

IN THE CAPITAL MARKETS TRIBUNAL

AT DAR ES SALAAM

CIVIL CASE NO. 01 OF 2025

GEORGE JARED KIDINDIMA (*The Administrator of the Estate of the late Mussa Manzjared Nakomolwa Kidindima*).....**PLAINTIFF**

VERSUS

DAR ES SALAAM STOCK EXCHANGE PLC.....**DEFENDANT**

RULING

The defendant, having received the plaintiff's claim, raised a preliminary objection as follows:

1. *The Tribunal lacks jurisdiction to entertain this matter, as it has been filed contrary to sections 136A, 136G and 136H of the Capital Markets and Securities Act [Cap. 79 RE 2023], read together with Rule 7 of the Capital Markets and Securities Tribunal Rules, G.N. No. 649 of 2023.*

In expounding the preliminary objection, the defendant's counsel drew the Tribunal's attention to a typographical error in the plaint. She argued that the sections as typed, namely 136A, 136G, and 136H of the Capital Markets and Securities Act [Cap. 79 RE 2023], were meant to be sections 139, 145, and 146, respectively; the only change was the re-arrangement of the sections, with section 136A becoming section 139, section 136G becoming section 145, and section 136H becoming section 146. The counsel further argued that the sections mentioned in the preliminary objection do not emanate from the dead law, as the law cited in the Capital Markets and Securities Act [Cap. 79 RE 2023] and the sections cited were never repealed but rather re-arranged.

In the counsel's view, non-citation, wrong citation, or citation of a non-existing law is no longer fatal. To bolster the argument, the counsel cited the case of Bitam International Enterprises LTD v. Mished Kotak, Civil Appeal No. of 2012, CAT at Dar es Salaam (unreported). The counsel insisted that, although the provisions of the Capital Markets and Securities Act were revised in 2022, the wording of the relevant sections did not change in the 2023 revision. It was the counsel's averment that the same anomaly is curable by the overriding principles, and that it did not prejudice the plaintiff.

The counsel further argued that the Tribunal lacks jurisdiction to entertain this suit, as it is clothed with jurisdiction to hear and determine appeals against the decision of the Capital Market and Securities Authority and any other dispute arising in the course of the Authority's discharge of its functions under the Act. The counsel insisted that the Tribunal has no jurisdiction to adjudicate this matter, whether arising from specific or general damages, as its jurisdiction is limited to appeals. To support the argument, the counsel referred the Tribunal to sections 139, 145, and 146 of the Capital Markets and Securities Act, read together with Rule 7(1) and (2) of the Capital Markets and Securities Tribunal Rules G.N No. 649 of 2023. It was the counsel's view that a suit for damages is outside the Tribunal's jurisdiction. Furthermore, to ensure that the tribunal does not deal with original cases, the rules provide only procedures for lodging appeals under Rules 8 and 9. Therefore, the plaintiff filed this matter in the wrong forum. The counsel argued that jurisdiction cannot be assumed by the parties; rather, it is the creature of the statute. She fortified the argument with the case of Richard Julius Rukambur v. Isaac Ntwa Mwakajila and Another, Civil Appeal No. 2 of 1998



(2004) TZCA 67 (19 January 2004). The counsel implored the tribunal to dismiss the suit, as its determination would amount to forum shopping or abuse of the court process and mockery of justice, as stated in the case of Patrick William Magubo v. Lilian Peter Kitali, Civil Appeal No. 41 of 2019 (2022) TZCA 441 (18 July 2022).

In response, the plaintiff objected to the objection, reminding the Tribunal of its decision in Civil Appeal No. 2024, in which it stated that it has both original and appellate jurisdiction under section 136G, now section 145 of the Act. The plaintiff emphasised that the Tribunal has both original and appellate jurisdiction. To support the argument, the plaintiff referred the Tribunal to section 2 of the Act, which defines a stock exchange as a market intermediary. He further referred to section 145(1) of the Act, which empowers the Tribunal to adjudicate on disputes and controversies arising under the Act, and to section 145(2)(d) of the Act, which confers jurisdiction on the Tribunal to adjudicate on matters relating to disputes between market intermediaries and their clients. After the plaintiff's submission, there was no rejoinder from the defendant.

Having considered the parties' rival arguments, the Tribunal is invited to determine whether it has original jurisdiction under the Act. However, before addressing this major point, we find it pertinent to ascertain certain issues raised by the parties. It is true that the plaintiff filed the suit and cited sections that were rearranged in the 2023 revision. As rightly argued by the defendant's counsel, the sections have been rearranged as follows: section 136A is now section 139, section 136G is section 145, and section 136H is section 146. We also fully agree with the learned counsel for the



defendant that non-citation is not currently fatal. The Honourable Court of Appeal of Tanzania has already provided guidance on this issue; where a wrong provision is cited alongside a proper provision, the court will ignore the wrong citation and proceed to decide the matter on merit. See the case of Advatech Office Supplies Limited v. Ms. Farhia Abdullah Noor and another, Civil Application No. 354/16 of 2017. Therefore, wrong citation and/or non-citation of the law is curable when the court has the power to grant the reliefs prayed for. In the case of Bin Kuleb Transport Company Limited v. Registrar of Titles and 3 others, Civil Application No. 522/17 of 2020, the Court of Appeal stated that:

"In the first place, we think the citation of rule 4(2) of the AJA must have resulted from a slip of the pen. The applicant must have meant section 4(2) of the AJA rather than rule 4(2). Be that as it may, the citation of section 4(2) of the AJA was improper because the Court is not hearing any appeal; which is what section 4(2) of the AJA is all about. The appropriate provision for an application such as this one should have been section 4(3) of the AJA. That means that the applicant has not properly moved the Court to exercise its revisional power. However, mindful of the proviso to rule 48(1) of the Rules and considering that the Court has the requisite jurisdiction to entertain applications for revision such as the instant one, we shall disregard the error and proceed to determine the application on merit." (Emphasis added)

Also, in The Director General LAFP Pensions Fund v. Pascal Ngaio, Civil Application No. 76/08 of 2018 (cited by the defendant), the Court of Appeal emphasised that:

"...provided that where an application omits to cite any specific provision of the law or cites a wrong provision, but the jurisdiction to grant the order sought exists, the irregularity or omission can be ignored and the court may order that the correct law be inserted."



See also the case of Bitam International Enterprises LTD (supra). In line with the above provisions of the law, the plaintiff's incorrect citation of the law cannot oust this tribunal's jurisdiction. Overall, the cited provisions were not repealed but merely rearranged.

On the second limb of the preliminary objection, the defendant's counsel argued that the tribunal lacks jurisdiction to determine this matter. In the counsel's view, the tribunal is not vested with original jurisdiction but has appellate jurisdiction over matters arising for the decision of the Capital Markets and Securities Authority. By contrast, the plaintiff insisted that the tribunal has both original and appellate jurisdiction. In addressing this issue, we wish to consider section 145 of the Act, which provides that:

"145.--(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:

- (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.*

(3) The Tribunal shall have no criminal jurisdiction.

(4) Where in the course of investigation, the Authority discovers that there is evidence of possible commission of a criminal offence, it shall inform an appropriate criminal prosecuting authority.” (Emphasis added).

The above provisions of the law may be read alongside Rule 7 of the Capital Markets and Securities Tribunal Rules, G.N. No. 649 of 2023, which also provides that:

"7.-(1) Subject to section 136 D of the Act, the Tribunal shall have the power to adjudicate on matters relating to:

- (a) the interpretation of any enactment or regulations to which the Act applies;*
- (b) disputes between the Authority and any stock exchanges;*
- (c) disputes between the Authority and any market intermediaries;*
- (d) **disputes between market intermediaries and their clients;***
- (e) disputes between listed companies and 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 in 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 the Act;*

(2) Without prejudice to subrule (1), the Tribunal shall have no criminal jurisdiction.. (Emphasis added)



From the above provisions of the law, it is evident that the tribunal is vested with original jurisdiction to determine disputes arising from the operations of the Capital Market. Specifically, the tribunal has original jurisdiction to hear and determine disputes arising from the interpretation of any enactment under the Act; disputes between the Capital Markets and Securities Authority and any stock exchange(s); disputes between the Capital Markets and Securities Authority and market intermediaries; and disputes between market intermediaries and their clients. According to section 2 of the Act, a market intermediary includes the defendant, the stock exchange, and the plaintiff, who is its client. Furthermore, the tribunal has original jurisdiction to determine any dispute between listed companies and regulators; any refusal by the Authority to grant a licence; any suspension or revocation of a licence by the Authority; any refusal to admit securities to the stock exchange; any suspension of trading in securities on a stock exchange; and any removal of a security from the official list of a stock exchange. Also, any other dispute arising in the course of the Authority's discharge of its functions may be determined by the tribunal at the original level.

Therefore, we entirely agree that the tribunal derives its jurisdiction from the law, not from the parties' whims. The parties cannot vest jurisdiction in the court by their choice, and even the court cannot grant itself jurisdiction. See the cases of National Bank of Commerce Limited and 4 others v. National Chicks Corporation Limited, Civil Appeal No. 129 of 2015, and Abdallah Aily Selemani t/a Ottawa enterprises (1987) v. Tabata Petrol Station Co. Ltd and another, Civil Appeal No. 89 of 2017. In the former case, the Court of Appeal stated that:



"That being the case and read in context, it seems to us that the learned judge misapplied the word "jurisdiction". The learned judge appears to have misapplied the word "jurisdiction" in lieu of preference. The words preference and jurisdiction bear different meanings and are two distinct matters. Parties to a dispute may prefer that their dispute be determined by a certain court, but they cannot vest that court with the jurisdiction it legally does not have, or vice versa. Preference has something to do with the parties' choice, but jurisdiction, as we have stated above, is a creature of either the Constitution or law." (emphasis added).

In the present case, it is not the plaintiff's wishes that confer original jurisdiction on this matter. The law explicitly confers jurisdiction on the tribunal to determine a dispute between the defendant and the plaintiff at the original level. Accordingly, we find the defendant's objection non-meritorious and overrule it, allowing the case to be determined on the merits. The parties should bear their own costs. Order accordingly.

Dated at **Dar es Salaam**, this 31 March 2026



Hon. Ntemi N. Kilekamajenga, J.
Chairperson
31 March 2026



Mr. Andrew Mkapa
Member
31 March 2026



Mr. Eliad E. Mndeme
Member
31 March 2026

