

COURT OF APPEAL OF SEYCHELLES

Reportable

[2026] (27 April 2026)
SCA MA 07/2026 And
SCA 27/2025
(Arising in MC 56/2021)

1. Lisa Rouillon

1st Applicant/Appellant

2. Darren Pillay

2nd Applicant/Appellant

(rep. by Mr. Serge Rouillon)

And

Catherine Mancham (acting in her personal capacity
and in her capacity as former executrix of the Estate
of late James Mancham)

Respondent

(rep. by Mr. Divino Sabino)

Neutral Citation: *Rouillon and Another v Mancham* (SCA MA 07/2026 And SCA 27/2025)
[2026] (Arising in MC 56/2021)
(27 April 2026)

Before: Gunesh-Balaghee, Sharpe-Phiri, Sichinga, JJA

Summary: Section 133 of Companies Act – validity of resolutions made by unanimous
written declaration – Sections 3 and 12 of the Immovable Property (Transfer
Restriction) Act.

Heard: 14 April 2026

Delivered: 27 April 2026

ORDER

The appeal is dismissed with costs.

JUDGMENT

GUNESH-BALAGHEE JA

(Sharpe-Phiri JA, Sichinga JA, concurring)

1. This is an appeal against a judgment of the Supreme Court dated 6 October 2025 granting the orders sought by the respondent (the then petitioner) against the appellants (the then respondents) by way of a petition lodged under section 136 of the Companies Act (the “Act”).
2. The respondent is resisting the appeal.
3. At the very outset, I must point out that the appellants made a miscellaneous application in the present case seeking an order from this Court for the caption of the appeal which had initially been lodged against “*Catherine Mancham*” to be amended to read “*Catherine Mancham (acting in her personal capacity and in her capacity as former executrix of the Estate of late James Mancham)*”. The motion was prompted by the fact that the respondent had brought the petition the judgment of which is the subject matter of the present appeal in her capacity as executrix of the estate of her late husband, James Mancham. However, her appointment as executrix in respect of which an application for extension was pending had in the meantime lapsed. There being no objection to the motion, the application for the above amendment was granted.

Background facts

4. Cherimont Development Company (“the company”), whose registered address at the time of incorporation was Glacis Mahé Seychelles, is a company limited by shares and registered under the laws of Seychelles. James Mancham, who was one of the directors of the company, owned 35% of the shares (35 shares, referred to as the “Mancham shares”), while late Dr Hindrich Bischoff owned 65 % of the shares (65 shares, referred to as the “Bischoff shares”). The other director of the company was late Roland Hoareau who was also the registered company secretary.
5. The respondent, who is the wife of late James Mancham, was appointed executrix of his estate by the Supreme Court on 30 January 2017, while K. Balke, a German lawyer, was appointed Executor of the Estate of late Dr Bischoff on 21 August 2020.

6. On 27 April 2021, K. Balke registered an affidavit transmitting the Bischoff shares in his name as executor of the estate of late Dr Bischoff.
7. By letter dated 28 June 2021, the first appellant wrote to the respondent informing her, *inter alia*, that she (the first appellant) was the newly appointed company secretary, that the company would be holding its annual general meeting (AGM) before 31 August 2021 and that the following five matters would be presented to the AGM:
 - (1) the ratification of the appointments of the current company directors and secretary to serve until the next AGM in 2022;
 - (2) the ratification of the appointment of the auditors of the company;
 - (3) the approval of the opening of a local company bank account;
 - (4) the approval of an increase in the authorised and issued share capital of the company from 100 shares to 1200 shares without dilution for the purpose of allowing the respective executors of the succession to distribute the shares of the late shareholders amongst their respective heirs;
 - (5) the approval of a cash infusion into the company which had been estimated by the directors to be around USD 25,000 for the upcoming 12 months.
8. The letter contained four attachments as follows:
 - (1) a Return of Particulars of Directors and Secretaries, dated 20 May 2021, indicating that the former directors had been removed and replaced by the two appellants and that the first appellant had, in addition, been appointed Secretary of the company;
 - (2) a Return of allotments, dated 20 May 2021, showing that 65 shares were held by K. Balke as Executor for the heirs of late Dr Bischoff and 35 shares were held by James Richard Mancham;
 - (3) a notice, dated 20 May 2021, showing that the company's address is on the 1st Floor, Suite 14, Kingsgate House, Independence Avenue, Victoria, Mahé;
 - (4) a letter dated 24 June 2021 addressed to the Registration Division informing it, *inter alia*, that the company had no legal capacity to act until directors were appointed on 20 May 2021, of its intention to hold its AGM by 31 August 2021 and that the

Bischoff shares had been transferred into the name of K. Balke while the Mancham shares had not yet “*been transferred to the company*”. It also requested confirmation from the Registration Division that it would take no action to strike out the company from the registry due to the delays in complying with the Act.

9. The letter, in addition, enjoined the respondent to provide an affidavit of transmission of the Mancham shares into her name so that the said shares could be transferred into her name as Executrix with a view to secure a right to vote at the AGM.
10. On 2 July 2021, the respondent informed the first appellant that she did not accept her representation as director nor as secretary of the company and asked her to cease making such representations.
11. On 7 July 2021, the respondent filed the original petition (which was subsequently amended on 14 June 2022) seeking the following orders from the Supreme Court:
 - “(i) *to declare that no valid resolutions have been passed with respect to the Company to give effect to the 3 documents mentioned [...] [above] including any document that may have been submitted to the Registrar General on or around the 17th June 2021 in respect of the Company;*
 - (ii) *to declare that the [appellants] have not been validly appointed as Directors of the Company;*
 - (ii) *(sic) to order against the [appellants] to cease representing themselves and acting as Directors of the Company; and*
 - (iii) *to order the Registrar General not to register any instrument, document or any filing whatsoever pertaining to the Company emanating from the [appellants], or if such registration has been registered or given legal effect, to cancel or otherwise make void such registrations;*
 - (iv) *such further order as the Court considers appropriate.”*
12. In her affidavit in support of the petition, the respondent averred, *inter alia*, that K. Balke sought to appoint the appellants as directors of the company without following due legal

process, no company meeting was held nor were any resolutions approved for such appointments; and the alleged directors submitted at least three documents to the Registrar of Companies, namely: (i) to change the directors of the company, (ii) to “*alter, transfer or otherwise allocate*” the 65 shares of the late Dr Bischoff to K. Balke and (iii) to alter the Memorandum of Association of the company by changing the registered office of the company.

13. The respondent contended that the said documents were received by the Registrar of companies on 17 June 2021, but the resolutions (hereinafter referred to as the “impugned resolutions”) were not validly made in the absence of any resolution or any meeting properly convened in breach of sections 136(3)(a) and (e) of the Act.
14. On 19 July 2021, the Registrar rejected the amendments purported to be made by the documents filed and also queried why K. Balke sought to transfer the shares to himself, but the appellants did not challenge the Registrar’s decision.
15. The learned Judge granted the prayers sought by the respondent (which are set out under paragraph 11, subparagraph(i), the first sub-paragraph(ii) and subparagraph (iii) above) and also ordered that each party shall bear its own costs.
16. The appellants are now appealing against the judgment of the learned Judge on 5 grounds as per their notice of appeal. Before turning to the grounds of appeal, I must deal with a few preliminary issues raised by the respondent.

Preliminary issues

17. In the skeleton heads of argument, the appellants have raised 6 grounds of appeal. The numbering of the grounds of appeal in the skeleton heads of argument of the appellants differs from that in the notice of appeal: in the notice of appeal the grounds of appeal are numbered 1 to 5, whereas in the skeleton heads of argument, they are set out as grounds a to f. Ground 1 corresponds to ground b; ground 2 to ground c; ground 3 to ground e; and ground 5 to ground f in the skeleton heads of argument.

18. In their skeleton heads of argument, the appellants have raised a new ground of appeal under ground a, by canvassing the issue of locus standi which was never raised in the notice of appeal. Under ground d, they contend that the learned Judge was biased when clearly the said ground was not raised in the notice of appeal. Moreover, ground e has been framed differently from its corresponding ground (ground 3): the appellants refer to “*misstatements of fact*” under ground 3, whereas under ground e they refer to false statements allegedly made by the learned Judge. Finally, the appellants have neither in the skeleton heads of argument nor in Court canvassed the issues raised under the said ground 4.
19. Rule 18(8) of the Court of Appeal of Seychelles Rules, 2023 expressly provides that the appellant shall not, without leave of the Court, be permitted, on the hearing of an appeal, to rely on any grounds of appeal other than those set forth in the notice of appeal. In the present case, leave of the Court was not sought before raising grounds a, d and e (to the extent that it differs from ground 3). These grounds were raised for the first time in the skeleton heads of argument. In the circumstances, the appellant cannot proceed with grounds a, d, and e (to the extent that it is not similar to ground 3) and the said grounds are deemed to be abandoned.
20. In so far as ground f is concerned, learned Counsel for the respondent submitted that it is a new ground which was not raised in the notice of appeal. Although it is not couched exactly in the same terms in the skeleton heads of argument and the notice of appeal, I have after careful consideration come to the conclusion that, in substance, ground f as reflected in the skeleton heads of argument does not in substance depart from ground 5 in the notice of appeal.
21. Since no submissions were offered regarding ground 4 and it was not addressed in the skeleton heads of argument, it is also deemed to be abandoned.

22. In the circumstances, the only grounds left for consideration by the Court in the present appeal are grounds b, c, e (subject to the caveat set out above) and f (which correspond to grounds 1, 2, 3, and 5, respectively in the notice of appeal).
23. Finally, I must also point out that all the other grounds of appeal as set out in the notice of appeal have been further subdivided into a number of paragraphs and sub-paragraphs, with the result that they are long-winded, argumentative and contain unnecessary detail.
24. Rule 18(7) of the Court of Appeal of Seychelles Rules, 2023 provides that no ground of appeal which is vague or general in terms shall be entertained, such as, that the verdict is unsafe or that the decision is unreasonable or cannot be supported by the evidence. In this regard, I find it relevant to refer to the following extract from the Mauritian case of **Langué A.S v The State [2017 SCJ 55]**, where the Supreme Court of Mauritius made the following remark about the drafting of grounds of appeal:

“The basic rule is that grounds of appeal must be carefully drafted, that is in a clear and precise manner so as to indicate to the other side, and indeed the court, what specific issues are being raised and have to be considered Should the court consider that the ground is a mischief ground, that is through its vagueness and generality raised new issues not envisaged in the impugned ground, the court will not consider same.”

25. However, although in the notice of appeal the grounds of appeal are long-winded and prolix, they are more succinct and have been set out as follows in the skeleton heads of argument of the appellants:

- b. The learned Judge erred in fact and law in finding that, because the Company shares registered to James Mancham were not represented at a general meeting, the unanimous written resolutions of the Company dated 20 May 2021 were not validly passed.*
- c. The trial Judge's decision was wrong at law and fact that the transfer of Hindrich*

Bischoff's Company shares to his duly appointed executor, Karsten Balke violates the Immovable Property (Transfer Restriction) Act ("IPTRA").

- e. The Appellants submit that the trial judge has made various false statements in his decision which demonstrate a careless disregard for facts and evidence that can result in confusing legal precedent and require correction for this case to be properly adjudicated.*
- f. Appellants submit the judgement is unreasonable and leads to an absurd result as well as unclear legal precedent."*

26. In the circumstances, I shall proceed to consider the merits of the appeal by relying on grounds of appeal b, c, e and f as couched in the skeleton heads of argument which, as stated above correspond to grounds 1, 2, 3, and 5 in the notice of appeal.

Case for the respondent

27. The case of the respondent before the trial court was, in essence, that the appellants could not have been appointed as directors of the company as there was no shareholders' meeting nor any shareholders' resolution approving their appointment. She contended that there was no company general meeting at which it was resolved that K. Balke could appoint directors as he did by agreement and no valid resolution was made by the company to give effect to the documents which the appellants submitted to the Registrar. It was further argued on behalf of the respondent that the purported transfer of the shares to K. Balke was effected without government sanction.

Case for the appellants

28. The case for the appellants was that all the steps taken by K. Balke were aimed at restoring the company's good standing. Although the respondent is an heir and would qualify as a shareholder under section 23(3), she had no right to vote at a meeting of the company since she had failed to submit an affidavit of transmission to the company registrar in order to inherit the shares for the purposes of exercising voting rights. The appellants were duly appointed under section 133 of the Act by way of a unanimous written declaration of the shareholders of the company who were entitled to vote, without the requirement of a

general meeting. K Balke who had transferred all the Bischoff shares in his name by way of an affidavit of transmission held all the shares entitled to vote and he appointed the appellants by unanimous written declaration under section 133 of the Act.

The applicable law

29. In order to determine the questions raised in this appeal it is necessary at this juncture to set out the relevant provisions of the Act.

30. Sections 23(3) of the Act reads as follows:

“23. Definition of members and shareholders.

...

...

(3)The following persons shall be shareholders of the company:-

- (a) a person who is a member of the company under subsection (2);*
- (b) a subscriber of the memorandum to whom shares have been issued;*
- (c) the heir or other persons entitled to the shares of a deceased shareholder under his will or on his intestacy, and the trustee in bankruptcy of a bankrupt shareholder;*
- (d) a person who is on his own behalf in possession of a bearer share certificate, whether by himself or by an agent acting for him. [emphasis added]*

31. This provision is important in two respects. First, it confirms that, for the purposes of the Act, a “shareholder” is not confined to persons entered on the register. The legislature contemplated that entitlement to shares can arise by operation of law, independently of formal registration. Second, and equally importantly, the provision confines the definition of shareholder to heirs and persons “entitled to” the shares under a will or intestacy. It does not extend it to an executor. An executor is the administrator of an estate - he holds the estate’s assets in a fiduciary capacity for distribution to beneficiaries; he himself is not the beneficial owner of those assets.

32. Furthermore, section 23(3)(c) grants shareholder status only to persons who are “*entitled to*” the shares. That entitlement does not arise automatically or unconditionally upon the death of the registered holder. Where, as in the present case, there are multiple potential heirs and an executor appointed to administer the estate, the identity of the specific person or persons beneficially entitled under the will or intestacy remains to be determined through the succession process. Section 23(3)(c) recognises that once that entitlement is established, the person so entitled holds shareholder status.

33. Section 84 of the Act, so far as material for the present purposes provides:

“84. Transfer of shares and debentures.

(1) *Subject to section 84A, shares and debentures shall be transferred by a written instrument of transfer signed by the transferor and naming the transferee.*

...

...

(4) The beneficial ownership of the shares or debentures shall pass to the transferee on the delivery to him of the transfer signed by the transferor and the transferor’s share certificate or debenture, or on the delivery to him of a transfer signed by the transferor which has been certificated by or on behalf of the company or by or on behalf of a stock exchange in Seychelles or a recognised overseas stock exchange: Provided that if the transferor is not the member of the company in respect of the shares, or is not the registered holder of the debentures (as the case may be), this subsection shall take effect as if references to the transfer signed by the transferor included transfers signed by that member or registered holder (as the case may be) and all holders of the shares or debentures intermediate between that member or registered holder and the transferor.

(5) **Notwithstanding subsection (4) a company and, in the case of debentures, the trustees of the covering trust deed shall not be bound or entitled to treat the transferee of shares or debentures as the owner of them until the transfer to him has been registered by the company or until the court orders the company to register the transfer to him, and until the transfer is presented to the**

company for registration, the company shall not be treated as having notice of the transferee's interest thereunder or of the fact that the transfer has been made. [emphasis added]

34. Section 84(1) provides that shares may be transferred by a written instrument of transfer signed by the transferor naming the transferee. Section 84(4) provides that beneficial ownership passes on delivery of the signed transfer.
35. Section 84(5) imposes a mandatory prohibition on the company. The company is expressly stated to be neither bound nor entitled to treat a transferee as the owner of shares until one of two events occurs: registration of the transfer by the company, or a court order requiring registration. The company has no choice: until registration or a court order, it cannot recognise the transferee as owner.
36. Section 84(5) also introduces the concept of deemed notice, or more precisely, the deemed absence of notice. Until the transfer is presented to the company for registration, the company is deemed not to have notice of the transferee's interest or of the fact that any transfer has taken place. The company's obligations, its recognition of membership, and its governance decisions must therefore proceed on the basis that it has no knowledge of any unregistered interest whatsoever.
37. Section 88 of the Act, so far as relevant for the present purposes, reads:

“88. Registration of transfers.

(1) Notwithstanding anything in the memorandum or articles of a company or in any debenture, debenture trust deed or other contract or instrument, it shall not be lawful for the company to register a transfer of shares in or debentures of the company unless a transfer in proper form and duly signed by the transferor and transferee has been delivered to the company:

Provided that nothing in this section shall prejudice any duty of the company to register as a member or debenture holder of the company any person to whom the

ownership of any shares in or debentures of the company has been transmitted by operation of law.

(2) On the application of the transferor of any share or debenture in a company, the company shall enter in its register of members or debenture holders the name of the transferee in the same manner and subject to the same conditions as if the application for the entry were made by the transferee.

...”

38. The proviso to section 88(1) provides for the company’s duty to register a person whose title has arisen “*by operation of law*”, thereby acknowledging that such title exists independently of a formal bilateral transfer instrument – but makes the exercise of that duty conditional upon the production of satisfactory evidence of title. Section 88(1) itself then draws the critical line: it is not lawful for the company to register a transfer unless a transfer instrument in proper form has been delivered to it, and until registration is effected, the full corporate membership rights of the transferee or transmittee do not attach.
39. Sections 84 and 88 create a two-stage statutory structure. Stage one is the acquisition of the underlying proprietary or succession right in the shares, which, in the case of transmission on death, passes by operation of law. Stage two is the activation of the corporate membership rights attached to those shares, which requires compliance with the transmission regime and the effecting of registration. The Act deliberately separates these two stages. The existence of a right at stage one does not automatically activate the rights at stage two.
40. Section 133 of the Act provides as follows:

“133. Unanimous written declaration to have same effect as a resolution.

A declaration in writing signed by all the persons entitled to attend a general meeting of a company, or by all the persons entitled to attend a meeting of a class of shareholders or debenture holders, shall have the same effect as a resolution in the same terms passed at a meeting duly called and held.”

41. The interpretation of section 133 is central to this case. A **declaration in writing by all the persons entitled to attend a meeting of the company** is akin to a resolution duly passed by the company at a meeting. The section does not provide that “all registered shareholders” can make a declaration; it states that “*all persons entitled to attend a general meeting of the company*” can make a declaration. This distinction is crucial and is considered in more detail when dealing with ground b (ground 1).
42. Having set out the legal framework, I shall now turn to the grounds of appeal.

Ground b (ground 1 in the notice of appeal)

“The learned Judge erred in fact and law in finding that, because the Company shares registered to James Mancham were not represented at a general meeting, the unanimous written resolutions of the Company dated 20 May 2021 were not validly passed.”

43. A perusal of the judgment shows that the learned Judge made a finding that the only manner in which the directors could be appointed was by an ordinary resolution at a general meeting of the company because the requirements of section 133 of the Act were not met. After stating that reliance on section 133 does provide a legal basis for the acts of the appellants, he reasoned that section 133 requires **all persons entitled to attend the general meeting** to sign the declaration, but there “*was no representation of Mr. Mancham (or beneficiaries of the shares under his will) that attended the meeting*”. The use of the word “meeting” in the above sentence is clearly a slip. When one reads the judgment carefully, it is clear that what the learned Judge meant was that the declaration had not been signed by 35% of the shareholding that [was] still represented by the [respondent] as executrix of the Mancham estate and this is the reason why he concluded that the resolutions could not have been passed under section 133.
44. Learned Counsel for the respondent argued that there was no unanimous written declaration since the shareholder holding 35% of the shares did not vote to make a unanimous declaration. For his part, learned Counsel for the appellants first conceded that,

pursuant to section 133, the declaration could not be signed only by K. Balke, but also required the signature of the respondent. However, he then changed his stand and argued that the declaration was valid.

45. As stated above, the company had two shareholders, late Dr Bischoff and late J Mancham, holding 65% and 35% of the shares, respectively. Since the shareholders had passed away, the shares became part of their respective estates by operation of law. K Balke filed an affidavit of transmission showing that the Bischoff shares had been transferred to him as executor. As regards the Mancham shares, no instrument of transmission had been delivered to the company in respect of those shares. No affidavit of transmission had been filed and the respondent had not been registered as a member of the Company in any capacity in respect of the Mancham shares, nor had any other person.

46. In **Dr Bharti Dhanjee v Estate of late Rajnikant Dhanjee represented by Zarine Dhanjee and others [2012] SCSC 37**, Ergonda-Ntende, CJ held:

“The plaintiff is not a shareholder in [the company]. She is the executrix of a shareholder. Whether she is entitled to take over the shares of the deceased shareholder is something that must be decided in accordance with the constitution of the company...

...

...

If the shares of [a] deceased majority shareholder were inherited directly as movable property by the heirs... there are steps that such members or other persons ought to take to allow for transmission of those shares to the new shareholder of the company.”

47. In addition, in the case of **Dr Bharti Dhanjee v Javahar Dhanjee & Anor [2012] SCSC 38**, the Court stated as follows:

“The Companies Act has provided companies with how the company and its assets must be managed...Companies that adopt the regulations provided under the

Companies Act would have the following provisions in relation to the shareholding of deceased members of the company.

"13. In case of the death of a shareholder or debenture holder the survivor or survivors where the deceased was a joint holder, and the heir or other person entitled on the death of the deceased where he was a sole holder, shall be the only persons recognised by the company as having any title to the deceased's shares or debentures; but nothing herein contained shall release the estate of a deceased joint holder from any liability in respect of any share which has been jointly held by him with other persons.

14. Any person becoming entitled to shares or debentures in consequence of the death or bankruptcy of a shareholder or debenture holder may, upon such evidence being produced as may from time to time properly be required by the directors and subject as hereinafter provided, elect either to be registered himself as holder of the shares or debentures or to have some person nominated by him registered as the transferee thereof, but the directors shall, in either case, have the same right to decline or suspend registration as they would have had in the case of a transfer of the shares or debentures by that shareholder or debenture holder before his death or bankruptcy, as the case maybe.

15. A person becoming entitled to a share by reason of the death or bankruptcy of the holder shall be entitled to the same dividends and other advantages to which he would be entitled if he were the registered holder of the share except that he shall not, before being registered as a member in respect of the share, be entitled in respect of it to exercise any right conferred by membership in relation to meetings of the company:

Provided always that the directors may at any time give notice requiring any such person to elect either to be registered himself or to transfer the

share, and, if the notice is not complied with within ninety days the directors may thereafter withhold payment of all dividends, bonuses or other moneys payable in respect of the share until the requirements of the notice have been complied with."[emphasis added]

48. It follows from the **Dhanjee** cases that there are two categories of right which flow from succession to a deceased shareholder's shares: economic rights – such as dividends and other financial advantages - which pass automatically to the person entitled by transmission by operation of law; and corporate membership rights - including the right to vote at meetings – which do not vest until the person is registered as a member in respect of those shares.
49. Although the beneficial interest in the 35% Mancham shares had passed by operation of law to the Mancham estate and the respondent as executrix held the shares on behalf of the heirs, under the *Dhanjee* principle, she was not, by reason of that capacity alone, entitled to vote at a general meeting of the company.
50. In contrast, given that K. Balke as executor of the estate of late Dr Bischoff had filed an affidavit of transmission of the Bischoff shares to him as executor, albeit that he held them on behalf of the heirs, he had the right to attend and vote at a general meeting of the company.
51. The question that had to be determined by the Supreme Court was whether K. Balke, the executor of the estate of late Dr Bischoff had validly passed the impugned resolutions under section 133 of the Act.
52. Section 133 is based on the Duomatic Principle which originates from the case of **Re Duomatic Ltd [1969] 1 All ER 161**. According to the said principle, the unanimous, informed consent of all shareholders entitled to vote is as binding as a formal resolution passed at a general meeting, even if legal or procedural formalities (such as calling a meeting) are not followed. The purpose of the principle is to provide flexibility by

dispensing with the need for shareholders of a company to comply with the legal and procedural formalities ordinarily required for convening and holding general meetings. The application of the *Duomatic* principle contains two core requirements: firstly, the consent of shareholders must be unanimous and secondly, the shareholders must give fully informed consent for the passing of the resolutions.

53. In Seychelles, although section 133 bears the heading “*Unanimous written declaration to have same effect as a resolution*”, it does not expressly provide that there should be a unanimous vote of the shareholders of the company entitled to vote at a meeting for a declaration made thereunder to be valid, but provides that **all the persons entitled to attend a general meeting** must sign a declaration in writing under the said section for it to have the same effect as a resolution.
54. This begs the question: who are the persons entitled to attend a general meeting of the company? The Act itself does not define the word “entitled” nor does it contain any provision setting out who are the persons entitled to attend a general meeting of the company. The Court is therefore faced with the invidious task of determining what was the intention of the Legislature when enacting section 133.
55. Was it the Legislature’s intention that the persons entitled to attend a general meeting under section 133 should be confined to those who have a right to vote at a meeting of the company (which is a right conferred by membership of the company) because the right to sign a written declaration in lieu of a meeting is the exercise of the same right as the right to attend and vote at the meeting it replaces?
56. If a person is not entitled to vote at a general meeting, there is no need for his signature for a written declaration to be valid. On the basis of **Dhanjee**, this right does not vest in a personal representative or an heir until he is registered as a member in respect of the relevant shares. If that were the intention of the Legislature, then the declaration would be valid since, at the material time, the respondent was not a registered member of the company, was therefore not entitled to vote at a meeting of the company and, as a result,

was not required to sign the declaration by virtue of which the impugned resolutions were passed.

57. However, the above overlooks the fact that the Legislature did not use the words “persons entitled to vote at a general meeting” or “persons entitled to attend and vote at a general meeting” when enacting section 133.
58. In this regard, it is of interest to note that section 127 (concerning notice of meetings), section 128 (concerning proxies) and section 130 (concerning postal voting) all use the expression “**persons entitled to attend and vote**” as opposed to section 133 where the Legislature used the words “**persons who are entitled to attend**” only. There is clearly a distinction between the two and where different words are used in a statute, they cannot be construed as having the same meaning.
59. The persons entitled to vote at a general meeting necessarily form a subset of the person entitled to attend a general meeting of the company. It may therefore be argued that in enacting section 133, the Legislature did not only intend that the shareholders of the company who are entitled to vote at a general meeting should sign the declaration but that other persons who are not entitled to vote but who are entitled to attend a meeting should also sign it.
60. Who then are those persons who are entitled to attend a meeting of the company but are not entitled to vote at the meeting? The determination of the above question is not free from difficulty. In answering the above question, it is useful to refer to the following scenario: in a company having two shareholders, where one of the shareholders passes away, there will inevitably be a time interval between the date on which the shareholder passes away and the date on which there is the completion of the transmission formalities regarding his shares. During this time interval, the sole surviving shareholder will be the only person having the status of member of the company and as such he would be the only one entitled to vote at a general meeting of the company.

61. Interpreting the words “persons entitled to attend a general meeting of the company” as excluding the heirs of a shareholder or the executor of his estate because they do not yet qualify as members of the company, would give rise to a situation where during the time interval between the passing away of the shareholder and the completion of the transmission formalities, the surviving shareholder could pass any ordinary resolution which is one which can be passed by a simple majority, simply by signing a declaration to that effect.
62. It is noteworthy that the Companies Act provides that business shall be transacted at general meetings of a company by ordinary resolution, unless the Act or the memorandum requires a special resolution and that an ordinary resolution is one passed by a simple majority (See sections 121 and 122 of the Act). It can be gleaned from section 122 (3) of the Act (which is reproduced below for ease of reference) that a number of important decisions concerning a company are taken by passing an ordinary resolution:

“122. (3) An ordinary resolution by a general meeting of a company shall be necessary -

- (a) to appoint a director of the company other than a director appointed under section 163(4), (5), (7) or (8);*
- (b) to authorise or approve the remuneration to be paid to a director of the company in the circumstances where such authorisation or approval is required by section 174(1), and to authorise or approve any other payments or benefits of the kinds mentioned in sections 174(2) and 175(1) in circumstances where such authorisation or approval is required by either of those sections;*
- (c) to remove a director of the company under section 168;*
- (d) to give any authorisation to a director which is required by sections 171 or 172;*
- (e) to appoint an auditor of the company;*
- (f) to authorise the sale or transfer of the whole or substantially the whole of the company’s undertaking or assets (subject or not to its liabilities) to another person;*

- (g) *to authorise the issue of any of the unissued shares or debentures of a company (other than a proprietary company), or to authorise the re-issue of shares or debentures of such a company (except to the extent that section 173 otherwise provides);*
- (h) *to authorise an issue or re-issue of the company's shares for a consideration other than cash, unless the terms of the issue are set out in the company's memorandum in conformity with section 6(1);*
- (i) *to dispose of the profits or revenue reserves of the company, whether by payment of a dividend, by capitalisation of profits or revenue reserves and the issue of bonus shares or debentures, by transfer to capital reserve, by the acquisition of shares of the company under paragraph (c) of section 54(2), by the redemption of redeemable shares, by allocations to employee share subscription schemes to which the company is a party or otherwise;*
- (j) *to alter the share capital of the company under section 59;*
- (k) *to authorise the company to alter or abrogate the rights of debenture holders;*
- (l) *to wind up the company voluntarily under section 146(1)(a)(i) of the Insolvency Act 2013; and*
- (m) *in connection with matters arising in the winding up of the company which by this Act are required to be transacted by ordinary resolution;*
- (n) *in such other cases as this Act provides."*

63. Thus, one of the shareholders could by acting alone during the time interval referred to above pass any of the above resolutions, and this without the need of giving notice of a general meeting which serves as an obvious procedural safeguard. Giving the above interpretation to section 133 is problematic.

64. It is also relevant to refer to the following example which depicts how confining the persons entitled to attend a general meeting of a company to the shareholders who have a right to

vote at the meeting can lead to an absurdity: a company has two shareholders, A and B, holding 99% and 1% of the shares respectively. A passes away on 1 January 2026 leaving three heirs C, D, and E. F is appointed as executor of the A's estate in February 2026, but has not yet filed an affidavit of transmission of the shares.

65. In such a case, if we were to agree that only shareholders of the company whose names are recorded in the company's register have the right to attend a general meeting of the company and therefore would be required to sign a declaration under section 133 for it to be valid, we could potentially have a shareholder holding 1% of the shares passing a number of ordinary resolutions without the heirs or the executor of the estate being able to challenge the validity of those resolutions.
66. Taking the above into consideration, I am of the view that the words "persons entitled to attend a general meeting of the company" must be interpreted broadly and as including shareholders as defined under section 23(3)(c) of the Act, that is the heirs or the executor of the estate, pending the completion of the transfer formalities. Such an interpretation would avoid the mischief referred to above.
67. In making the above determination, this Court is alive to the fact that section 133 exists to provide a workable alternative to formal meetings in circumstances where convening a meeting is impractical or impossible. In interpreting section 133 as above, the signature of all the shareholders registered as members as well as those of heirs or of the executor, where the estate has not yet been distributed to the heirs, would be required to make a declaration under the said section. It is not uncommon to have one of the two shareholders of a company passing away. At worst this may lead to a situation where, as in the present case, the company's governance becomes inoperable by reason of a shareholder's death - and the consequent inaction of the estate's representative.
68. It must be emphasised that the facts of the present case are exceptional. It is unusual to have a company where all the shareholders, the directors as well as the secretary have passed away and where no action has been taken to bring the company in good standing

for several years. However, in most cases, the company would be able to proceed with the making of the resolutions which would have been made through section 133 by calling a general meeting.

69. At any rate, in the present case, the Mancham shares have, since the hearing of case by the Supreme Court, already been transferred to the heirs, with the result that the shareholders now have the possibility of calling a general meeting of the company for the purpose of passing resolutions and doing the needful to bring the company in good standing, notably through section 124 of the Act.
70. Taking all the above into consideration, although in his judgment the learned Judge seems to suggest that the only way in which the resolutions could have been passed was through a meeting duly attended by the holders of the Mancham shares and that no such meeting was held, I find that, at the end of the day, he was perfectly right in finding that the unanimous written resolutions of the company dated 20 May 2021 were not validly passed, albeit for different reasons. I accordingly dismiss ground b (ground 1 in the Notice of appeal).
71. Before leaving this ground, I must make the following observation: no reason was given by the appellants as to why the respondent could not have been written to, before the unanimous written declaration was made, to inform her that K. Balke intended to proceed as he did to pass the resolutions under section 133 and requesting her to do the needful to complete the transmission formalities regarding the Mancham shares. Taking such a step could possibly have avoided the long-drawn process of trying to bring the company to good standing.

Ground c (ground 2 of the notice of appeal)

“The trial Judge’s decision was wrong at law and fact that the transfer of Hindrich Bischoff’s Company shares to his duly appointed executor, Karsten Balke violates the Immovable Property (Transfer Restriction) Act (“IPTRA”).”

72. The learned Judge stated that, since K. Balke is a foreigner, he needs the sanction of government to hold the shares, but there was no evidence to that effect before him. Therefore, all the acts taken by him as bearer shareholder of the company would be void.

73. In the present case, the underlying assets of the shares was immovable property. Pursuant to section 3 of the IPTRA a non-Seychellois cannot purchase or acquire immovable property situated in the Seychelles or any right therein, without the Minister's approval except where the property is acquired through inheritance or court-ordered settlements of matrimonial property in relation to divorce proceedings. Section 3 (1) is reproduced below:

"3. Restrictions on sales and leases of immovable property to non-Seychellois.

(1) A non-Seychellois may not –

- (a) purchase or acquire by any means whatsoever and whether for valuable consideration or not, except by way of succession or under an order of the court in connection with the settlement of matrimonial property in relation to divorce proceedings any immovable property situated in Seychelles or any right therein; or*
- (b) lease any such property or rights for any period; or*
- (c) enter into any agreement which includes an option to purchase or lease any such property or rights,*

without having first obtained the sanction of the Minister." [emphasis added]

74. The plain reading of section 3 is that the Minister's approval is not needed when a non-Seychellois acquires immovable property or any right therein through succession. A non-Seychellois could therefore acquire shares in a company the underlying assets of which is immovable property without the approval of the Minister where the shares are acquired through succession.

75. Section 12 of the IPTRA reads as follows:

“12. Restriction on the issue and transfer of shares in companies owning immovable property or rights therein.

(1) Notwithstanding anything in the Civil Code of Seychelles or the Companies Act contained, a non-Seychellois may not purchase or acquire by any means whatsoever shares in a company owning immovable property or rights therein by way of transfer, allotment, rights issued or otherwise without having first obtained the sanction of the Minister.

(2) The Minister may by notice published in the Gazette, exempt the purchase, or acquisition by a non-Seychellois of shares of a class or category of companies owning immovable property or rights therein in Seychelles from the application of subsection (1).”[emphasis added]

76. K. Balke was appointed as executor of the estate of late Dr Bischoff by the Court on 21 August 2020, solely for the purpose of restoring the company to good standing and avoiding its possible striking off. Through an affidavit of transmission, the shares in the company were transmitted to him in his capacity as executor to put the company in good standing and to effect the corporate recapitulation for the distribution of the shares to the heirs of the deceased.

77. Learned Counsel for the respondent argued that, as regards direct ownership of immovable property, section 3 of the IPTRA provides a carve out whereby no sanction of the Minister is required where the immovable property is acquired by succession. However, section 12 of the IPTRA which concerns the acquisition of shares in a company owning immovable property contains no such exception. He submitted that, in view of the clear wording of section 12, which provides that acquiring the shares in a company owning immovable property by any means requires the sanction of the Minister whether the acquisition is via

purchase or another means such as succession, it cannot be contended that the learned Judge was wrong.

78. It must be emphasised that Mr Balke did not acquire his shares by voluntary purchase or by allotment. He acquired them by the registration of an affidavit of transmission following the death of Dr Bischoff, purporting to transmit the 65 Bischoff shares to himself as executor. The question which the Court had to answer is whether he could have acquired the shares without the sanction of the Minister.
79. There are two ways of interpreting section 12. It may be argued that since the phrase “*may not purchase or acquire by any means whatsoever*” is plainly intended to be exhaustive, the legislature employed the word 'whatsoever' precisely to foreclose arguments based on the form or mechanism of acquisition. The policy rationale behind the Act supports this broad reading. The Act's purpose is to regulate the extent to which non-Seychellois can hold interests in immovable property in Seychelles, whether directly or indirectly through corporate vehicles. If transmission by operation of law were excluded from the purview of the Act, the restriction could be circumvented by the simple device of ensuring that shares in land-owning companies pass through estates to non-Seychellois beneficiaries or executors without any Ministerial scrutiny. That result would undermine the Act's purpose fundamentally.
80. It is noteworthy that under section 3 of the Act, a non-Seychellois does not need the Minister's approval to acquire immovable property by succession; an heir of a non-Seychellois owning immovable property in the Seychelles would on the demise of his ascendant who owned immovable property in Seychelles be able to acquire the said property by succession without the Minister's approval. However, if a non-Seychellois's ascendant owned shares in a company in the Seychelles, the underlying asset of which was immovable property, the non-Seychellois would have to seek the approval of the Minister before acquiring the said shares. The above clearly seems to defeat logic. In addition, the question arises as to what would be the fate of those shares if the Minister were to refuse

to give his approval, the more so since arguably the heir would first have to own the shares to be able to dispose of them.

81. I am of the considered view that one should resort to the *eiusdem generis* rule of construction to determine what is the true scope of section 12 of the Act. The rule provides that where a statute enumerates specific items sharing a common genus and then adds a general or catch-all expression, the general expression is confined to the same genus as the specific items.
82. Adopting the above rule, it may be argued that the Act's prohibition is directed at voluntary acts of acquisition. The Act prohibits a non-Seychellois from purchasing or acquiring shares “*by way of transfer, allotment, rights issued or otherwise.*” On a plain reading, each of the specific mechanisms enumerated - transfer, allotment, rights issue - denotes a consensual, deliberate transactional act. A transfer is the voluntary conveyance of title from a willing transferor to a willing transferee. An allotment is the deliberate act of a company issuing new shares to a subscriber. A rights issue is a controlled offer by a company to its existing shareholders to subscribe for additional shares. The ordinary meaning of each word in this list is of a human agent making a choice and executing that choice through a legal instrument. A transmission by operation of law on the death of a registered shareholder falls entirely outside deliberate transactional acts: the executor does not choose to receive the shares; he administers them as an incident of a legal duty that arises by operation of succession law, independently of any market decision.
83. In light of the above, I am of the considered view that the word “*otherwise*” should be interpreted as being limited only to voluntary acts of acquisition where a person who purchases or acquires shares does so as a consequence not of choice, but by operation of law through succession.
84. In the circumstances, in so far as ground c (ground 2 in the notice of appeal) is concerned, I agree with learned Counsel for the appellants that the learned Judge was wrong to have found that there was a violation of the IPTRA. However, I find that this is of no

consequence to the outcome of this appeal, since it is not relevant to the real issue in the present case which is whether the declaration, under which the impugned resolutions were made, could have been signed by K. Balke alone.

Ground e (ground 3 in the notice of appeal)

“e. The Appellants submit that the trial judge has made various false statements in his decision which demonstrate a careless disregard for facts and evidence that can result in confusing legal precedent and require correction for this case to be properly adjudicated.”

85. As stated above, in the notice of appeal reference is made to “misstatements” and not “false statements”. I shall proceed to consider the above ground on the basis that the appellants contend that there were “misstatements” by the learned Judge.

86. It is not disputed by the respondent that the learned Judge made what the appellants describe as “misstatements” in his judgment. However, learned Counsel for the respondent submitted that many of the said “misstatements” are ostensibly typographical or clerical errors, while some of them are findings of the learned Judge.

87. I note that the appellants have not pointed to any identifiable error of law, such as a material error of law or the making of any critical finding of fact which has no basis in evidence, or a demonstrable misunderstanding of relevant evidence or a demonstrable failure to consider relevant evidence (See: **Henderson v Foxworth Investments Ltd and Anor [2014] UKSC 41**).

88. I have carefully read the judgment and I consider that the “misstatements” on the part of the learned Judge are of no consequence and I am unable to agree with learned Counsel for the appellants that they are such as to affect the reasoning of the learned Judge or the outcome of the case before him.

89. In the circumstances, I find that there is no merit in ground e (ground 3 in the notice of appeal) which I, accordingly, dismiss.

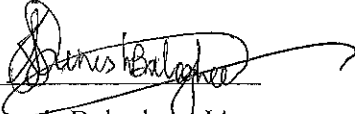
Ground f (ground 5 of the notice of appeal)

“f. Appellants submit the judgement is unreasonable and leads to an absurd result as well as unclear legal precedent.”

90. Learned Counsel for the appellants submitted that even if the respondent had exercised her right to vote at a meeting, since K. Balke held 65% of the shares he would have been able to pass the resolutions. This in view of the fact that a simple majority is required to pass a resolution to appoint the directors and secretary of the company and change the address of the company. He argued that the learned Judge favoured form over substance by deciding that the “resolutions” passed under section 133 were invalid.
91. He also submitted, in essence, that the Judge left the parties without a remedy when he was invited to make such orders as the judge considers appropriate.
92. I do not agree that the Judge favoured form over substance. He was tasked with determining whether the appellants had been validly appointed as directors and the first appellant as secretary of the company and also whether the change of address of the company had been validly effected by passing of resolutions under section 133 of the Act. However, the appellants failed to comply with the requirements of the law for doing so. In the circumstances, the Judge cannot be said to have favoured form over substance. He simply applied the law to the facts and found that the resolutions had not been validly passed. If the appellants felt that they could have achieved the same result through a resolution passed by a simple majority at a meeting of the company, they were at liberty to proceed in that manner.
93. Learned Counsel for the appellants also argued that the learned Judge failed to take into consideration the consequences which the company would face because he found that the

resolutions were not valid. As rightly submitted by learned Counsel for the respondent, a court of law must decide the legal issues in a uniform manner and cannot decide a legal issue differently merely because of the consequences that will flow from it.

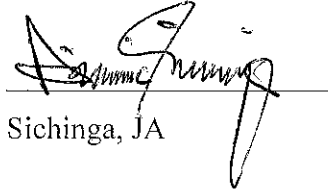
94. Finally, it was submitted that the learned Judge did not make an attempt to find a remedy for both parties although he was invited to make such orders as he considered appropriate.
95. I do not find that the judgment of the learned Judge can be impugned on the above ground. It was not his role to act as the legal adviser of the parties and given the particular facts and circumstances of the case, it was clearly not possible for the learned Judge to have made any orders other than those made.
96. Taking all the above into consideration, ground f (ground 5 in the notice of appeal) cannot succeed and is dismissed.
97. Grounds b, e, and f (grounds 1, 3 and 5 in the notice of appeal) having failed and in view of my observations regarding ground c (ground 2 in the notice of appeal), the appeal is dismissed with costs.


Gunesh-Balaghee, JA

I concur:-


Sharpe-Phiri, JA

I concur:-


Sickinga, JA

Signed, dated and delivered at Ile du Port on 27 April 2026.