IN THE HIGH COURT OF BELIZE

CLAIM No. Civ 181 of 2024

BETWEEN:

OLIVIER AZOULAY

Claimant

AND

REGISTRAR OF THE BELIZE COMPANIES AND CORPORATE AFFAIRS REGISTRY

Defendant

Appearances:

Rt. Hon. Dean O. Barrow, SC for the claimant
Ms Kimberly Wallace for defendant

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13 June 2024

5 August 2024

JUDGMENT

Company law – Section 223 of the Companies Act, 2022 – statutory law on the restoration of dissolved companies to the companies register – Application for restoration filed more ten years after date of compulsory dissolution – Application excluded by section 223(2)(b) of the Companies Act - Whether the High Court has inherent jurisdiction to order restoration – Section 95(1) of the Constitution - Pleas invoking the court's inherent and equitable jurisdictions must be sufficiently particularised – The High court's inherent jurisdiction is not the same as its equitable jurisdiction - Restoration sought to avoid/minimise a capital gains tax liability – Whether in the interests of justice to order restoration

[1] **Hondora J:** Mr Olivier Azoulay, the claimant seeks the restoration to the companies' register of a company known as Euclid Networks Ltd (Euclid Networks). In his claim form, the claimant seeks:

> "(a) An order pursuant to section 223 of the Companies Act 2022 and/or the court's inherent jurisdiction that [the] deemed dissolution of the Euclid *(sic)* be set aside and that the name "EUCLID NETWORKS LTD" be entered on the Register of Belize Companies and Corporate Affairs Registry.
>
> (b) A declaration that EUCLID NETWORKS LTD is deemed never to have been dissolved.
>
> (c) Any other order the Court deems just.

Background

[2] The claimant incorporated Euclid Networks Ltd. on 8 December 2005 under the International Business Companies Act (IBC Act) and he was a sole shareholder and director. The IBC Act was repealed in 2022 and all companies in Belize are now regulated under the new Companies Act, 2022.

[3] In his affidavit the claimant explains that Euclid Networks provided online marketing and traffic generation services. It made its clients' websites more visible on the internet, including through direct advertising on search engines like Google, Yahoo, MSN and others. Euclid also paid search engines on a pay-per-click basis and engaged in Wholesale Traffic Acquisition activities through traffic brokers.

[4] The claimant also explains that: (a) he "was responsible for ensuring the payment of the Company's annual licence fees and other outgoings"; (b) "due to an administrative oversight on [his] part and also by [his] administrative staff, the annual licence fees were not paid in 2009"; (c) he "was not prompted by the Company's registered agent [based in Belize] that the [annual] fees were outstanding and as a result the fees owed to the Registrar of the International Companies Business Companies were not paid"; and (d) the "oversight continued until 2024 when [he] was advised, to [his] alarm, that the Company was struck off for non-payment of the annual fees by [the] registered agent, International Corporate Services".

[5] The claimant stated that he did not pay the fees because he was "preoccupied by a high volume of business activity". However, he does not provide any information on the relevant period when he was otherwise preoccupied and why he did not attend to the payment of annual fees when he was no longer thus preoccupied. He also states that "because business activity slowed considerably in 2009 and onwards, this administrative requirement completely fell 'off our radar'". I note that the claimant did not refer to or attach any of the company's annual financial reports in support of his assertions on the period that was characterised by a high volume of business and the period from 2009 onwards during which he says the business slowed down considerably.

[6] The claimant attaches to his affidavit an extract dated 28 February 2024 from the Belize Companies and Corporate Affairs Registry, which states that Euclid Networks "*was deemed compulsorily dissolved on 10 January 2012 due to non-payment of Government fees*." The extract is not authenticated. However, the defendant does not dispute the correctness of the information contained in the document.

[7] In these proceedings, the claimant is seeking an order restoring Euclid Networks' name to the register for personal tax mitigation reasons. He explains that as a citizen and resident of Canada he is required to disclose his personal earnings to the Canada Revenue Agency (CRA). He explains that the CRA informed him that since Euclid Networks "was not properly registered in 2009 and [because] money was still moving to and from

the Company" from 2009, that money would be deemed to be capital gains.

[8] The claimant indicates that the capital gains tax liability has been calculated at CAN $557,951 or USD $411,000 00. In addition, the claimant estimates that when interest and penalties are added, his tax liability exposure is over CAN $1,259,389 or USD $927,000.00 – an amount, he says, he cannot afford to pay.

[9] The claimant explains that:

> "Without the restoration of the Company [to the register he] will be personally penalized and taxed on any amounts that the Company might have received during that period as those sums will be treated as personal taxable income."

[10] The claimant does not explain the basis upon which the CRA would tax him on "any amounts…the Company *might* have received" rather than on amounts received and/or earned. In addition, the relevant tax periods are unclear although they appear to relate to the period 2009-2024.

[11] The claimant also explains that:

> "The funds coming into the Company were used to settle expenses at the time and had no end benefit other than to pay for operational expenses. This tax claimed by the CRA is oppressive and punitive…Furthermore, the CRA will likely allege legal misconduct and will levy substantial additional penalties…"
>
> "It is vital that the Court allow [] the restoration of the Company to the Register of the Belize Companies and Corporate Affairs Registry so that [he is] able to address and settle this matter with the CRA."

[12] I note in passing that the claimant has not provided any information supporting his assertion that the funds received by the company were used solely to settle expenses and had no end benefit other than paying for operational expenses. It is also unclear whether the claimant's case is that the tax liability assessed by the CRA is "oppressive and punitive" as a matter of law or that he has initiated or plans to initiate legal proceedings challenging the tax assessment on those grounds.

[13] The claimant has undertaken to pay all outstanding fees and penalties that may be levied by the Registrar of Companies and to keep Euclid Networks in good standing.

Chronology of the proceedings

[14] In his fixed date claim form, the claimant cited the Registrar of the Belize Companies and Corporate Affairs Registry (the Registrar) as the defendant. The first hearing was scheduled for **13 June 2024**.

[15] In these proceedings, the claimant is represented by the Rt Hon. Dean Barrow SC (Mr Barrow SC) and the defendant is represented by Ms Kimberly Wallace of Bradley Ellis Co LLP (Ms Wallace).

[16] On the return day, i.e., on **13 June 2024**, I requested both Mr Barrow SC and Ms Wallace to address me on the claimant's entitlement to the restoration of the dissolved company to the register under section 223 since

the company was dissolved more than ten years ago, i.e., in 2012. That issue had not been addressed in the claimant's application. In addition, the defendant had not filed any affidavit evidence or submissions directly addressing the issue. Furthermore, the parties had not submitted written submissions addressing the claimant's plea on the court's inherent jurisdiction and the remedies seeks thereunder.

[17] Since this was a fixed date claim and the matter turned on points of law, I exercised my case management powers as set out in Rules 25 and 26 of the Civil Procedure Rules and ordered the parties to file written submissions on the apparent ten-year time-bar and the court's inherent jurisdiction.

[18] I pause here to note that when she appeared for the defendant on 13 June 2024, Ms Wallace had not filed a defence. She indicated that her instructions were not to object or consent to the claimant's plea. I found this approach peculiar given the legal issues arising for resolution and the impact of this court's decision on the defendant's policy (if any) regarding the restoration to the companies register of companies that had been dissolved for more than ten years. Mr Barrow SC did not object to the defendant's participation in the proceedings. I suspect that he adopted this position in view of the defendant's litigation position. I commend the Registrar's new approach to this type of litigation.[1]

[19] Mr Barrow SC filed his written submissions on **14 June 2024**. Ms Wallace filed her written submissions on **28 June 2024**.

[20] After I considered both parties' written submissions, I directed the parties on **2 July 2024** to file additional written submissions no later than **15 July 2024** addressing, among others, the following points:

(a) the impact, if any, of the use of the word "shall" in section 223(2)(b) of the Companies Act; and

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[1] It appears that the Registrar's historical approach has been to not participate in legal proceedings pertaining to the resuscitation of dissolved companies. For example, the Registrar did not participate in the cases cited by the claimant in this matter, i.e., the cases of ***International Services Ltd v Registrar of International Business Companies Registry***, Claim No. 20 of 2018 (the ***Monteverdi case***); ***Commissioner of Her Majesty's Revenue and Customs v Registrar of International Business Companies***, Claim No. 192 of 2019 (the ***Revenue and Customs case***). I commend to the Registrar and its legal advisors the case of Re Belmont & Co Ltd. 1951, 2 AER 898 where the court noted:

> "In cases under s. 353, it is plainly necessary that the Registrar of Companies should be represented in order that he may make clear to the court what is the default for which the company is struck off and what are the undertakings which should be required by the court as to filing returns as a condition of making the order asked for under sub-s. (6) of that section….In my view, particularly under present-day conditions, there is everything to recommend that course."

That statement, which was made in 1951 still applies today. It is often not enough for the Registrar to appear through its legal representative and inform the court that the Registrar neither consents nor disputes the resuscitation of a company. The Registrar must provide sufficient information relating to the dissolution of the relevant company and on the conditions, which the Registrar believes should be imposed if the court decides to uphold the claimant's application for the resuscitation of the dissolved company. Relatedly, in promoting the overriding objective, there is merit in a claimant first approaching the Registrar to inform the department of their intention to file for resuscitation and to ascertain the Registrar's position. This approach minimises costs in particular in those situations where it is possible for the parties to proceed by way of consent. It also enables the parties to narrow down the issues that need to be resolved.

(b) the claimant's submission that the High Court has a supplemental inherent jurisdiction to restore dissolved companies' names to the register.

[21] Both Mr Barrow, SC and Ms Wallace filed their additional written submissions with commendable expedition for which I am grateful.

Issues arising

[22] As noted in para. 1 above, the claimant pleaded his case in the alternative. He asserts that as a shareholder and director of Euclid, he is entitled to have the dissolved company restored to the companies register pursuant to section 223 of the Companies Act and/or the court's inherent jurisdiction. I will address each plea in turn. In this judgment, I use the following phrases interchangeably, i.e., (i) ***resuscitation*** of a dissolved company; and (ii) ***restoration*** of a dissolved company's name to the companies' registry.

Claimant's case under section 223 of the Companies Act, 2022

[23] Section 223 of the Companies Act, 2022 provides the statutory framework for the restoration of dissolved companies to the register. It provides:

> "(1) Where a company has been dissolved, an application may be made to the Court in accordance with sub-section (2) to declare the dissolution of the company void and restore the company to the Register.
>
> (2) An application under sub-section (1) –
> (a) may be made by the company or by a creditor, member or liquidator of the company; and
> (b) shall be made within ten years of the date that the company was dissolved.
>
> (3) On an application under sub-section (1), the Court may declare the dissolution of the company void and restore the company to the Register subject to such conditions as it considers just."
>
> (4) Where a company is restored to the Register under this section, the company is deemed never to have been dissolved or struck off the Register." [Emphasis added

[24] It is not in dispute that (a) Euclid Networks was deemed compulsory dissolved in **January 2012** and that its dissolution has not been challenged in these proceedings; (b) the claimant was the sole shareholder and director and that either capacity gave him locus standi to initiate these proceedings and that he is entitled to apply for the resuscitation of Euclid Networks under section 223(2)(a) of the Companies Act; and (c) the claimant applied for the resuscitation of the company 12 years after it was deemed compulsory dissolved. What is in dispute is whether the section 223(2)(b) of the Companies Act, which provides that an application for the resuscitation of a dissolved company "shall be made within ten years of the date of the company was dissolved" precludes the claimant's application.

[25] In his additional written submissions, Mr Barrow SC submitted that:

> "3. The Claimant's position is that the use of the word 'shall' in Section 223(2)(b) of the Companies Act is not dispositive of the issue. The word is merely confirmatory of the Court's statutory jurisdiction to restore a

company. That jurisdiction allows for a restoration made within 10 years of the date of dissolution. It is empowering and permissive. It is not restrictive. The word and the section do not at all speak to the Court's inherent jurisdiction to restore a company outside of that period. It does not circumscribe that inherent jurisdiction. It does not forbid its exercise…

5. To put it another way, the use of the word 'shall' cannot, without more, inhibit the Court from 'reading down' the ten-year period set out in Section 223(2)(b)." [Emphasis added]

[26] This submission establishes that the learned senior counsel was, in all but name, abandoning the claimant's case under section 223 of the Companies Act choosing instead to focus on what he called the "*court's inherent jurisdiction to restore a company outside of [the ten-year] period*".

[27] For the defendant, Ms Wallace argued that an application under section 223 of the Companies Act needed to be made within ten years of the date of liquidation. Learned counsel argued that the word "shall" used in section 223(2)(b) of the Companies Act was "mandatory" and "imperative" and that the court had no discretion to order the restoration onto the companies register the name of a company if, as in this case, the application was made more than ten years after the dissolution of the said company.

[28] In support of her submission, Ms Wallace referred to section 58 of the Interpretation Act, which provides:

> "In an enactment "shall", shall be construed as imperative and the expression "may" as permissive and empowering."

[29] Ms Wallace's interpretation of section 223(2)(b) is correct. I agree that if a claimant bases their application on section 223 of the Companies Act, 2022 for the resuscitation of a dissolved company such an application must be made within ten years of the date of dissolution. The words used in section 223(2)(b) are clear and the time bar imposed is peremptory.

[30] In the circumstances, I dismiss the claimant's Companies Act, section 223 claim because it falls outside the prescribed ten-year period.

Claimant's case under the court's inherent jurisdiction

[31] The claimant's counsel submits in the alternative that this court has an "inherent jurisdiction to restore a dissolved company" and that it has exercised that jurisdiction in two previous cases and provided remedies similar to the one sought by the claimant in this application. The cases referenced by senior learned counsel in support of the claimant's action are (a) ***International Services Ltd v Registrar of International Business Companies Registry***, Claim No. 20 of 2018 (the ***Monteverdi case***); ***Commissioner of Her Majesty's Revenue and Customs v Registrar of International Business Companies***, Claim No. 192 of 2019 (the ***Sintra case***).

[32] In his pleadings, the claimant did not elaborate on what he meant by the court's inherent jurisdiction. Considering the context, I took it that the claimant meant either that (a) the High Court as a court of original jurisdiction had 'inherent jurisdiction' to hear and determine his claim and grant him an order resuscitating Euclid Networks; and/or (b) that the High Court's jurisdiction was not ousted by section 223 of the Companies Act and that the court had an 'inherent power' to order the resuscitation of Euclid Networks in the interest of justice[2] as set out in the ***Monteverdi*** and ***Sintra*** cases.

[33] When pleading the court's inherent jurisdiction, the best approach is to spell out in clear and simple terms which inherent jurisdiction or inherent power is being invoked. A brief explanation must be provided, including of the remedy sought and the grounds in law or equity.

Issues arising under this head

[34] In my judgment, the claimant's alternative plea raises the following three issues, i.e.:

(a) whether the claimant's resuscitation remedy lies under the court's inherent jurisdiction; and/or

(b) whether the claimant has a remedy based on the interest of justice principle pursuant to this court's ruling in the ***Monteverdi case***); and

(c) whether this case engages the court's equitable jurisdiction and if so, whether the claimant has demonstrated that he has an equitable interest requiring an order resuscitating Euclid Networks.

Whether the claimant's remedy to the resuscitation lies under the court's inherent jurisdiction

[35] In this section, I address whether the claimant's remedy, i.e., the resuscitation of Euclid Networks, lies under

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[2] The phrase "inherent jurisdiction" is an overused synonym used in different contexts to mean different things.

In common law systems, this phrase is used to describe the High Court's jurisdiction, i.e., its original jurisdiction to hear and determine any civil and criminal proceedings. That said, it is not unusual to find courts of appeal across the Commonwealth, including in England and Wales, asserting that they have inherent jurisdiction. Used by these statutory courts, which are not courts of original jurisdiction, the phrase is merely a synonym for "inherent powers" which those courts possess by virtue of their status as courts of law. Those courts not being high courts do not have 'inherent jurisdiction' to hear and determine any civil or criminal matters.

The phrase is also used to describe the courts' power to control their proceedings and the enforcement of their orders.

In addition, it is used to describe the courts' power to apply and interpret rules of law and in so doing incrementally develop legal principles – be they statutory, common law or rules of equity. Used in this context, the phrase means a court's power to interpret and apply the law to arrive at accurate and just decisions. One of the court's 'inherent powers' that flows from it being a court of law is to incrementally develop legal rules and principles. This 'inherent power' is not limited to the High Court.

Since the phrase is both a synonym for legal capacity/authority (original jurisdiction) and a wide variety of inherent powers, when referenced in pleadings, it is best if the reference is followed by a statement clearly articulating the nature of the *inherent capacity/authority or power*, which is being invoked. Litigants' claims risk being struck out or dismissed if the phrase is not particularised. Defendant must not be left guessing and unsure about what exactly a claimant means when they refer to the court's inherent jurisdiction.

the court's inherent jurisdiction.

[36] A useful starting point is section 95(1) of the Constitution, which stipulates that:

> "The [High] Court shall have unlimited original jurisdiction to hear and determine any civil or criminal proceedings under any law and such jurisdiction and powers as may be conferred on it by this Constitution or any other law."

[37] Section 95(1) is composed of two key parts. The first provides that the High Court has unlimited original jurisdiction to hear and determine any civil or criminal proceedings under any law. The second is that the High Court shall have such jurisdiction and powers as may be conferred on it by the Constitution of Belize or any other law. Certainly, there are numerous other categories of law that do not sit easily into the realm of civil and criminal law, which in my view explains the second part of section 95(1) of the constitution, which refers to the High Court having such other jurisdiction and powers as may be conferred on it by the constitution or any other law.

[38] That apart, it is clear that the court is required to exercise its "*unlimited original jurisdiction"* or its statutory jurisdiction in the context of the law regulating the particular dispute before it - be it a statute, the common law, equity or some other category of law.

[39] It is not in dispute between the parties that pursuant to section 223 of the Companies Act, the High Court possesses statutory jurisdiction over applications for the restoration to the companies register of dissolved companies. In addition, section 223(2)(a) of the Companies Act granted the claimant locus standi to apply to the High Court for an order restoring Euclid Networks' name to the companies register, i.e., in either of his capacities as a shareholder or director of Euclid Networks. In addition, the statutory right granted to the claimant is subject to a ten-year time limitation.

[40] In my judgment, section 95(1) permitted the claimant to invoke, including as he did in the alternative, the High Court's inherent jurisdiction to hear and determine his application for the resuscitation of Euclid Networks. Section 223 does not preclude the High Court's exercise of its inherent jurisdiction, which is constitutionally enshrined.

[41] However, the High Court's inherent jurisdiction does not give the claimant a right or entitlement to an order requiring the Registrar to restore Euclid Networks' name to the register of companies. The claimant's claim to that remedy must of necessity be based on a separate rule of law be it statutory, common law or based on a rule of equity. It follows that the claimant's remedy is to be found, if it exists, in one or more separate rules of law, which must be pleaded and proven to the appropriate standard.

[42] Consequently, I hold that to succeed the claimant needed to plead that he has cause of action or interest

based on a clearly identified and separate rule of law. And that law is not section 95(1) of the Constitution. In other words, the claimant has no actionable remedy under section 95(1) of the Constitution save where his was a claim in which he had been denied access to the High Court.

[43] Put differently, in constitutional terms, the High Court's section 95(1) inherent jurisdiction guarantees a litigant access to a court. It does not guarantee a remedy where the issue in contention is not his right to access the High Court in the vindication of his rights.

[44] It is not the law that all what a litigant needs to plead to succeed in a case such as this is that the court has inherent jurisdiction to hear the matter and that it is fair and just that the court issue the order sought. If that were the case, there would be no need for statutes, rules of common law or rules of equity. Similarly, there would be no stability in the law. It would result in rule-by-judges depending only on the presiding judge's view of what is fair and just ignoring or regardless of the provisions of statutes and other established rules of law.

[45] As noted in footnote 2 above, in addition to its inherent capacity, i.e., authority, to hear and determine any civil disputes, the High Court has inherent power to incrementally interpret and develop rules of law. That inherent power is possessed by all courts. Leveraging that power, courts may grant remedies in situations not adequately covered by current rules or principles of law. However, in any such situation (which must be demonstrated as a matter of fact) if a litigant is to be granted a remedy, they must demonstrate that they possess a right, entitlement or actionable interest and that the applicable legal rules should be applied or extended to grant them the remedy they seek. In and of itself, the High Court's inherent jurisdiction, i.e., its authority to hear and determine any civil matter is not a repository of supplementary actionable rights, entitlements or interests.

[46] In the circumstances, I hold that the High Court's inherent jurisdiction does not grant the claimant an actionable right or entitlement to the resuscitation of Euclid Networks or an actionable interest that should result in an order resuscitating Euclid Networks.

Whether the claimant has a remedy pursuant to the Monteverdi and Sintra cases

[47] Mr Barrow SC is correct that in ***Monteverdi***, the former chief justice of Belize, the Honourable Benjamin CJ sitting as a judge of the High Court ruled that the "*Court [was] empowered to exercise its inherent jurisdiction in order to do justice*" to the directors of Monteverdi who were "*at risk of being rendered liable to prosecution for fraud unless [the company's] dissolution was set aside*." Learned counsel is also correct to point out that in a subsequent ruling in the case of ***Commissioner of Her Majesty's Revenue and Customs v Registrar of International Business Companies***, Claim No. 192 of 2019 (***the Sintra case***), the Honourable Benjamin CJ followed his earlier ruling in ***Monteverdi.***

[48] In the circumstances, I must consider whether the claimant has a remedy pursuant to the ***Monteverdi case.***

Monteverdi case

[49] The facts of, and reasoning adopted by the court in, the ***Monteverdi case*** bear restating. As described by the Honourable Benjamin CJ, Monteverdi Universal S.A (Monteverdi) was registered in Belize under the now-repealed International Business Companies Act.

[50] Monteverdi had banking relations with UBS-Switzerland, which stored its clients' financial transactions data in Germany. The German tax authorities seized UBS's data and distributed it to various countries, including Spain. Using that information, Spain initiated criminal fraud investigations into Monteverdi's transactions and requested from the Swiss authorities Monteverdi's banking records. UBS-Switzerland objected to the Spanish authorities' request for Monteverdi's banking records. In 2018, the directors of Monteverdi decided to resuscitate the company, which operated in Belize but had been voluntarily dissolved in December 2014.

[51] The claim was initiated by the International Services Limited (ISL), the liquidator of Monteverdi. ILS sought the resuscitation of the company because the directors and ultimate beneficiaries of Monteverdi wanted the company (Monteverdi) to object to the Spanish authorities' request to the Swiss authorities for Monteverdi's banking records. The liquidators disclosed that they feared that if the Swiss authorities handed over Monteverdi's banking records to the Spanish authorities, the ultimate beneficiaries of Monteverdi could be held personally criminally liable for tax fraud.

[52] The problem that arose was that the International Business Companies Act did not provide for the resuscitation of companies that had been voluntarily dissolved. That issue has now been resolved following the enactment of the Companies Act, 2022, which consolidates what was then the International Business Companies Act and the Companies Act, respectively. In addition, the Companies Act, 2022 provides for the restoration to the companies register of any dissolved company subject to the terms set out in section 223.

[53] In paragraphs 14 and 15 of his decision, the Honourable Benjamin CJ held:

> "[14] Monteverdi through its directors and its beneficial owner, is at risk of being rendered liable to prosecution for fraud unless its dissolution is set aside. To my mind, in the absence of a statutory provision in the IBC Act allowing for such setting aside, the court is empowered to exercise its inherent jurisdiction in order to do justice.
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> [15] The Court is seized of the inherent jurisdiction enjoyed by the High Court of Justice in England. It is only right that Monteverdi be put in a position to challenge the disclosure of its account information by UBS to the Spanish Competent Authority." [Emphasis added]

[54] Following that brief statement, the Honourable Benjamin CJ set aside Monteverdi's voluntary dissolution and ordered the name of the company to be restored to the register of International Business Companies. No conditions were imposed – most probably because the Registrar did not participate in those proceedings and

consequently did not assist the court in determining relevant conditions.

[55] For the following reasons, I hold that the ***Monteverdi*** case is of little assistance to the claimant.

[56] First, in ***Monteverdi***, the Honourable Benjamin CJ held: *"In the absence of a statutory provision in the IBC Act allowing for [the] setting aside [of the dissolution of a company], the Court is empowered to exercise its inherent jurisdiction in order to do justice."* It is correct that in the absence of a regulating statute, the court is empowered to exercise its inherent jurisdiction to hear and determine a claim. However, in this case there is in existence a regulating statute, i.e., the Companies Act, the provisions of which the claimant was unable to fulfil because he filed his application more than ten years after dissolution of the company. In the circumstances, the Monteverdi case is not based on similar factual and legal matrix and cannot without more be applied directly to the case in casu.

[57] Second, I have not been able to establish the ratio decidendi in the ***Monteverdi*** case. In the case the Honourable Benjamin CJ held that the High Court had an inherent jurisdiction to do justice. It would appear that the honourable justice held that it was just that the directors of Monteverdi should be enabled to "*challenge the disclosure of [Monteverdi's bank] account information by UBS to the Spanish Competent Authority*." The honourable judge explained that: *"In the present case, Monteverdi through its directors and beneficial owner, is at risk of being rendered liable to prosecution for fraud unless its dissolution is set aside*."

[58] The honourable judge did not explain why it was in the interests of justice for the beneficial owners of Monteverdi to be allowed to resuscitate the company in order to challenge the disclosure of the company's banking records, which might disclose suspected criminal conduct on their part. Notably, the beneficial owners did not say they wanted to resuscitate the company in order to assist the Spanish authorities with their investigations or to demonstrate that there was no wrongdoing on their part or on the part of the company.

[59] In the absence of more elaborate reasoning, I am unable to follow a decision that provides that it is in the interests of justice to assist a director of a dissolved company to litigate in the name of the company with the stated objective of preventing the disclosure of information pertinent to criminal investigations into possible fraud by the company. Alleged fraud by directors is also a possible fraud against the company. Certainly, if the argument was that the resuscitation was sought to assist in the investigations, then there would have been greater weight in the argument that it was in the interests of justice that the company be resuscitated.

[60] I say this only to point out that the basis upon which the court ruled that it was in the interests of justice to resuscitate the company was unusual. The court did not offer any reasons for the decision that it was in the interests of justice to enable the directors to litigate to prevent the disclosure of information pertinent to a

criminal fraud investigation on the part of the company. It appears that the directors did not argue that the Spanish investigation was improper and an abuse or process, tainted by mala fides or otherwise persecutory. This raises questions on the factors considered, which this court ought to pay regard to in considering the application of the principle of "interests of justice" in the context of actions to resuscitate a dissolved company.

[61] That said, in my view, the "interests of justice" principle pertains to the court's exercise of its discretion in judicial decision-making. The principle does not sustain or grant a claimant a cause of action and the court may not invoke it in a seeming grant to a claimant of a cause of action nor should it amount to the recognition of an actionable interest when that cause of action or interest has not been clearly spelt out in the claimant's pleadings.

[62] In the circumstances, I cannot with any degree of confidence deduce any principle of general application from the ***Monteverdi case*** and I am unable to accede to the proposition that the court has 'inherent jurisdiction to do justice' in the context of a case in which there is no pleaded cause of action or actionable interest and where the directors asserted that their objective was to prevent disclosure of information pertinent to a criminal fraud investigation.

[63] For completeness I should add that it is my considered view that where the High Court's inherent jurisdiction and/or its equitable jurisdiction is invoked in a claim for the restoration of a dissolved company's name to the register, a claimant must additionally demonstrate in their pleadings that:

(a) they have a right or entitlement under a statute, the common law or rules of equity to the restoration of the company to the register; **or**

(b) they have suffered or may suffer injury due to the company's dissolved status and that the injury was caused by or resulted from or will arise due to the company's dissolved status; **or**

(c) they possess a right, entitlement or substantial and overriding interest substantively connected to the company that can only be enforced, realised or safeguarded if the company's dissolution is set aside, and its name restored on the register; **and**

(d) on balance, when all the facts are considered in the round, it is in the interests of justice (fair and just) that the court restore the dissolved company to the companies register.

[64] The need to demonstrate a right, entitlement or substantial and overriding interest is critical for establishing locus standi. In addition, the requirement for a substantial and overriding interest is necessary for establishing a nexus between the injury that has occurred or that is feared and the dissolved company. Resuscitation of dissolved companies engages the Registrar's effective administration in the public interest of the nation's laws,

policies and procedures relating to corporations. It also engages the rights of third parties, including property rights that may have accrued or devolved to third parties. In the circumstances, any substantial and overriding interest asserted as a cause of action must relate in some concrete way to the company itself and not merely be incidental.

[65] While each case turns on its own facts, I am of the view that a personal interest in reducing one's personal tax liability cannot, without more, justify the resuscitation of a company. Restoration necessarily adds costs and complexity to the Registrar's department and impacts third party rights relating to or arising from the company's dissolution and resuscitation. It also explains why time is of the essence, including in situations where the resuscitation is sought pursuant to the court's exercise of its inherent jurisdiction. A laissez faire approach that permits resuscitation on any grounds, including those that do not relate to the dissolved company but that relate to personal interests that are incidental to the company's dissolved status are unlikely to be in the public interest or serve the interests of justice. In general, resuscitation of companies results in the unravelling of property rights that occurred on dissolution. In view of this, to prioritise personal interest that are only incidentally connected to the company's dissolution will likely impose imponderable costs and difficulties on all stakeholders whose rights and interests would be affected as a consequence. There will be cases where no such difficulties arise. This also explains the need for a greater degree of candour and explanation by the claimant to enable the correct decision to be made on the facts of their case. In addition, it also explains why the Registrar should seek to be actively involved in litigation relating to resuscitation of companies to enable the court to make an informed decision, including on the conditions that should, if necessary, be attached to any resuscitation.

[66] In view of the above, I hold that the ***Monteverdi case*** does not lay down any rule of general application to the effect that in civil proceedings, the High Court will exercise its inherent jurisdiction and/or its equitable jurisdiction and may rule on any matter on the basis only of the interests of justice. Alluring as that proposition is, it is built on quicksand and constitutes a conceptual fallacy.

[67] Third, in ***Monteverdi***, the court appeared to conflate its inherent jurisdiction and its equitable jurisdiction. Certainly, a High Court's constitutionally enshrined inherent jurisdiction may be engaged or invoked. However, it does not necessarily follow that its equitable jurisdiction is simultaneously engaged. Those two grounds should be separately pleaded. The court's equitable jurisdiction carries with it equitable remedies. The court's inherent jurisdiction grants a litigant access to the court. The court's inherent power grants a litigant remedies in cases of casus omissus. But to secure a remedy, the litigant must demonstrate that (a) they have a right, entitlement or substantial and overriding interest, which ought to be recognised and enforced under a pleaded rule of law and not merely in the interests of justice; and (b) that there is as a matter of fact a casus omissus.

The claimant has not demonstrated that on the facts of his case there is any casus omissus.

[68] Fourth, in ***Monteverdi***, the court only referenced its inherent jurisdiction and in interpreting its powers under that head, the court relied on an academic article and the Scottish case of ***Collins Brothers & Co Ltd*** [1916] S.C. 620.

[69] The court cited an article by I.H Jacobs titled ***"Inherent jurisdiction of the court***", Current Legal Problems, 1970, Vol. 23, pp. 23-52, which is often cited in caselaw, but which has been criticised for its analysis of the doctrine on inherent jurisdiction.[3]

[70] It is worth restating the two paragraphs of Jacobs's article that were cited in para. 14 of the ***Monteverdi case***, which it appears influenced that court's decision that the High Court had an inherent jurisdiction, which it could use to order the Registrar of Companies to restore Monteverdi's name to the register of companies in the interest of justice.

[71] On page 23 of his article, Jacobs stated:

> "The general jurisdiction of the High Court as a Superior court of record is broadly speaking unrestricted and unlimited in all matters of substantive law, both civil and criminal, except in so far as that has been taken away in unequivocal terms by statutory enactment. The High Court is not subject to the supervisory control of any other court except by due process of appeal, and it exercises the full plenitude of judicial power in all matters concerning the general administration of justice within its area."

[72] On page 24 of his article, Jacobs stated:

> "…the court may exercise its inherent jurisdiction even in respect of matters which are regulated by statute or by rules of court, so long as it can do so without contravening any statutory provision…the source of the inherent jurisdiction of the court is derived from its nature as a court of law, so that the limits of such jurisdiction are not easy to define, and indeed appear to elude definition."

[73] It is unclear from the judgment, which of those two passages informed the court's decision that the High Court had an inherent jurisdiction "to do justice" and which supported the ruling that it was just to restore Monteverdi to the companies register (para. 14 of ***Monteverdi).***

[74] The first passage (see **para. 71 above**) relates to the rule on the High Court's constitutionally enshrined jurisdiction.

[75] In the context of the law in the United Kingdom, Jacobs's opinion is in my view correct. However, his exception

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[3] Jacobs' article has not been without its critics. In one notable and more recent article, Jacobs' article was described as "spectacularly unhelpful" regarding its analysis and statements on inherent jurisdiction (see Joseph, Constitutional and Administrative Law in New Zealand (3rd Edn, Brooker's, p. 807. Donnelly J, expressed the view that Jacobs' "…widely cited article has spawned widespread confusion in common law jurisdictions on the concept of inherent jurisdiction." (Donnelly, J, Inherent Jurisdiction and Inherent Powers of Irish Courts, Judicial Studies Institute Journal [2009] 2, p126).

does not apply to this country, which has a written constitution and in which the High Court's inherent jurisdiction is enshrined in section 95(1) thereof. Jacobs's assertion that the general jurisdiction of the High Court can be removed "in clear and unequivocal terms by statutory enactment" does not apply to Belize. In Belize, an amendment to section 95(1) of the Constitution would be needed to remove the court's inherent jurisdiction. That cannot be done via a statute. Relatedly, the cited paragraph cannot be relied on for the proposition that the court's inherent jurisdiction grants it power to rule on any matter simply and only on the invocation by a claimant of the "interests of justice" principle in the absence of a pleaded cause of action or enforceable interest.

[76] The second passage cited (see **para. 72 above**) is couched in terms so generic that it is impossible to discern any clear principle of law supportive of the decision taken in ***Monteverdi***. The first sentence that reads: "*…the court may exercise its inherent jurisdiction even in respect of matters which are regulated by statute or by rules of court, so long as it can do so without contravening any statutory provision*" confuses the court's inherent power with its inherent jurisdiction. Certainly, any court, including the High Court, will exercise its inherent power as a court of law to hear and determine any matter whether regulated by statute or some other rule of law. But that is not the same as inherent jurisdiction as it applies to constitutional democracies like Belize. In addition, that statement talks to the reality that statutes do not and cannot provide for the totality of humanity's experience and the issues that invariably fall for resolution in disputes or in relation to claims in which claimants seek court orders. There will be matters that arise that are not canvassed or provided for in a regulating statute, which the High Court in exercising its power as a court of law is required to and should hear and determine and potentially grant a remedy on the basis of the pleaded cause of action or enforceable interest.

[77] I do not read the cited passage to say: the High Court has power "to do justice" without drawing and requiring that a case be based on a pleaded cause of action or enforceable interest founded on a recognised and legally valid rule of law, be it based on a statute, the common law or rules of equity.

[78] Relatedly, in ***Monteverdi***, the honourable Benjamin CJ based his decision on and cited with approval the case of ***Collins Brothers & Co Ltd*** [1916] S.C. 620 as authority for the proposition that:

> "…in the context of English law [the Collins Brothers case] operates to invite the invocation of the inherent jurisdiction of the Court. Learned Counsel submitted that the Court ought to set aside the dissolution of Monteverdi on the basis of its inherent jurisdiction. Indeed, this Court has done so in at least three (3) cases."

[79] On this point, I find myself in the regrettable position of respectfully taking a different view from that taken by the honourable judge. The ***Collins Brothers*** was not decided on the basis of that court's inherent jurisdiction but rather on the basis of the court's *nobile officium* jurisdiction. In addition, contrary to the honourable judge's ruling, the *nobile officium* doctrine is not a rule of English law. Rather, it is a rule of Scottish law, which is unique to that nation and is applied in relation to cases that arise from that nation. It is not shared by any of the other

three nations, which together with Scotland make up the United Kingdom. Rightly, learned senior counsel did not contend that the *nobile officium* has been recognised as a rule of or absorbed into Belize's common law or rules of equity.

[80] Relatedly, contrary to the submission made by Mr Barrow SC, the *nobile officium* is not analogous to and ought not to be conflated with the constitutional doctrine on the inherent jurisdiction of the High Court. *Nobile officium* it is an equitable jurisdiction (***Dale Vince and Others v Advocate General*** [2019] CSIH 51).

[81] In addition, the *nobile officium* jurisdiction is typically invoked when there is not in existence an alternative remedy available to a petitioner that possesses and that has demonstrated the existence of an actionable right, entitlement or interest in law. Notably, in some cases, it has been held that the *nobile officium* jurisdiction exists to address errors or omissions that are principally administrative in character that cannot be dealt with in any other way (see ***London & Clydeside Estates Ltd v Aberdeen District Council*** [1980] 1 WLR 182). Certainly, in exercising its inherent power to incrementally develop the law or in exercising its equitable jurisdiction, the High Court may provide for remedies that have not previously been granted. This explains the need for claims to be particularised with a greater degree of specificity to ensure the development of clear rules of law of general application.

[82] In the circumstances, I am unable to place any weight on the precedent set by the ***Monteverdi case*** owing to the misapprehension that the *nobile officium* doctrine is a rule of English law and its application in that case. Obviously, had it been a rule of English law, it would have been open to the court to take notice of it pursuant to section 25 of the Senior Courts Act.

[83] In ***Monteverdi***, the honourable judge also cited (it appears, at the invitation of the claimant in that case) three cases in relation to which it was stated that the High Court had invoked its inherent jurisdiction to restore previously dissolved companies to the companies register. The cases are:

(a) ***Irish Bank Resolution and Ors v Continental Liquidators Inc***, Claim No. 509 of 2012;

(b) ***In re: Anouk Invest Corporation and Ors v The Registrar of International Business Companies***, Claim No. 666 of 2014; and

(c) ***In re: Arlinda Limited and Ano v The Registrar of International Business Companies***, Claim NO. 527 of 2015.

[84] Despite their best efforts, the parties were unable to locate the cited authorities and neither the court office. In these proceedings, the duty to produce the cited cases lay on the claimant since he is the one that sought to rely on them. That said, it is surprising that the cited cases could not be located.

[85] For the foregoing reasons, I find myself in the regrettable position of not being able to follow the ruling in ***Monteverdi***. I arrive at this decision after reminding myself of my duty to consider and follow decisions issued by a judge exercising concurrent jurisdiction both out of judicial comity and in the interests of the stability and consistency of this court's stare decisis *(**Police Authority for Huddersfield v Watson*** [1947] KB 842; ***R v Greater Manchester Coroner, ex parte Tal*** [1985] QB 67 at 81).

Sintra case

[86] The ***Sintra*** case was also decided by the honourable Benjamin CJ drawing on the precedent set in ***Monteverdi***. In deciding that case, the honourable Benjamin CJ held at para. 13 that:

> "The [International Companies Act] is silent as to the restoration of a company and the setting aside of the striking out of an IBC. However, this court has held in Claim No. 43 of 2018 [the Monteverdi case] that in the absence of a statutory provision in the [International Companies Act], the Court is empowered to exercise its inherent jurisdiction in order to do justice." [Emphasis added]

[87] And at para. 14, the honourable judge held:

> "There has not been any evidence to suggest that it would not be fair and reasonable for the Court to exercise its jurisdiction to restore Sintra SA to the Register of [International Business Companies]."

[88] The statement that "*the Court is empowered to exercise its inherent jurisdiction in order to do justice*" suggests that the court conflated its inherent jurisdiction with its equitable jurisdiction. Judicial decisions must, of course, be fair and just and where a litigant relies on equitable grounds or an equitable principle these must be pleaded. In addition, a litigant must demonstrate which of the equitable principles they wish the court to apply to the facts of their case and their reasons for so pleading. Regrettably, neither requirement has been fulfilled in these proceedings.

[89] I hold that the decisions in ***Monteverdi*** and ***Sintra*** cases do not exhibit any principle of law of general application and are be restricted to the peculiar circumstances that existed prior to the promulgation of the Companies Act, 2022. In addition, I was not provided with any binding authority or persuasive jurisprudence establishing that this court is empowered to exercise its inherent jurisdiction or its inherent power in order to do justice in the absence of a plea and an applicable cause of action grounded on a specified rule or principle of law entitling the claimant to the remedy of the restoration of a dissolved company to the companies register.

Mukhaini case

[90] Both Mr Barrow SC and Ms William referred to the case of ***Mukhaini & Ors v Registrar of International Business Companies***, Claim No. 61 of 2018. In ***Mukhaini***, the claimant requested the court to issue an order restoring the company to the companies register exercising its inherent jurisdiction. The Honourable Young J gave short shrift to the application. In a brief sentence, the honourable judge dismissed the application stating:

> "Although counsel postulated that the restoration of a company could be done under the court's inherent jurisdiction

I find that such a power is statutory only."

[91] I take a slightly broader position to that adopted by the Honourable Young J. I agree that the High Court has statutory jurisdiction over applications to restore dissolved companies to the companies register. However, I am also of the view that the High Court's inherent jurisdiction is not ousted in applications for the restoration of dissolved companies to the companies register.

[92] Certainly, cases that fall under section 223 of the Companies Act, 2022 should be initiated under that statute. However, there will be cases that fall outside section 223 of the Companies in which claimants require the resuscitation of companies. I hold that such claimants are not automatically barred from having their claims heard by the High Court.

[93] In my view, such cases cannot be defeated on the ground that the High Court has no jurisdiction. Rather, such cases will turn on whether the claimant's cause of action or the pleaded interest is actionable. And if the cause of action or pleaded interest is valid as a matter of law, the High Court will exercise its decision-making authority to determine whether the case has been made out and whether it is in the interests of justice to order the resuscitation of the dissolved company. For example, applications made in the context of alleged fraud on a company would fall into this category. So too cases where assets belonging to a company have been discovered after dissolution and it is intended to realise and distribute the same. For example, the Registrar is not included in the section 223 categories of persons that may apply for the resuscitation of a dissolved company. Does this mean that the Registrar is precluded from seeking an order from the High Court and has no actionable rights, entitlements or interests, including in cases of alleged fraud or in its capacity as a creditor? Although obiter and using that example, this does not appear to be the case. That said and for the avoidance of doubt, I am not pronouncing myself on any of these examples.

[94] It appears that in ***Mukhaini***, the claim that the court had an inherent jurisdiction to order the restoration of a company to the Companies register was made on the basis of an opinion made in the Eastern Caribbean Supreme Court case of ***Landbridge Management Inc. v Waterfall Foundation***, BV1HCV 118/2002 in which the judge in that case incorrectly assessed the decision made in the English case of ***In re Belmont & Co Ltd***, 1951, 2 AER 898.

[95] In my view, Young J was correct to decline the invitation to rely on the reference to the phrase "inherent jurisdiction" that was made in ***Re Belmont***. I mention this to reiterate the need for care in pleading this court's inherent jurisdiction and its inherent powers. It is clear that in ***Re Belmont***, although the judge used the phrase 'inherent jurisdiction', what the judge was talking about was the court's inherent power, i.e., its inherent decision-making power as a court of law in the context of the UK's Companies Act, 1948 and not the High

Court's inherent jurisdiction as a court of original jurisdiction. As noted above, reference to inherent jurisdiction in the context of English case law is not necessarily the same as inherent jurisdiction when used in the context of proceedings in a country like Belize, which has enshrined the High Court's inherent jurisdiction in its constitution.

Summary

[96] I hold that the ***Monteverdi*** and ***Sintra*** cases (i) do not disclose any principle of law of general application; (ii) are per incuriam in so far as they are based on the case of ***Collins Brothers and Co. Ltd*** and the Scottish *nobile officium* jurisdiction; and (iii) must be regarded as restricted to the legal situation that existed prior to the promulgation of the Companies Act, 2022.

[97] In addition, I am not persuaded that the principle outlined in the ***Monteverdi*** and ***Revenue and Sintra*** cases that "*the Court is empowered to exercise its inherent jurisdiction in order to do justice*" is well founded. I rule as such because the principle is too broadly drawn. As articulated, the decision does not require claimants to establish valid causes of action or rights, entitlements or interests justifying the restoration of dissolved companies to the companies register.

Whether it is just to restore Euclid's name to the register

[98] The above does not address the following issue, which appears from Mr Barrow SC's submissions albeit without much elaboration, i.e., whether this court has power/authority to order the restoration to the companies register of a company because it is just to do so. That apparent submission appears to be grounded on the court's equitable jurisdiction, which has not been explicitly pleaded in these proceedings. In my view, as expressed above, the court's equitable jurisdiction is not the same as its inherent jurisdiction.

[99] That said, I am considering this issue because section 42 of the Senior Courts Act enjoins this court to:

> :…take notice of all equitable estates, titles and rights, and all equitable duties and liabilities appearing incidentally in the course of any cause or matter, in the same manner in which the High Court of Justice in England may now take notice of those matters in any suit or proceeding duly instituted therein." [Emphasis added]

[100] In addition, I raise this issue because it is only fair and appropriate that I address as comprehensively as I can the issues arising in this case.

[101] The context of this case begs the question: what equitable interests, duties or liabilities does the claimant have which this court should consider and uphold through an order restoring Euclid Networks' name to the companies register?

[102] The claimant has not indicated that he has equitable duties or liabilities or that he seeks restoration of the company's name to the register because the company owes debts to creditors. The only creditor cited is the

Canada Revenue Authority. However, I am not convinced that I am able to or should issue an order resurrecting Euclid Networks to enable the claimant to arrange his tax affairs so that the Canada Revenue Authority can charge the company and not the claimant personally for tax due to it. In addition, the claimant has not indicated that there exist creditors in Belize or that the company has assets, which in view of its dissolution ought to be distributed, liquidated or which he wishes to trace and have distributed. In addition, it has not been suggested that the company is involved or needs to be involved in litigation to vindicate its rights or interests. The most the claimant asserts is that he may be charged criminally for his tax affairs. However, beyond that he provides no relevant or supporting information.

[103] Certainly, restoration of Euclid Networks to the companies register may allow the claimant to restructure and reduce his personal tax liability as assessed by the Canada Revenue Authority. In my view, the claimant has known or should be taken as having known since at least 2009 that he had not paid the company's annual fees that were due to the authorities in Belize and so too, tax in Canada. In addition, no averments have been made regarding the company's tax liability in this jurisdiction. The claimant has not referred to any and I am unable to deduce any principles of equity that should apply in favour of the restoration of Euclid Networks to the companies register.

[104] In the circumstances, I am unable to rule that it is fair and just that the company be restored to the register of companies under this court's equitable jurisdiction.

Summary

[105] I hold that the section 223(2)(b) precludes the claimant from seeking the restoration of Euclid Networks under the Companies Act.

[106] I also hold that the claimant was entitled to invoke the High Court's inherent jurisdiction. However, that only allowed him to be heard and to enable him to advance the substance of his cause of action or enforceable interest. To secure the remedy of the restoration of Euclid Networks to the companies register, the claimant needed but failed to demonstrate that:

(a) he had a statutory, common law or equitable right or an entitlement to the restoration of the company to the register; **or**

(b) he had suffered or stood to suffer injury due to the company's dissolved status and that the injury was caused by or resulted from or would arise due to the company's dissolved status; **or**

(c) he possessed a right, entitlement or substantial and overriding interest substantively connected to the company that could only be enforced, realised or safeguarded if the company's dissolution was set aside, and its name restored on the register; **and**

(d) on balance, when all the facts are considered in the round, it is in the interests of justice that the court restore the dissolved company to the companies register.

[107] In this case any injury suffered by the claimant was not due to the company's dissolved status. Rather, it was caused by his failure to arrange his personal tax affairs in Canada in compliance with Canadian tax law. Obiter, I would venture to say, if the claimant had approached the court after securing agreement with the Registrar for the resuscitation of the company for the specific purpose of and restricted only to enabling Euclid Networks to pay its outstanding dues to the Registrar as well as any other amounts due to other creditors, that would have presented a different set of facts and issues of law on which this court would have needed to pronounce.

[108] The ***Monteverdi*** case does not establish a general rule or principle of law entitling the claimant in the absence of a properly pleaded cause of action or actionable interest to secure an order directing the Registrar of Companies to restore Euclid Networks' name to the companies register.

[109] The claimant did not invoke the court's equitable jurisdiction and the facts as pleaded do not demonstrate the existence of any equitable rights or interests, which would require the court in the interests of justice to order the restoration of Euclid Networks to the companies register.

Costs

[110] Costs follow the cause. The claimant not having succeeded must pay the defendant's costs. If not agreed, the costs must be assessed.

Conclusion

[111] Drawing on the above analysis, I issue the following orders:

1. The claimant's application seeking the restoration of Euclid Networks Ltd.'s name to the Companies Register pursuant to section 223 of the Companies Act, 2022 is dismissed.
2. The claimant's application seeking the restoration of Euclid Networks Ltd.'s name to the Companies Register pursuant to the court's inherent jurisdiction and/or in the interests of justice is dismissed.
3. The claimant's application for a declaratur that Euclid Networks Ltd. be deemed never to have been dissolved is dismissed.
4. Costs are awarded to the defendant. If not agreed, the costs are to be assessed.

Dr Tawanda Hondora
High Court Judge