THE UNITED REPUBLIC OF TANZANIA

IN THE CAPITAL MARKETS TRIBUNAL

AT DAR ES SALAAM

APPEAL NO. 01 OF 2024

BETWEEN

GEORGE JARED KIDINDIMA .....APPELLANT

VERSUS

DAR ES SALAAM STOCK EXCHANGE PLC (DSE).....RESPONDENT

JUDGMENT OF THE TRIBUNAL

The appellant, being the administrator of the estate of the late Jared Nakomolwa Kadindima (deceased), appeared before this tribunal challenging the decision of the Dar es Salaam Stock Exchange PLC (DSE) that awarded compensation of TZS. 100,000/= (One Hundred Thousand Tanzania Shillings) from the Fidelity Fund as damages for recovery of pecuniary loss suffered by the appellant, in terms of section 95(1) of the Capital Markets and Securities Act, Cap 79. The background giving rise to this appeal may be summarised as follows: The appellant is the son of the late Jared Nakomolwa Kadindima, who, during his lifetime, owned shares in CRDB. In 2020, the appellant lodged a complaint with the Dar es Salaam Stock Exchange (the respondent) against a stockbroker called Solomon Stockbrokers Limited.

The appellant alleged that the broker unlawfully sold 280,000 shares belonging to the late Mr Kadindima on 26 July 2012, without proper authorisation from the lawful administrator of the estate. The appellant further contended that the broker sold an additional 38,200 shares below the limit order price, in contravention of instructions given by the deceased. Such conduct, it was argued, was in breach of **Rules 22(1) and 26(1) of the Dar es Salaam Stock Exchange (DSE) Rules**. It was the appellant's case that the sale of the shares constituted a violation of the DSE Rules and resulted in loss and damages. The appellant also held the broker responsible for the loss of dividends and interest that would have otherwise accrued from the said shares.

Upon receipt of the complaint, the respondent convened a meeting and subsequently charged the broker with violations of the DSE Rules. By a letter dated 4 December 2020, the respondent directed the broker to restore 280,000 shares to the investor's account and to pay the price difference in respect of the 38,000 shares that had been sold at market price rather than in accordance with a limit order. The broker appealed to the Capital Markets and Securities Authority (CMSA) against the respondent's order. On 12th July 2021, the CMSA instructed the respondent to afford the broker the right to be heard and re-determine the complaint. In compliance with that directive, the respondent invited the broker, but in the absence of the appellant and through a letter referenced DSE/0065/CMSA, dated 16th February 2023, the respondent informed the authority on the decision against the broker. In the letter, the respondent had ordered the broker to pay a penalty of TZS. 2,000,000/= for breaching DSE rules while handling

the shares of the late Jared Kidindima. In the same letter, the respondent advised the appellant either to seek compensation from the fidelity fund or to pursue the matter in court for compensation.

The appellant, having been presented with the above options, proceeded to apply for compensation from the Fidelity Fund in the amount of TZS 109,508,000. The application for compensation was submitted to the respondent's Board on 23rd May 2023. As a result, the appellant was awarded compensation of TZS. 100,000/= vide a letter with reference number DSE/0257/CC, dated 31st May 2023. The respondent's decision was communicated to the appellant on 31 May 2023, along with a request for the appellant's bank details to facilitate payment of the awarded compensation. Dissatisfied with the outcome, the appellant filed an appeal before the tribunal on 1st June 2023, seeking to challenge the respondent's award of TZS 100,000 from the Fidelity Fund. It was the appellant's contention that the respondent had either wilfully disregarded or failed to properly interpret the provisions of Part VIII of the Capital Markets and Securities Act, as well as the relevant DSE Rules governing compensation from the Fidelity Fund.

When the appeal came for hearing on 03rd April 2025, the appellant appeared in person and without legal representation, whereas the respondent was represented by Ms. Mary Stephen Mniwasa, the Chief Legal Counsel, Ms. Jackline Ghikas (Senior Legal Officer), and Mr. Mecklau Edson (Chief Internal Auditor). The tribunal ordered the appeal to be disposed of by way of written submissions. In addition to the grounds of appeal, the

tribunal urged the parties to address other issues, such as whether the appeal was properly before this tribunal and whether the appellant committed non-joinder of parties by not joining the broker (Solomon Stockbrokers Ltd).

In expounding the grounds of appeal, the appellant was content that the appeal was properly before the Tribunal. In support of this position, he relied on section 95(1) of the Capital Markets and Securities Act, Cap. 79, which provides as follows:

> *"Subject to this part, every person who suffers pecuniary loss as provided in subsection (1) of Section 94 shall be entitled to claim compensation from the fidelity fund and to take proceedings in the Tribunal against the Stock Exchange"*

The appellant admitted that there are some conditions to be met before taking proceedings in the tribunal against the Stock Exchange. In his view, however, he complied with the conditions stipulated under Section 97(2)(a) and (b) of the Act which states that:

> *"Subject to subsection (3), of this section, a person shall not commence legal proceedings under this part against a stock exchange without leave of the Council unless–*
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> *(a) the Council has disallowed his claim; and*
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> *(b) the claimant has exhausted all relevant rights of action and other legal remedies available against the member company or member firm in relation to which the claim arose and other persons liable in respect of the loss*

suffered by the claimant for the recovery of the money or other properties in respect of which the defalcation was committed.

When addressing the issue of non-joinder of parties, the appellant indicated that he was aggrieved by the respondent's action by refusing the claim for compensation from the fidelity fund which is exclusively within the management and whims of the respondent. The broker has no power over the fund and therefore an unnecessary party in this case. On the issue of exclusivity of jurisdiction, the appellant was of the view that the DSE, Capital Markets and Securities Authority and this tribunal have exclusive jurisdiction to try disputes of civil nature arising out of the Act. He fortified his argument with the case of ***Khofu Mlelwa v. Commissioner General of TRA and another***, Civil Appeal No. 229 of 2019. The appellant went further assailing the respondent for failing to impose an appropriate compensation to the broker. Instead, the respondent found the broker liable and merely imposed a penalty of TZS. 2,000,000/=. Hence, the respondent should shoulder the pecuniary loss suffered by the appellant. As the respondent failed to impose an appropriate compensation against the broker, the only remedy is for the respondent to compensate the appellant through the fidelity fund as provided under section 94(1) of the Act which provides that:

"...a fidelity fund shall be held and applied for the purposes of compensating persons who suffer pecuniary loss from any defalcation committed by a member company or member firm or any of its directors or partners or by any of the employees of such member company or member firm in relation to any money or other property which in the cause of or in connection with the business of that company or firm."

On the first ground of appeal, the appellant believed that the respondent deliberately ignored and/ or failed to interpret Part VIII of the Act and DSE Rules which govern the administration of fidelity fund. In awarding compensation to the appellant, the respondent deliberately ignored the provisions of sections 94(3) and 94(6) of the Act. On the second ground of appeal, the appellant blamed the respondent for deliberately refusing to pay the actual pecuniary loss suffered by the appellant as required by section 95(3) of the Act. When addressing the third ground, the appellant challenged the respondent's decision which deliberately ignored to pay 15 percent per annum in addition to the compensation as provided by section 95(4) of the Act. On the fourth ground, when citing section 95(3) of the Act, the appellant was of the view that the respondent deliberately refused to pay cost and disbursement incidental to the appellant's claim. On the fifth ground, the appellant blamed the respondent for failing to issue notice of disallowance of the appellant's claim as required by section 97(4) of the Act. Finally, the appellant urged the tribunal to grant the following orders: restoration 280,000 share or payment in cash at the current market price rates; payment of TZS. 109,508,000/= in the following denominations: TZS. 70,280,000/= being loss of dividends out of 280,000 shares from 2012 to 2023 and TZS. 39,228,000/= being the 15% interest per annum of the said dividends from 2012 to 2023; payment of Tshs. 6,952,400/= in the following denominations: TZS. 2,483,000/= being loss suffered by the appellant when the broker sold shares at the price of TZS. 115 each instead of 180, and 4,469,400/= being 15 percent interest per annum from

2013 to 2024; payment of general and punitive damages at the tribunal's discretion; payment of costs of the case and any other orders that the tribunal may deem fit and just to grant.

In response, the respondent extensively submitted on the above points and cited several cases to support the argument. On the first issue, the respondent's position was that the appeal is not properly before the tribunal, as it can only be entertained after the appellant has exhausted all remedies available under the law. The counsel cited the provisions of section 136H(1) of the Act, arguing that the appeal is incompetent as it is not emanating from the action or decision of the Authority (CMSA). In the respondent's opinion, the authority does not include the Dar es Salaam Stock Exchange PLC (DSE). As the instant appeal emanates from the respondent's decision, the appellant had no right to appeal to this tribunal. The respondent further submitted that the provisions of **Sections 95(1) and 97(2)(a) and (b) of the Act** cited by the appellant are irrelevant in this case and that the appellant has not fulfilled the conditions for an appeal to lie in this Tribunal. The respondent further insisted that the provisions of section 94(2) of the Act were complied with and the compensation of TZS. 100,000/= was proper and correct. The respondent further argued that the appellant was supposed to invoke the provisions of section 94(7) of the Act for the minister to increase the amount of compensation to be paid from the fidelity fund. It was further the respondent's argument that the appellant failed to comply with the requirements of section 97(2)(a) and (b) of the Act as the council did not disallow his claim. The

appellant was awarded compensation in line with section 94(2) of the Act, and if such compensation was unsatisfactory in the eyes of the appellant, he could have moved the powers of the Minister under section 94(7) of the Act who may direct the council to enlarge the amount of compensation from the fidelity fund. For that reason, the respondent was of the view that the appellant did not exhaust the alternative remedy provided under the law before filing the instant appeal.

In the alternative, the respondent argued that the instant appeal was hopelessly filed out of the prescribed time. The decision from the respondent reached the appellant on 31st May 2023, and the instant appeal was filed on 1st June 2023, i.e. after the expiry of 30 days from the date of the action or decision. As the appellant failed to account for the reasons for the delay, this tribunal has no jurisdiction to entertain this appeal. The respondent urged the tribunal to dismiss the appeal.

On the issue of non-joinder of a party, the respondent argued that the broker is a necessary party in this appeal since the resultant order or decision will affect the broker or prejudice the right to be heard. It was the respondent's position that the failure to join the broker in this appeal is fatal, and the appeal deserves to be struck out from the tribunal. The respondent believed that the remedies sought by the appellant cannot be enforced without the inclusion of the broker. The respondent cited the case of ***CHIYANGA ENTERPRISES (T) LTD V. EXIM BANK (TANZANIA) LIMITED & ANOTHER,*** CIVIL APPEAL NO 362 OF 2021, [2024] TZCA 711, where the Court held

that *to the effect that determination of a suit without a necessary party is a fatal irregularity which renders the decision and proceedings thereof a nullity.*

On the issue of exclusivity of jurisdiction, the respondent conceded that the DSE and the CMSA have exclusive jurisdiction to try disputes of a civil nature arising out of the Act. But in the respondent's view, the law does not oust the powers of the High Court to try any matter for compensation arising out of the contract between the Broker and Investor. The respondent stressed that if the compensation of TZS. 100,000/= was insufficient; the appellant could have sought other alternative remedies, including filing a civil claim in court against the broker. The respondent further argued that the appeal is misconceived because the appellant did not prefer an appeal to the authority before filing in the tribunal as provided under section 28(5) of the Act.

When responding to the first ground, the respondent was of the view that the respondent used her discretion properly and the compensation of Tshs. 100,000/= was proper. The respondent emphasised that the payment of compensation from the fidelity fund was backed up by the law. The word '*shall*' used under section 94(2) of the Act does not allow the respondent to pay more than the stated amount. On the second ground, the respondent conceded that the appellant was entitled to compensation from the fidelity fund, something which the respondent did. The act of the appellant filing this appeal was not a proper forum for dealing with the complaint of this nature. On the third ground, the respondent simply submitted that the appellant cannot be awarded

something which he did not pray for. On the fourth ground, the respondent assailed the appellant for not explaining this ground. The respondent, on the other hand, was cautious enough not to put some words into the appellant's mouth. On the fifth ground, the respondent simply reiterated that the appellant was compensated from the fidelity fund as per section 94(2) of the Act. Finally, the respondent urged the tribunal to dismiss the appeal.

When rejoining, the appellant argued that the appeal was brought within time as per section 97(5) of the Act. The appellant was notified about the decision by the respondent on 31st May 2023 and immediately filed the instant appeal on 1st June 2023. He further stressed that the conditions stipulated under section 97(2)(a) and (b) of the Act were fulfilled before filing the instant appeal. He was content that he deserved the relief prayed for in the appeal.

Having considered the submissions from the parties, it is apposite to resolve the issues and the grounds of appeal advanced in this appeal. As hinted above, when the parties appeared for this appeal, the tribunal was of the view that, among other things, the parties ought to address the tribunal on whether or not the appeal was competent before this court. We wish to start with this pertinent issue before proceeding to the grounds of appeal. On this point, the appellant was emphatic that the appeal was proper before this tribunal. He urged the tribunal to invoke the provisions of section 95(1) of the Act and declare the appeal competent before the tribunal. The appellant

stressed further that the council disallowed his claim; hence, under the provisions of section 97(2) (a) and (b) of the Act, the conditions for him to file this matter were complied with. On the other hand, the respondent was content that the appeal contravened section 136H of the Act, which allows an aggrieved person to appeal against the decision of the authority within 30 days to the tribunal. In the respondent's view, the appeal was incompetent on the ground that it did not emanate from a decision of the authority. We are alive on the jurisdiction of the tribunal, which includes both original and appellate jurisdiction. Section 136G of the Act clearly sets out the scope of the Tribunal's original jurisdiction, as follows:

> *136G -(1) The Tribunal shall have powers to adjudicate on disputes and controversies arising under this Act.*
> *(2) Without prejudice to the generality of subsection (1), the Tribunal shall adjudicate on matters relating to*
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> *a) the interpretation of any enactment or regulations to which this Act applies;*
> *(b) dispute between the Authority and the stock exchanges;*
> *(c) dispute between the Authority and any market intermediaries;*
> *(d) dispute between market intermediaries and their clients;*
> *(e) dispute between listed companies and the regulators or the securities exchange;*
> *(f) refusal by the Authority to grant a licence;*
> *(g) imposition by the Authority of limitations or restrictions on a licence;*
> *(h) suspension or revocation of a licence by the Authority;*
> *(i) refusal to admit securities on a stock exchange;*
> *(j) suspension of trading of a security on a stock exchange;*
> *(k) removal of a security from the official list of a stock exchange; and*

(l) any other dispute arising in the course of discharge of the functions of the Authority under this Act.

Under the above provisions of the law, it is clear that the Tribunal is vested with both original and appellate jurisdiction. The Tribunal's original jurisdiction, as outlined under section 136G, covers a broad range of disputes and controversies arising under the Act, including those involving intermediaries, stock exchanges, and listed companies. In addition, according to section 136H, the Tribunal also exercises appellate jurisdiction in matters arising from decisions or actions taken by the Capital Markets and Securities Authority (CMSA). The section provides that:

"136H.-(1) A person aggrieved by an action or decision of the Authority under this Act may lodge an appeal to the Tribunal against such a decision within 30 days from the date of the action or decision of the Authority was communicated to the aggrieved party."

As rightly argued by the respondent, the term *"Authority"* is expressly defined under the Act to mean the **Capital Markets and Securities Authority (CMSA)**, as established under section 6 of the Act. Under the statutory framework, the **Dar es Salaam Stock Exchange PLC (DSE)** is a separate legal entity and cannot be confused with the Authority. Accordingly, it was not improper for the appellant to lodge an appeal directly to this Tribunal from a decision made by the DSE.

In our considered view, the appellant ought first to have challenged or sought review of the DSE's decision before the CMSA, as the regulatory Authority. Only upon receiving a

decision or determination from the CMSA would the appellant then have had a proper basis to invoke the Tribunal's appellate jurisdiction under section 136H of the Act. We are therefore firmly of the view that the present appeal was prematurely before this Tribunal and does not fall within the scope of its appellate jurisdiction as prescribed by law.

However, the appellant invited the Tribunal to invoke the provisions of section 95(1) of the Capital Markets and Securities Act and to declare that the appeal was properly before the Tribunal. In light of this submission, the Tribunal considers it necessary to offer a correct and purposive interpretation of the said provision. Section 95(1) provides as follows:

> *"Subject to this Part, every person who suffers pecuniary loss as provided in subsection (1) of section 94 shall be entitled to* ***claim compensation from the fidelity fund and to take proceedings in the Tribunal against the stock exchange.***"

A close reading of the foregoing provision reveals that the law entitles any person who suffers pecuniary loss to claim compensation from the Fidelity Fund and, in parallel, to institute proceedings before the Tribunal against the securities exchange. As noted in the submission above, the respondent was engaged and advised the appellant to either seek compensation from the Fidelity Fund, which is administered by the respondent, or to commence legal action in the courts against the broker.

In the present case, the appellant elected to pursue the first option and accordingly moved the respondent to grant compensation from the Fidelity Fund. In our view, however, it was proper for the appellant to request such compensation directly from the respondent as provided by section 97 of the Act. On the other hand, where the claim is disallowed by the Council as per the above provision of the law, an aggrieved party may claim compensation from the Fidelity Fund and initiate proceedings before the Tribunal against the Stock Exchange.

Under the circumstances at hand, as long as the appellant's claim was entertained by the respondent to the extent of awarding TZS. 100,000/= which, in the eyes of the appellant, was insufficient. The appellant ought to have challenged the respondent's decision before the Authority before preferring an appeal to this Tribunal. Having considered the first issue or ground, we consequently find that the appellant pursued an incorrect procedural route in seeking redress against the respondent. This ground is sufficient to dispose of this appeal without addressing the rest of the grounds.

Based on the reasons allured to above, the Tribunal makes the following findings: The Dar es Salaam Stock Exchange PLC (DSE) is a legal entity distinct from the Capital Markets and Securities Authority (CMSA), and as such, an appeal cannot lie directly to the Tribunal from a decision of the DSE unless it arises from a matter within the Tribunal's original jurisdiction. In the present case, the appellant was required to

challenge or seek a review of the DSE's decision before the CMSA to exhaust the regulatory framework before invoking the Tribunal's appellate jurisdiction under section 136H of the Act. While the appellant's claim indeed relates to compensation from the Fidelity Fund, the procedure followed was proper, and we find that the appellant rightly exhausted the requirements of section 97(1) (2) (a) and (b) of the Act. Consequently, we are of the view that the present appeal has been prematurely brought before the Tribunal. Given the foregoing findings, the present appeal is hereby struck out for having been prematurely and improperly filed before this tribunal. Accordingly, we find that the appellant is at liberty to appeal to the Authority before approaching this tribunal. No order as to costs. It is so ordered.

Dated at Dar es Salaam, this 11th day of July, 2025

Hon. Ntemi Kilekamajenga, J.

Chairman

Mr. Andrew Mkapa

Member

CAPITAL MARKETS TRIBUNAL
P. O. Box 75713
DAR-ES-SALAAM

Ms. Sia B. Mrema

Member

Mr. Eliad E. Mndeme

Member

Tribunal:

Judgment delivered this 11th July 2025 in the presence of the appellant, and Ms. Jackline Ghikas, Senior Legal Officer for the respondent. Right of Appeal explained to the parties.

Hon. Ntemi Kilekamajenga, J.

Chairman

Mr. Andrew Mkapa

Member

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