2019.

[25] Mr Wade did not explain in his affidavit why he needed to depose one "*in support of the [other] claimants."* In addition, he did not aver that the other claimants had authorised him to testify on their behalf and if so, the reasons thereof.

[26] Through their attorney's written submissions, the claimants assert and agree (see the preamble thereof) that in these proceedings they are seeking a declaration that Schedule 1 of the ROPA is unconstitutional in that it breaches section 90(1) of the Constitution. They also accept in the same written submissions (see para. 2 thereof) that in Claim No. 55 of 2019 they sought a declaration that Schedule 1 of the ROPA breaches section 90(1) of the Constitution and that the defendants' alleged

violation of section 90(1) of the Constitution violates section 6 of the Constitution. They also assert that they want and are entitled to such a declaration for purposes of securing a final decision that establishes a precedent in this jurisdiction.

[27] Consequently, I find that it is common ground between the parties that, in these proceedings, the second to seventh claimants are seeking to relitigate the same issues and they seek the same reliefs which they sought and compromised in Claim No. 55 of 2019, i.e., on the questions:

(a) whether Schedule 1 of the ROPA violates section 90(1) of the Constitution (see remedy 2 and 3 sought in Claim No. 55 of 2019);

(b) whether the alleged continuing violation of section 90(1) of the Constitution violates section 6 of the Constitution (see remedy 3 of Claim No. 55 of 2019)[2]; and

(c) whether the ECB should be restrained from using Schedule 1 of the ROPA for purposes of holding elections in Belize (see remedy 6 sought in Claim No. 55 of 2019).

[28] Before leaving this part of my analysis, I must state that the claim based on "a continuing violation" of section 90(1) of the Constitution presupposes that there exists a ruling by a court declaring that Schedule 1 of the ROPA breaches section 90(1) of the Constitution. As the claimants accept, there is not yet a decision issued by a court of competent jurisdiction on the issue of the constitutionality of Schedule 1 of the ROPA. This points to the existence of an inherent fallacy in the claimants' plea.

(b) Defendants' abuse of process strike out application

[29] It lies on the defendants to demonstrate abuse of process (***Johnson v Gore Wood and Co.*** [2002] 2 AC 1. at page 31). In addition, prior to striking out the claimants' statement of case, this court must be satisfied that the defendants' abuse-of-process plea is well-founded.

[30] The defendants' case is that these proceedings are an abuse of process as the second to seventh claimants sued them on the same issue in 2019, which claim was compromised and thereafter dismissed by Nabie J on 8 August 2024 and that the claimants are once again vexing them on the

[2] The remedy set out in para. 3 of the claimants 18 December 2019 Fixed Date Claim Form requires the court to make three interrelated declarations. The first being that Schedule 1 of the ROPA breaches section 90(1) of the Constitution. The second being that in continuing to use Schedule 1 of the ROPA, the defendants are in breach of section 90(1) of the ROPA. The third being that in continuing to use continue Schedule 1 of the ROPA in breach of section 90(1) of the Constitution, the defendants are also in breach of section 6 of the Constitution.

same subject matter.

[31] The claimants' responses to the defendants' pleas are generalised in nature and do not focus with the requisite degree of precision on each of the pleas advanced by the defendants. In their written submissions, the claimants state that:

(a) the consent order was an agreement between the parties and enforceable as between the parties and it did not create any binding precedent;

(b) it is only the court that can pronounce on the question raised in both Claim No. 55 of 2019 and subsequently in these proceedings on whether Schedule 1 of the ROPA is compliant with section 90(1) of the Constitution;

(c) the malapportionment of the electoral divisions set out in Schedule 1 of the ROPA continues to violate their fundamental constitutional right to protection of the law, which right is guaranteed by section 6(1) of the Constitution;

(d) in her 8 August 2024 decision in Claim No. 55 of 2019, Nabie J ruled that it was improper for the claimants to seek declaratory relief in the context of an application to enforce the Consent Order and that the honourable judge did not consider the merits of their claim in Claim No. 55 of 2019;

(e) paras. [65], [75] and [76] of Nabie J's 8 August 2024 decision gave the claimants the green light to file fresh proceedings;

(f) *"the proper course of action to address the constitutionality of…Schedule 1 of ROPA is to file fresh proceedings in this Honorable (sic) Court, which is now done with the filing of this case…";* and

(g) *the* courts "*as guardians of the Constitution, play a crucial role in addressing the relief sought, when a proper claim is brought under section 20 of the Constitution…";*

(h) these proceedings raise a constitutional issue of public interest, which goes beyond the interests of the parties since it *"touches on the election process which is the Bedrock of Belizean democracy*."

[32] Are these proceedings an abuse of process? In addressing this question, I shall start by analysing and reminding myself of the general principles on the subject of, and the foundations underlying, the doctrine of abuse of process.

Principles and analytical framework

[33] In their written submissions, the claimants cite the Belize Court of Appeal case of ***Cuellar v Audinett***, Civil Application No. 1 of 2018, which addressed the issue of abuse of process and res judicata. In that matter, Awich JA noted that:

> 35. The principle of ***res judicata*** and the principle of **abuse of the process of court**, are related in as far as making one claim or part of it in a repetitive way in court is concerned. The rules are based on a public policy that, it is desirable in the public interest as well as in the private interest of the parties themselves that, litigation should not drag on forever, and that a defendant should not be oppressed by successive suits when one would do — **see *Henderson v Henderson*** (1843) 3 Hare 100: [1843–60] All ER Rep. 378; and ***Johnson v Gore Wood & Co. (a firm) (No. 1)*** **[2001] 1 All ER 481.**
>
> 36. The restatement of the principles of res judicata and abuse of process, made in the ***Henderson v Henderson*** case by Sir Wigram V-C at page 382 remains the correct law

[34] I am bound by (and I agree) with Awich JA's ruling in para 36 of ***Cuellar v Audinett*** that the ***Henderson v Henderson*** abuse rule remains good law.

[35] As to what constitutes abuse of process, I draw on what Lord Diplock said in ***Hunter v Chief Constable of West Midlands Police*** (1982) A.C. 529 at page 536, that is to say, it is the misuse of the court's procedure in a manner or for purposes that would be manifestly unfair to a party to litigation before it or that would otherwise bring the administration of justice into disrepute.[3]

[36] Abuse of process has traditionally been found to exist where the same matter between the same parties has already been the subject of prior litigation and a final decision issued by the court (see for example, ***House of Spring Gardens Ltd. v Waite*** [1990] 3 W.L.R. 347 at p. 358, [1990] 2 All E.R. 990 (C.A.). As a general rule, it matters not whether the court's decision was the result of a judgment or order or a consent order. The policy behind the rule is the discouragement of repeat

---

[3] In ***Hunter v Chief Constable of West Midlands Police*** (1982) A.C. 529 at page 53, Lord Diplock stated: "My Lords, this is a case about abuse of the process of the High Court. It concerns the inherent power which any court of justice must possess to prevent misuse of its procedure in a way which, although not inconsistent with the literal application of its procedural rules, would nevertheless be manifestly unfair to a party to litigation before it, or would otherwise bring the administration of justice into disrepute among right-thinking people. The circumstances in which abuse of process can arise are very varied; those which give rise to the instant appeal must surely be unique. It would, in my view, be most unwise if this House were to use this occasion to say anything that might be taken as limiting to fixed categories the kinds of circumstances in which the court has a duty (I disavow the word discretion) to exercise this salutary power".

litigation between the same parties over the same issue.

[37] In ***Arthur J S Hall & Co (a firm) v Simons*** [2002] 1 AC 615, Lord Hoffmann at 701 A-C highlighted two of the policies, which underlie discouragement of re-litigation.

> "The law discourages relitigation of the same issues except by means of an appeal. The Latin maxims often quoted are nemo debet bis vexari pro una et eadem causa and interest rei publicae ut finis sit litium. They are usually mentioned in tandem but it is important to notice that the policies they state are not quite the same. The first is concerned with the interests of the defendant: a person should not be troubled twice for the same reason. This policy has generated the rules which prevent relitigation when the parties are the same: autrefois acquit, res judicata and issue estoppel. The second policy is wider: it is concerned with the interests of the state. There is a general public interest in the same issue not being litigated over again. The second policy can be used to justify the extension of the rules of issue estoppel to cases in which the parties are not the same but the circumstances are such as to bring the case within the spirit of the rules" [Emphasis added]

[38] In ***Johnson v Gore-Wood and Co***., at page 31, Lord Bingham referred to the equally important principle that is:

> "…there should be finality in litigation and that a party should not be twice vexed in the same matter. This public interest is reinforced by the current emphasis on efficiency and economy in the conduct of litigation, in the interests of the parties and the public as a whole." [Emphasis added]

[39] Notably, Lord Bingham did not qualify his restatement of the rule on the abuse of process that arises from relitigating the same issue against the same person following a judgment or order issued by a court of competent jurisdiction. Neither did Millett LJ (see page 59).

[40] In agreement with Lord Sumption in ***Virgin Atlantic Airways Limited v Zodiac Seats UK Limited*** [2013] UKSC 46 at [18], I hold that there exists at common law *"the more general procedural rule against abusive proceedings*", which is connected to and is the foundation for, but which is juridically different from, the substantive rules on res judicata, cause of action estoppel/the ***Henderson v Henderson*** rule, and issue estoppel.

[41] In ***Alsaifi v Trinity Mirror Plc*** [2017] EWHC 2873 (QB) (a decision cited with approval in ***Churchill Ltd v The Open College Network South Eastern Region Ltd*** [2018] EWHC 457 (QB) at [34]) Justice Nicklin stated at [54] that "*The principle from **Henderson v Henderson** can be summarised [as follows] that a party is expected to bring forward their entire case in a single action and that it is an abuse of process to raise in later proceedings matters which could and should have been raised in the earlier proceedings*." I need not repeat Justice Nicklin restatement of the applicable principles

and incorporate them by reference.

[42] I will draw on the above rather broad-brush synopsis to address the question whether the second to seventh claimants' statement of case should, as pleaded by the defendants, be struck out on the grounds of abuse of process. But first, I must also remind myself of the ground rules on strike out applications based on abuse of process.

Abuse of process strike out principles

[43] As outlined in Rule 26.3(1) of the Civil Procedure Rules (CPR), the court may strike out a statement of case if the court is persuaded on proper grounds that the proceedings or issue(s) raised in proceedings are an abuse of the process of the court.

[44] The court's power and discretion to strike out a statement of case must be exercised with due consideration of the overriding objective of the just resolution of matters on their merits.

[45] The strike out remedy is considered a nuclear option, and the court must be satisfied that the impugned party's case is in fact an abuse of the process of the court.

Application of the principles

[46] The general rule is that it is an abuse of process for a person to seek to relitigate a cause action that has already been the subject of litigation and a final decision issued by the court either on the merits or consequent to a consent order (see (i) ***Greenhalgh v Mallard*** [1947] 2 All ER 255, which was cited with approval in the Privy Council case of ***Brisbane City Council v Attorney General*** [1978] 3 WLR 299; (ii) Lord Justice Stuart-Smith's decision in ***House of Spring Gardens Ltd v Waite*** [1990] 3 W.L.R 347.

[47] In ***House of Spring Gardens Ltd***, the defendants filed an application in Ireland to set aside a judgment issued by a judge in that country on the grounds that it had been obtained by fraud. In Ireland, the claim of fraud had been dismissed. When the claimants moved to enforce the Irish judgment in England, the defendants sought to impeach the decision issued in Ireland once again on the grounds of fraud. In his decision, Lord Stuart-Smith held:

> "The question is whether it would be in the interests of justice and public policy to allow the issue of fraud to be litigated again in this Court, it having been tried and determined by Egan J. in Ireland. In my judgment it would not; indeed, I think it would be a travesty of justice. Not only would the plaintiffs be

required to re-litigate matters which have twice been extensively investigated and decided in their favour in the natural forum, but it would run the risk of inconsistent verdicts being reached, not only as between the English and Irish courts, but as between the defendants themselves. The Waites have not appealed Sir Peter Pain's judgment, and they were quite right not to do so. The plaintiffs will no doubt proceed to execute their judgment against them. What could be a greater source of injustice, if in years to come, when the issue is finally decided, a different decision is in the appellant's case reached? Public policy requires that there should be an end of litigation, and that a litigant should not be vexed more than once in the same cause."

[48] In my judgment, it has always been the case, arguably since, but most probably before, the ***Henderson v Henderson*** case, which I read in light of the reasoning expounded in that and subsequent cases, that:

(a) where a person's claim or defence becomes the subject of litigation before a court of competent jurisdiction that person must bring forward their whole case;

(b) if the matter in dispute is concluded whether by a final judgment or order on the merits or consequent to a consent order, that resolves and concludes the matter before that court, save where:

(i) the judgment or order issued can be impeached before the same court on exceptional grounds such as fraud or material non-disclosure (***Sharland v Sharland*** [2015] UKSC 60); or

(ii) new facts have come to light, which fundamentally change the complexion of the case (***Amin v Director General of the Security Service (MI5)*** [2015] EWCA Civ 653 at [52]); ***Gairy v Attorney General*** [2002] 1 A.C. 67);

(c) permitting a person whose matter was heard and concluded before a court of competent jurisdiction to re-litigate the same "*offends the core policy against re-litigation of identical claims*" (***Virgin Atlantic Airways Ltd v Zodiac Seat UK Ltd*** [2013] UKSC 46, at [26]), in part because:

(i) the integrity of the justice system would be undermined by the risk of conflicting judgments;

(ii) the justice system offers parties to litigation dissatisfied with a decision (be it a judgment, order or consent order) an avenue to ventilate their claims by way of an appeal; and

(iii) there should be finality in litigation, a policy that advances the public interest.

[49] Drawing on Lord Diplock's statement in ***Johnson v Gore-Wood & Co*** at page 31, Mr Elrington SC contended in his written submissions that there ought not be a too dogmatic approach to the application of the plea on abuse of process. I agree.

[50] However, I fear that learned senior counsel took Lord Bingham's statement out of context. Lord Bingham's caution against the adoption of a "*too dogmatic an approach*" was made in the context of the plea that the claimants could and should have but did not raise in previous proceedings between the parties the issue which was then subsequently brought before the court. The relevant passage quoted by Mr Elrington SC reads in the material part:

> "I would not accept that it is necessary, before abuse may be found, to identify any additional element such as a collateral attack on a previous decision or some dishonesty, but where those elements are present the later proceedings will be much more obviously abusive, and there will rarely be a finding of abuse unless the later proceeding involves what the court regards as unjust harassment of a party. It is, however, wrong to hold that because a matter could have been raised in earlier proceedings it should have been, so as to render the raising of it in later proceedings necessarily abusive. That is to adopt too dogmatic an approach to what should in my opinion be a broad, merits-based judgment which takes account of the public and private interests involved and also takes account of all the facts of the case, focusing attention on the crucial question whether, in all the circumstances, a party is misusing or abusing the process of the court by seeking to raise before it the issue which could have been raised before." [Emphasis added]

[51] In these proceedings, the defendants' plea is much less complicated. It is that the second to seventh claimants are seeking to relitigate the same cause of action before the same court seeking the same reliefs they sought and compromised in Claim No. 55 of 2019. I do not read Lord Bingham to have said that, in a situation such as exists here, there is any room to find that such litigation can avoid being caught under the abuse of process dragnet.

[52] I find as fact that:

(a) the second to seventh claimants are re-litigating through these proceedings the same subject matter compromised in Claim No. 55 of 2019; and

(b) in their 3 October 2023 application, the second to seventh claimants sought to reopen and relitigate against the same defendants the same cause of action they asserted in their 18 December 2019 Fixed Date Claim Form (i.e., on the alleged unconstitutionality of Schedule 1 of the ROPA) and the same relief, which they had compromised through the Consent order and that their application was dismissed.

[53] Notably, in their 3 October 2023 application, the second to seventh claimants sought "*A declaration that the First Schedule to the Representation of the People Act is unconstitutional and unsuitable for the holding of general elections in Belize*…" In both these and the Claim No. 55 of 2019 proceedings, it is common ground that the second to seventh claimants' case is that Schedule 1 of the ROPA is unconstitutional because it breaches section 90(1) of the Constitution.

[54] Nabie J dismissed the second to seventh claimants' application on the constitutionality point stating at [85] that:

> "…in seeking such a declaration the applicants are trying to take the matter to a point that has passed. That stage of the matter has already concluded, these are proceedings for enforcement and not for determination of whether or not to grant the substantive relief in the main claim. I am unable to grant such a declaration on the application before me."

[55] I am of the view that Nabie J was correct to dismiss the second to seventh claimants' application for the declaratory order on the alleged unconstitutionality of Schedule 1 of the ROPA. To reopen the door to the re-litigation of their cause of action as set out in their 18 December 2019 Fixed Date Claim Form, the second to seventh claimants were required to but did not apply for an order setting aside the 29 November 2022 Consent Order.

[56] It would also appear that the second to seventh claimants did not plead that they intended to have the 29 November 2022 Consent Order reviewed and set aside. The second to seventh claimants had a choice, i.e., either to apply to set aside the Consent Order or seek to enforce it. Having chosen the latter, the principle of res judicata estopped them from relitigating the issue of the alleged unconstitutionality of Schedule 1 of the ROPA (see Carey JA's opinion at para. 20 in ***Huang v Attorney General*** BZ 2008 CA 28, where after referencing the Privy Council decision in ***Gairy v Attorney General*** stated that in his opinion, Lord Bingham did not express a view that res judicata did not apply to constitutional cases. I shall return to this issue below.

[57] For emphasis, if the second to seventh claimants were dissatisfied with Nabie J's ruling, which was final in effect on the issue on their entitlement to sue on the constitutional points, they had the option of appealing to the Court of Appeal.

[58] Standing back, these proceedings represent the third time that the second to seventh claimants are seeking to relitigate before this court the same issue against the same defendants and in which they

seek the same relief as they did in their 18 December 2019 Fixed Date Claim Form, which matter they compromised through the Consent Order, the execution of which they specifically sought through their 3 October 2023 application, which application was dismissed by Nabie J. These repetitive proceedings have abuse of process written all over them.

Were the claimants given the greenlight to commence a third round of litigation?

[59] In his written and oral submissions, Mr Elrington SC contended that the claimants are (and were) entitled to file fresh (new) proceedings on the same issues raised and compromised in Claim 55 of 2019 against the same defendants and seek the same declaratory relief because Nabie J declared that they were entitled to do so. The claimants base their contention on paras. [65], [75] and [76] of Nabie J's 8 August 2024 decision (***Smith Jr v Attorney General***).

[60] In para. [65] of the 8 August 2024 decision, Nabie J stated:

> "For the avoidance of doubt even if the respondents had not complied with the Consent Order (i.e., if they were in breach of their obligations contained in Schedule 1), I would still be unable to grant the relief sought in the application. The proper course of action would be to file fresh proceedings to obtain these desired reliefs." [Emphasis added]

[61] I accept that read out of context, Nabie J's obiter statement in para. [65] gives the impression that the honourable judge gave the second to seventh claimants the greenlight to refile the claims previously the subject of litigation and compromise in Claim No. 55 of 2019. However, I do not believe that in stating that the parties could file "*fresh proceedings*", the honourable judge was giving the claimants any advice on next steps or ruling that the principle on finality in litigation did not or would not apply to the matter before her.

[62] The reference to "fresh proceedings" referred (and can only have referred) to the only remedy available to the second to seventh claimants before the High Court, i.e., "fresh proceedings" seeking to set aside the Consent Order on proper grounds, i.e., if (and it is a big if) any proper ground exists on the facts of the matter.

[63] In Para. [75] of the 8 August 2024 decision, Nabie J stated:

> "I bear in mind the guidance of the [English] court in ***ex parte Foot***. It is clear that courts must be careful in inquiring into the workings of an election management body such as the EBC. Certainly, it is not for the courts to be drawing boundary lines. The applicants alluded to political bias and I reject that assertion. Parties must be mindful in making such accusations in the absence of cogent evidence. I

also reject the submission made by the respondents that the court has no place in such matters. The courts are the guardians of the Constitution and quite rightly, it is for the National Assembly to accept the proposals by the EBC and not the Court. However, the court still has a role if a proper case is mounted under section 20 of the Constitution and/or on judicial review applications of the administrative actions/ decisions of such public authorities as the EBC."

[64] Nabie J's statement in para. [75] of her decision must also be read in context. The honourable judge's statement related to the defendants' plea arising from the decision in the English case of ***Boundaries Commission of England, ex parte Foot*** [1983] 1 ALL ER 1099, that the drawing of electoral boundaries was a political matter for parliament to address but that the courts retained a role as one of the three pillars of state. The relevant paragraph bears restating:

> "Parliament and the courts are independent of each other and it is no part of the function or duty of the courts to review or intervene in any matter which pertains to Parliament itself. Thus the courts are not themselves concerned to draw or redraw constituency boundaries or to make any decision as to the basis of parliamentary representation. Those are matters for Parliament alone.
>
> When it comes to advising Parliament and the Secretary of State on these matters, it is for Parliament and Parliament alone to decide what advice, if any, it requires and the nature of that advice. Parliament has thought it right to set up independent advisory bodies, the Boundary Commissions, to advise it and, in so doing, it has given the Commissions instructions as to the criteria to be employed in formulating that advice. For good reasons, which we can well understand, Parliament has not asked the courts to advise it and it has not provided for any right of appeal to the courts from the advice or proposed advice of the Boundary Commissions.
>
> **This does not mean that the courts have no part to play.** They remain charged with the duty of helping to ensure that the instructions of Parliament are carried out. This is done by a procedure known as judicial review. Precisely what action, if any, should be taken by the courts in any particular case depends upon the circumstances of that case including, in particular, the nature of the instructions which have been given by Parliament to the minister, authority or body concerned. [Emphasis added]

[65] Para. [75] must also be read in the context of what Nabie J stated in para. [71] of her decision. The honourable judge stated:

> "The applicants have made heavy weather of the validity and constitutionality of the EBC proposals. The evidence of the respondents which has not been challenged tells us that the proposals were provided to the applicants. At that point when the applicants had become aware of the proposals, they had the option of filing judicial review proceedings as identified in ***ex parte Foot*** (supra). The authorities suggest and the applicants must bear in mind that to challenge the EBC proposals will undoubtedly be a difficult task." [Emphasis added]

[66] There is no question that this court has and will exercise jurisdiction on the merits of any application seeking to judicially review administrative decisions taken by the ECB or that alleges that the decisions taken by the ECB breach one or more of a litigant's personal rights under the constitution.

I hasten to add that this is not to say, the second to seventh claimants are entitled as of the date of this judgment to seek leave to judicially review or assert a claim for an alleged breach of a constitutional right. Whether they are so entitled will and would be a matter of the merits of any claimed cause of action and the judge presiding over any such matter. Further, in stating that the court has a role if a "*proper case is filed*", Nabie J was doing nothing more than restating the obvious, i.e., to say it is up to the second to seventh claimants or any other person with a sufficient interest and in a proper case to challenge the ECB's decisions, whatever those might be, and if they were so inclined.

[67] Para. [76] of the 8 August 2024 decision provides:

> "By virtue of the Constitution, the EBC should ensure that boundary lines are drawn with the aim to have as much equality as possible between districts but it would be impossible to achieve absolute parity. The EBC's constitutional role is therefore vital in a democratic society. In this matter, where the parties had agreed that it was necessary for there to be an amendment to Schedule 1 of the ROPA, the applicants' cause of action was one of merit. This affects all citizens of Belize in that the applicants are trying to make sure that elections are free and fair and that each vote has as equal weight as possible and that malapportionment is avoided or reduced. I bear in mind that this is a matter of public interest and of constitutional importance as it touches and concerns the election process. Accordingly, there shall be no order as to costs.

[68] As noted above, there appears to be a general consensus across the body politic that since the country's electoral boundaries have not been changed in years, there is need for redistricting. I note that it is not in dispute between the parties that there is a Bill pending before parliament to address that issue. The expectation is that once passed by parliament each electoral division shall have as nearly as possible an equal number of persons eligible to vote. That said, I do not read, Nabie J's statement in para. [76] as expressing a view that the second to seventh claimants' case in Case No. 55 of 2019 on the alleged unconstitutionality of Schedule 1 of ROPA (as it relates to section 90(1) and (6) of the constitution) had merit. If that were the case, there would have been no need for the honourable judge to have dismissed the claimants' application and simultaneously asked them to resubmit the same before the High Court.

[69] In conclusion, paras. [65], [75] and]76] of Nabie J's 8 August 2024 judgment were not an invitation to treat neither were they any authorisation to commence "fresh proceedings" against the defendants on the same issue that was resolved in 2022 through a Consent Order and dismissed by Nabie J.

No jurisdiction

[70] I am also of the view that following Nabie J's 8 August 2024 decision, this court is effectively functus officio, i.e., as it relates to the substantive issues dismissed by the honourable judge. Nabie J's 8 August 2024 decision was final and could only have been set aside on appeal. I have no power to review any final decision that I issue and neither do I have power to rehear a dispute disposed of in a final decision by another judge exercising concurrent jurisdiction.

Summary

[71] For the reasons outlined above, I hold that the second to seventh claimants' statement of case against the defendants is an abuse of the process of the court and should be struck out.

(c) Whether there is merit in the defendants' law of estoppel-based pleas

[72] In this section, I shall address in brief the defendants' pleas on merger, res judicata and cause of action estoppel.

Merger and res judicata

[73] It is my view that the second to seventh claimants' cause of action and the reliefs they sought against the defendants, which were premised on the alleged unconstitutionality of Schedule 1 of the ROPA, merged into and were extinguished by the 29 November 2022 Consent Order.

[74] As noted in ***Virgin Atlantic***, at para. 17:

> "…the doctrine of merger…treats a cause of action as extinguished once judgment has been given upon it, and the claimant's sole right as being a right upon the judgment."

[75] Pursuant to their 3 October 2023 application, the second to seventh claimants accepted the validity and enforceability of the Consent Order, i.e., to say, they accepted that their cause of action in Claim No. 55 of 2019 merged into and was replaced by the Consent Order.

[76] It is also settled law that while contractual as between the parties, a consent order is a judgment of the court. Where a consent order is drafted to have the effect of and is intended to finally resolve the dispute between the parties it puts a stop to proceedings before that court. The same issue, if raised in subsequent proceedings, can be defeated by the pleas, as relevant, of res judicata, cause of action estoppel, issue estoppel and/or the doctrine of merger.

[77] As noted by Lady Justice Smith in ***Zurich Insurance Company Plc v Hayward*** [2011] EWCA Civ 641 at [47]:

> The fact that an order is made by consent does not…prevent it from giving rise to an estoppel by record, provided that the nature of the order is such that it would otherwise have that effect. The clearest case is a judgment entered by consent. If the parties agree that judgment should be entered for one or other of them, there is no need for the court to investigate the substance of the dispute; it is entitled to act on the parties' agreement and enter judgment accordingly. The effect of the judgment is the same as that of a judgment entered after a trial. It is binding to the same extent and creates an estoppel by record (cause of action estoppel); the cause of action merges with the judgment and is no longer capable of supporting proceedings (see the explanation of the doctrine of merger given by Lord Goff in ***Republic of India v Indian Steamship Co. Ltd (The 'Indian Grace')*** **[1993] A.C. 410).** [Emphasis added] (See also ***Gairy v Attorney General of Grenada*** [2001] UKPC 30, at 27).

[78] In the Republic of ***India v Indian Steamship Co. Ltd*** case, Lord Goff quoting with approval the authors of **Spencer Bower and Turner**, Res Judicata, 2nd Ed at pp355 explained that the doctrine of merger means that a person:

> "…in whose favour an English judicial tribunal of competent jurisdiction has pronounced a final judgment … is precluded from afterwards recovering before any English tribunal a second judgment for the same civil relief in the same cause of action":

[79] In both his written and oral submissions, Mr Elrington SC argued that there is not any decision on the merits on the constitutionality of Schedule 1 of the ROPA. This is not disputed by the defendants. Senior counsel's submission and the facts of this case raise the question: if a person challenges the constitutionality of a statute and proceeds to settle his dispute pursuant to a consent order, which is final in nature save for purposes of enforcement, do the rules on merger and res judicata not apply as between the parties? Mr Elrington SC did not point me to any authority that says the rules on merger and res judicata do not apply. I note, however, that learned senior counsel could have brought to my attention and specifically addressed the Belize Court of Appeal case of ***Huang v Attorney General*** BZ 2008 CA 28,[4] in which it was held that the doctrines of res judicata and abuse of process apply to cases raising constitutional matters.

[4] There is a duty on legal practitioners to bring to the attention of the court all relevant authorities, including those that are against their client's case. This duty starts at commencement of proceedings and continues up until a final decision is issued by the court. Given the material relevance of the Huang case to these proceedings and his involvement in the matter, learned senior counsel had a duty to bring the authority to the court's attention. I belatedly discovered the authority only on undertaking a review of domestic authorities on the points of law arising for determination in this matter.

[80] In ***Huang v Attorney General***, the claimant sued the Attorney General and Belize Natural Energy Limited (BNE Ltd) before the High Court seeking leave to judicially review a decision, which permitted the BNE Ltd to conduct petroleum operations over a period of two years over his properties. In those proceedings, Mr Elrington SC, representing Mr Huang, advanced the argument that the relevant Minister's decision was not in conformity with section 17 of the Constitution. The application was denied. And Mr Huang did not appeal the decision.

[81] Thereafter, Mr Huang filed new proceedings by way of a Fixed Date Claim Form seeking (i) a declaration that section 26(1)(b) of the Petroleum Act breached section 17(1) of the Constitution; and (ii) damages. In response, the Attorney General filed an objection on the grounds that (i) the matter had already been adjudicated; (ii) the new proceedings were an abuse of process; and (iii) the matter barred by res judicata. The Chief Justice sitting in the High Court upheld the Attorney General's objection. Mr Huang appealed to the Court of Appeal.

[82] In ***Huang,*** the Court of Appeal dismissed learned senior counsel's argument that:

> "…the principle of res judicata was not applicable because the proceedings before Awich, J. was an interlocutory application and that before the Chief Justice was in the nature of a substantive application. The significance of that, he contended, was that the decision could never be binding "in the High Court or the Constitutional Court" (see para. 17 thereof)

[83] The only difference of any substance between these proceedings and those in ***Huang*** is the latter, there was a decision on the merits issued by the Chief Justice. In this matter the dispute was settled by the parties pursuant to a consent order. As noted above, a consent order has the same effect as a judgment on the merits. It ends the parties' dispute. Relatedly, the plea of res judicata operates as a substantive bar to re-litigation of the same issues as between the same parties or their privies.

[84] I am bound by the decision of and the principles laid out in ***Huang***. In short, I hold that the doctrines on merger and res judicata apply as between the second to seventh claimants on the one hand and the defendants on the other because the alleged breach of the second to seventh claimants' constitutional rights were compromised. Consequently, these subsequent proceedings engage and are precluded by the doctrines of res judicata and merger.

Cause of action estoppel

[85] I also uphold the defendant's plea on cause of action estoppel. In ***Arnold v National Westminster Bank Plc*** [1991] 2 AC 93, Lord Kinkel held:

> "Cause of action estoppel arises where the cause of action in the later proceedings is identical to that in the earlier proceedings, the latter having been between the same parties or their privies and having involved the same subject matter. In such a case the bar is absolute in relation to all points decided unless fraud or collusion is alleged, such as to justify setting aside the earlier judgment."

[86] As reflected in the ***Zurich Insurance Company Plc v Hayward*** case, at [47]:

> "The effect of [a] judgment [by consent] is the same as that of a judgment entered after a trial. It is binding to the same extent and creates an estoppel by record (cause of action estoppel)."

[87] Consequently, I hold that the second to seventh claimants are estopped from re-litigating through these proceedings the same cause of action they advanced in Claim No. 55 of 2019 against the same defendants, which they compromised through the Consent Order.

(d) Whether the first claimant should be deemed to have privity of interest with the second to seventh claimants' cause of action in Claim No. 55 of 2019

[88] Mr Wade, the first claimant in these proceedings was not party to Claim No. 55 of 2019. Nonetheless, the defendants plead that Mr Wade had a privity of interest and is barred pursuant to the res judicata doctrine from reasserting through these proceedings the cause of action and the reliefs sought by the second to seventh claimants in Claim No. 55 of 2019.

(i) What is privity of interest?

[89] The rule on privity of interest rule derives from the doctrine and defence of res judicata. In simple terms, privity of interest is a plea available to "**Person A**" who (i) was either a claimant or a defendant in previous proceedings that concluded pursuant to a final judgment or order issued by a court of competent jurisdiction; and (ii) is called upon in subsequent proceedings to answer the same issue by "**Person B,**" who was not party to the previous proceedings but who had or should be held as having had an interest (legal or beneficial) in the previous litigation or its subject matter. The plea enables "Person A" to plead res judicata in the subsequent proceedings against "Person B" who was not a party to the earlier in time proceedings.

[90] In ***Tyne and Wear Passenger Transport Executive (trading as Nexus) v National Union of Rail,***

Maritime and Transport Workers [2023] ICR 148 at para. 42, Lord Underhill stated:

> *"Res judicata* only applies where the parties to the second proceedings are the same as the parties to the first proceedings or are their "privies". Privies are traditionally treated as falling into three classes – "privies in blood", "privies in law" and "privies in estate or interest".

[91] In these proceedings, as regards Mr Wade, the defendants plead privity of interest.

[92] In ***Wiltshire v Powell*** [2004] 3 WLR 666, at 15, Lord Latham cited with approval the opinion expressed by the authors of ***Spencer Bower and Handley: Res Judicata*** that:

> '231. The reasons supporting the application of estoppels to privies were explained by [the case of] ***Cababe***…:
>
> Res judicata estoppels operate for, or against, not only the parties, but those who are privy to them in blood, title or interest. Privies include any person who succeeds to the rights or liabilities of the party upon death or insolvency, or who is otherwise identified in estate or interest. It is essential that the party to be estopped by privity must have some kind of interest, legal or beneficial, in the previous litigation or its subject matter…"

[93] In the case of ***Resolution Chemicals Ltd v H Lundbeck A/S*** [2013] EWCA Civ 924, Floyd LJ noted at para. 30 of the decision, after referencing the opinion expressed by Lord Reid in ***Carl Zeiss Stiftung v Rayner & Keeler Ltd*** (no. 2) [1967] 1 AC 853 (see pp. 911–912), that an estoppel would arise against a party to a second action raising an issue decided in an earlier action where and if *"in effect, he represents the party in the first action"*.

[94] In ***Carl Zeiss Stiftung***, at pages 911-112, Lord Reid stated that:

> "A party against whom a previous decision was pronounced may employ a servant or engage a third party to do something which infringes the right established in the earlier litigation and so raise the whole matter again in his interest. Then, if the other party to the earlier litigation brings an action against the servant or agent, the real defendant could be said to be the employer, who alone has the real interest, and it might well be thought unjust if he could vex his opponent by relitigating the original question by means of the device of putting forward his servant." [Emphasis added]

[95] These authorities indicate that a privy can be a third-party[5] with an interest in a subject matter[6] resolved in previous proceedings in which he was not a party.

---

[5] See Lord Reid in ***Resolution Chemicals*** (para. 98 above).

[6] See ***Wiltshire v Powell*** [2004] 3 WLR 666, at 15.

(ii) The test

[96] The defendants urge the court to adopt the test on determining privity of interest set out in ***Resolution Chemicals Ltd v H Lundbeck A/S*** **[2013] EWCA Civ 924**, at para. 32 where Floyd LJ stated:

> "… [I]n my judgment a court which has the task of assessing whether there is privity of interest between a new party and a party to previous proceedings needs to examine (a) the extent to which the new party had an interest in the subject matter of the previous action; (b) the extent to which the new party can be said to be, in reality, the party to the original proceedings by reason of his relationship with that party, and (c) against this background to ask whether it is just that the new party should be bound by the outcome of the previous litigation." [Emphasis added]

[97] In his decision, Floyd LJ also cited with approval Lord Bingham's opinion in ***Johnson v Gore-Wood***, that in considering whether (i) there is privity of interest between a new party and those who participated in previous proceedings; and (ii) it is just that the new party be held to be bound by the outcome of the previous proceedings, a broad merits-based judgment must be adopted. This approach has been upheld and applied in cases such as ***Tyne and Wear Passenger Transport***, at para. 47.

(iii) Applying the test

[98] As noted above, none of the second to seventh claimants have filed any affidavits in opposition to the defendants' strike out application. The only claimant that filed affidavits is Mr Wade. His second affidavit was filed in answer to the defendants' pleas on abuse of process as pertains to the second to seventh claimants as well as the plea that Mr Wade had privity of interest in Claim No. 55 of 2019. Mr Wade did not give any reasons why his comrades-in-arms decided to not provide affidavits or why he took it upon himself to answer the defendants' pleas directed at the second to seventh claimants. In addition, he did not say that the second to seventh claimants had authorised him to testify on their behalf. Rather, he stated that he was filing the second affidavit in support of the other claimants. This points to Mr Wade having a direct legal interest in Claim No. 55 of 2019.

[99] Mr Wade has made no attempt to disguise the fact that the genesis of these proceedings is Claim No. 55 of 2019. Mr Wade is clear that together with the other claimants, they wants a binding decision on the merits of the issues raised in Claim No. 55 of 2019. This positions these proceedings squarely as a continuation of Claim No. 55 of 2019 and not as separate and distinct proceedings that are similar to but motivated by different considerations or his own view that his rights under section 6 of

the Constitution have been breached and that he is merely of the similar view that Schedule 1 of the ROPA violates section 90(1) of the Constitution.

[100] That these proceedings are a continuation of the subject matter of and the remedies sought in Claim 55 of 2019 is further supported by the fact that Mr Wade as the lead claimant simply copied the words used in the Fixed Date Claim Form on the remedies sought and much of the evidence used in support and pasted them into the Fixed Date Claim Form used in these proceedings. Neither Mr Wade nor any of his co-claimants have pleaded that this is mere happenstance.

[101] Mr Wade also explains that because the claimants' 3 October 2023 application for substantive relief on the constitutional issues raised in Claim No. 55 of 2019 was dismissed by Nabie J on 8 August 2024 they decided to file these proceedings in light of the honourable judge's comments in para. [65] of her decision about filing "fresh proceedings."

[102] In their written submissions (see paras. 9, 10 and 27 of which paras. 9 and 10 are a cut-and-paste of paras. 12 and 14, respectively of Mr Wade's 13 January 2023 affidavit), the claimants state:

> 9. In view of Justice Nabie's judgment, the claimants respectfully submit that this court refrained in that proceeding from addressing or deciding on the legal merits of Case 55 of 2019 because the Application was deemed an improper avenue for raising the issues, and the question of the Schedule's compliance with the constitution fell outside the remit of the Application to Enforce the Consent Order…"
>
> …
>
> 10. The Claimants respectfully submit that given the circumstances, the proper course of action to address the constitutionality of the said Schedule 1 of ROPA is to **file fresh proceedings** in this Honourable Court, which is now done with the filing of this case…"
>
> …
>
> 27. Reference is made again to the very pronouncement of Justice Nabie with respect to the ability for the Claimants to **come back** to this court on this constitutional issue.[7] [Emphasis added]

[103] In short, Mr Wade affirms in his own words (see paras. 12 and 14 of his 13 January 2024 affidavit) that, together with his co-claimants, they decided to "***come back***" to this court through these "***fresh proceedings***" to continue prosecuting the *"**the question of [Schedule 1 of the ROPA's] compliance with the constitution***" since that question **"*fell outside the remit of the Application***

[7] I note that paras. 9 and 10 of the claimants' written submissions are a cut-and-paste of paras. 12 and 14 of Mr Wade's second affidavit dated 13 January 2023.

***to Enforce the Consent Order*,"** which they made on 3 October 2023 and which was dismissed by Nabie J on 8 August 2024.

[104] Further, I note that:

(a) while Mr Wade did not explain the joinder of the second to seventh claimants in the Fixed Date Claim Form filed used to commence these proceedings nor provide information pertaining to the circumstances that led to these seven claimants jointly filing this case, it is clear from the factors identified in **para. 103** above that the main driver behind these proceedings was the outcome in Claim No. 55 of 2019, which the claimants want this court to resolve on the merits.

(b) it is Mr Wade who has presented legal defences for and on behalf of the second to seventh claimants in rebuttal of the defendants' pleas on abuse of process and the related estoppel doctrines. That constitutes evidence of Mr Wade's legal interest in the outcome of Claim No. 55 of 2019. If Mr Wade had zero interest, involvement and knowledge of the ins-and-outs of the decisions taken and processes around Claim No. 55 of 2019, it is reasonable to assume that one or more of the other claimants involved in Claim No. 55 of 2019 would have stepped in, i.e., in opposition to the abuse-of-process pleas and distinguished these proceedings from those in Claim No. 55 of 2019. Rather, Mr Wade draped the mantle left by Mr Paco Smith Jr and, for the reasons explained in **para. 103** above, has continued to champion the objective of realising the parties' unfinished goals in Claim No. 55 of 2019.

(c) Mr Wade did not contend (which is odd since that would have been a natural fallback position if he was a disinterested party as regards Claim No. 55 of 2019) that if the court were to find that the second to seventh claimants' case constituted an abuse of the court process or fell foul of the related estoppel doctrines, his case should nonetheless be permitted to continue because his case although raising similar issues should be considered as separate and distinct.

[105] In these proceedings, Mr Wade has not given me any basis to rule that he had no privity of interest beyond saying he was not privy to the decision issued by Nabie J on 8 August 2024. The factors I have identified in paras. 98 - 104 above tilt the balance in favour of a finding that he had a privity of interest in the subject matter, and that he should be bound by the outcome of Claim No. 55 of 2019.

Consequently, Mr Wade's statement of case is struck out.

IV. Summary

[106] In summary, I have struck out and dismissed:

(a) the second to seventh claimants' statement of case on the grounds that (i) in relitigates the subject matter of Claim No. 55 of 2019 against the same defendants and consequently constitutes an abuse of the process of the court; and (ii) it is estopped on the grounds of res judicata, merger and cause of action estoppel; and

(b) the first claimant's statement of case on the ground that (i) he had privity of interest in Claim No. 55 of 2019 and is consequently bound by the outcomes in that matter (i.e., the 29 November 2022 Consent Order and the 8 August 2024 decision by Nabie J); and (ii) his claim in these proceedings is estopped by the principle of res judicata.

V. Costs

[107] I invite the parties to cooperate and either settle or indicate their respective positions on the issue of costs. The parties are directed to communicate with the Court Office no later than close of business on **31 July 2025** on the results of their exchanges and, if necessary, on whether case management orders should be issued to facilitate resolution on costs.

VI. Conclusion

[108] For the reasons expressed above, the claimants' statement of case is struck out.

HHJ Hondora
Judge
High Court
Civil Division