

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI COMMERCIAL AND TAX DIVISION**  
**CIVIL APPEAL NO.109 OF 2024**

**IN THE MATTER OF AN APPEAL**

**BETWEEN**

**DYER & BLAIR INVESTMENT BANK LIMITED.....APPELLANT**

**-VERSUS-**

**CAPITAL MARKETS AUTHORITY.....RESPONDENT**

*(Being an Appeal from the Judgment and Decree of the Capital Markets Tribunal of Kenya dated 26/3/2024)*

**JUDGMENT**

1. The Appellant filed this appeal vide a Memorandum of Appeal dated 25<sup>th</sup> April 2024, challenging the Capital Markets Tribunal's (the Tribunal) judgment of 26<sup>th</sup> March 2024, which dismissed the Appellant's appeal and affirmed the Capital Markets Authority's (CMA) enforcement directive dated 6<sup>th</sup> March 2018.
2. The said directive of 6<sup>th</sup> March 2018 by the CMA required the Appellant to compensate the estate of the late Patricia Wanjiku Mbugua with 50% of dividends (KES 125,074.25) and to reinstate 50% of irregularly disposed securities (1,330 KCB shares and 550 SCBK shares) arising from the sale of 150 KCB shares and 600 SCBK shares in 1995.
3. The Appellant, being dissatisfied with the decision of the Tribunal, appeals to this Court against the entire decision on the following grounds:

*" 1. The Tribunal erred in law by failing to find that the Capital Markets Authority (hereinafter, "the Authority") had entertained a matter before it which was time-barred under the Limitation of Actions Act, Cap. 22 of the Laws of Kenya.*

*2. The Tribunal erred in law by misapprehending and misapplying the provisions of section 26 of the Limitation of Actions Act, Cap. 22 of the Laws of Kenya, with the result that the limitation period herein was wrongly and unjustifiably extended to the detriment and prejudice of the Appellant.*

*3. The Tribunal erred in law by failing to find that the Complainant before the Authority, one John Maina, did not have the requisite locus standi to act on behalf of a Deceased person, absent the production of the Letters of Administration or Grant of Probates.*

*4. The Tribunal erred in law by retrospectively applying the law to the circumstances of this matter when, in effect, neither the Capital Markets (Licensing Requirements) (General) Regulations, 2002, nor the Capital Markets (Conduct of Business) Market Intermediaries Regulations, 2011 were in existence at the material time of the matter in question.*

*4. The Tribunal erred in law by placing a non-existent duty upon the Appellant to verify the identity and the signature of the Deceased when it had neither the obligation under law nor the capacity, when the said duty and capacity instead lay with the Registrars, Custody and Registrar Services, who had approved the transactions in question.*

*5. The Tribunal erred in law and exhibited outright bias by visiting liability upon the Appellant with respect to a transaction of which the record bears that the Appellant*

*had no role in it but was instead dealt with by a company known as Solid Investment Securities Limited.*

*7.The decision of the Tribunal goes against the weight of the evidence tendered and does not sit in accord with the applicable law."*

6. Based on the foregoing, the Appellant prayed to have the appeal allowed and the judgment of the Tribunal set aside. In the alternative, the Appellant prayed for an order to have the appeal remitted to the Tribunal to rehear the appeal afresh pursuant to section 35A (24) (b) of the Capital Markets Act.
7. In support of the appeal, the Appellant filed a record of appeal dated 20<sup>th</sup> December 2024 and written submissions dated 7<sup>th</sup> March 2025.
8. The Appellant submitted that the complaint was statute-barred, having been lodged over 22 years after the alleged share transfers of 1995, contrary to section 21 of the Limitation of Actions Act which prescribes a strict twelve-year limitation period for recovery of a deceased's movable property; that the complainant was aware of the transfers as early as 2003 but failed to act diligently, rendering the claim stale and incapable of revival and that extension of time under section 26 was inapplicable, as fraud was neither pleaded nor proved against the Appellant.
9. The Appellant submitted that the Tribunal erred in extending time based on alleged fraud without establishing that the Appellant participated in, condoned, or benefited from any fraud.
10. The Appellant further submitted that the complaint was incompetent for want of *locus standi*, as the complainant (John Maina) failed to produce any grant of

letters of administration authorising him to act on behalf of the deceased's estate.

11. Additionally, the Appellant submitted that the Tribunal unlawfully applied regulatory and Know Your Customer (KYC) obligations retrospectively to 1995 transactions, contrary to settled principles that statutes and subsidiary legislation imposing obligations operate prospectively unless expressly stated otherwise.

#### Respondent's case.

12. The Respondent opposed the appeal through written submissions dated 29<sup>th</sup> May 2025.

13. The Respondent contended that the law on limitation is meant to protect defendants from unreasonable delay, but admits exceptions under section 26 of the Limitation of Actions Act where fraud, mistake, or ignorance of material facts is involved. The Respondent maintained that the complaint was founded on fraud relating to the illegal transfer of the deceased's shares in 1995, which fraud was only discovered by the complainant, as administrator of the estate, much later.

14. The Respondent maintained that the complaint was lodged promptly in 2013 upon discovery. Accordingly, the limitation period began to run in 2013 and not in 1995, and the complaint was therefore not time-barred.

15. On *locus standi*, it was the Respondent's submissions that the Appellant never challenged Mr. John Maina's legal standing before the Respondent or at the Tribunal. The issue could not therefore be raised for the first time on appeal.

16. It was further the Respondent's position that, in any event, Mr. Maina was a duly appointed administrator of the estate, a fact disclosed in the complaint and supported by the grant of letters of administration.
17. Regarding the directive of 6<sup>th</sup> March 2018 by the CMA, the Respondent submitted that the Appellant, as the first point of contact in the transfer of shares, owed a duty of care to conduct adequate Know Your Customer checks.
18. On alleged retrospective application of the law, it was submitted that the Tribunal did not apply the **Capital Markets (Conduct of Business) Regulations, 2011** retrospectively. According to the Respondent, the Tribunal merely referred to Regulations to illustrate the evolution of standards, while grounding liability on longstanding common law principles, including fiduciary duty, the duty of care, and liability for negligence and breach of trust.
19. As to whether the Tribunal ignored the Appellant's evidence or imposed a non-existent duty, it was maintained by the Respondent that the Tribunal fully considered the Appellant's submissions and defences.

### **Analysis and determination**

20. I have considered the pleadings as filed by the parties, the record of appeal, as well as the submissions of the parties. I am of the view that the grounds of appeal may be condensed to the following issues for determination: -
- i. Whether the Tribunal erred in failing to find that the matter was time-barred under the Limitation of Actions Act, Cap. 22 of the Laws of Kenya.
  - ii. Whether the complainant, **John Maina**, had *locus standi* to act on behalf of the estate of the deceased.

- iii. Whether the Tribunal applied the law (2002 and 2011 CMA Regulations) retrospectively.
- iv. Whether the Tribunal failed to consider the evidence of the Appellant and placed a non-existing duty on the Appellant.

### **Whether the claim was time-barred**

21. On this issue, the Appellant argued that the cause of action in this matter accrued in November 1995, accordingly the complaint made by the administrators of the estate was statute-barred, having been raised almost 22 years later.

22. The Tribunal found that the Respondent took action against the Appellant within the statutory timeline, as the cause of action was discovered in 2015.

23. A background of this dispute is germane. The complainant, **Mr. John Maina**, as administrator of the estate of Patricia Wanjiku Mbugua (deceased), filed a complaint dated 13<sup>th</sup> August 2013 with the Respondent alleging the fraudulent transfer of the deceased's shares in 1995.

24. The **Limitation of Actions Act Cap. 22, Laws of Kenya**, prescribes the limitation period for the institution of suits regarding various causes of action. Concerning a claim for moveable property of a deceased person, in respect of a will or intestacy, Section 21 thereof prescribes a period of 12 years from the date on which the cause of action accrued. An exception to the provision above is found in **Section 26(c)** of the Act, which states that:

"26. Extension of limitation period in case of fraud or mistake Where, in the case of an action for which a period of limitation is prescribed, either-

(a) the action is based upon the fraud of the defendant or his agent, or of any person through whom he claims or his agent; or

(b) the right of action is concealed by the fraud of any such person as aforesaid; or

(c) the action is for relief from the consequences of a mistake; period of limitation does not begin to run until the plaintiff has discovered the fraud or the mistake or could with reasonable diligence have discovered it. [emphasis added].

25. The object of the law of limitation was stated in the case of **Gathoni v Kenya Co-operative Creameries Ltd (1982) KLR 104**, where the Court of Appeal held that:

“.... The law on limitation of actions is intended to protect defendants against unreasonable delay in the bringing of suits against them.”

26. Similarly, in the case of **Rawal v Rawal [1990] KLR 2**, the court held that: -

“The object of any limitation is to prevent a plaintiff from prosecuting stale claims on the one hand and, on the other hand, protect a defendant after he had lost evidence for his defence from being disturbed after a long lapse of time. It is to extinguish claims.”

27. In this case, it is clear from the record that the complaint filed before the Respondent was in respect of the fraudulent transfer of shares belonging to the deceased. The Appellant was the deceased's stockbroker. After the complaint was lodged on 13<sup>th</sup> August 2013, investigations were carried out, which confirmed in 2015 that there was forgery involved in the execution of the share transfer forms.

28. Informed by the facts above, I agree with the Tribunal's finding that the cause of action arose after the discovery of the alleged fraud, and not in 1995 when the shares were transferred.

29. Accordingly, this Court finds, and agrees with the Tribunal, that the complaint was not time-barred.

**Whether the Complainant, John Maina, had the requisite *locus standi***

30. The Appellant submitted that both the Respondent (CMA) and the Tribunal erred in entertaining a complaint lodged by the complainant, who did not produce any evidence to show that he is the administrator of the deceased's estate. Based on this, the Appellant argued that the complainant lacked *locus standi*.

31. The Respondent, on its part, was adamant that the Appellant had not raised this issue, either before the Respondent or before the Tribunal, and is therefore barred from raising it in this appeal.

32. I have carefully read the Tribunal's judgment of 26<sup>th</sup> March 2024 and analyzed the record of appeal. Indeed, the issue of the complainant lacking *locus standi* was not raised at any stage of these proceedings. This is the first time that the issue has been raised by the Appellant.

33. It is well established that a party cannot raise new issues in an appeal that were not pleaded in the lower forum. In **Independent Electoral and Boundaries Commission & Another v Stephen Mutinda Mule & 3 Others [2014] eKLR4**, the court cited with approval the Nigerian Supreme Court decision in Adetoun Oladeji v Nigeria Breweries PLC SC 91/2002, where Adereji, JSC expressed himself thus on the importance and place of pleadings:

*".....it is now trite principle in law that parties are bound by their pleadings and that any evidence led by any of the parties which does not support the averments in the pleadings, or put in another way, which is at variance with the averments of the pleadings goes to no issue and must be disregarded in fact, that parties are not allowed to depart from their pleadings is on the authorities basic as this enables parties to prepare their evidence on the issues as joined and avoid any surprises by which no opportunity is given to the other party to meet the new situation."*

34. In any case, the Respondent produced a certificate of confirmation of a grant on **page 28** of its bundle of documents. The document confirms that the complainant, **Mr. John Maina**, had the legal capacity to act on behalf of the estate of the deceased.

### **Whether the Tribunal applied the CMA Regulations retrospectively**

35. The Appellant contended that the Tribunal erred by retrospectively applying the Capital Markets (Licensing Requirements) (General) Regulations, 2002, and the Capital Markets (Conduct of Business) Market Intermediaries Regulations, 2011, to 1995 transactions, while neither was in existence at the material time of the matter in question.

36. The Respondent countered that the Tribunal did not apply the Regulations retrospectively; rather, it relied on longstanding common-law and fiduciary principles to assess the Appellant's conduct in a pre-automation era. According to the Respondent, the 2002 and 2011 Regulations were referenced only to illustrate the evolution of standards

37. I have carefully reviewed the Tribunal's judgment and note that the Tribunal at paragraph 34 thereof noted that although the transaction took place in 1995, the Respondent had since then codified the rules and regulations that govern the conduct of stock brokers as contained in the Capital Markets (Licensing Requirements) (General) Regulations 2002 as well as Capital Markets (Conduct of Business) Market Intermediaries Regulations 2011. The Tribunal further noted that these Regulations underscored the important role of stockbrokers in the capital markets and the need for strict regulation of their conduct aimed at protecting the investors.

38. In finding the Appellants liable for failing to verify the signature in the share transfer form, the Tribunal relied on common law principles and the Court of Appeal case of **Pioneer Holdings (Africa) Limited vs. Francis Thuo and partners Ltd & 2 others [2019]** where it was held *inter alia* that a stockbroker and a client had a principal/agent relationship whereby the principal had the duty to exercise care and skill in performing his duties.

39. Therefore, while it is true that the Tribunal mentioned the aforementioned provisions, they did not apply them to the circumstances of the appeal before them. The purpose of mentioning the guidelines was apparently to illustrate the evolution of professional standards owed by stock brokers, and simply to provide a contextual benchmark.

**Whether the Tribunal failed to consider the evidence of the Appellant and placed a non-existing duty on the Appellant.**

40. The Appellant's core argument on this is that, in 1995, the registrars exclusively held original KYC datasets and alone verified signatures. According to the Appellant, a broker's role was to receive instructions, compile documents, and

forward them to the registrar. It adds that one of the contested transfer forms (for 150 KCB shares) was signed before a different broker (**Solid Investment Securities**), and that the Appellant cannot be saddled with duties it did not have at the time.

41. The Respondent, on the other hand, maintained that the mere fact that the Registrar signed the forms does not relieve the broker of its duties of reasonable care/diligence, including flagging anomalies and verifying client identity with the means available.

42. I have analyzed the Tribunal's judgment and I note that it considered the Appellant's written submissions, including its position that it merely received and transmitted documents, relied on the registrar for verification of signatures, and lacked access to specimen signatures. Those defences were not ignored; they were assessed and rejected on the basis that, as a licensed market intermediary, the Appellant owed its clients a duty of care to verify instructions and to detect anomalies, particularly where fraudulent transfers were concerned.

43. In reaching that conclusion, the Tribunal relied on **Pioneer Holdings (Africa) Limited vs. Francis Thui and partners Ltd & 2 others (supra)**, affirming the fiduciary and professional obligations of stockbrokers to act with diligence, loyalty, and reasonable care.

44. The Tribunal also acted within its statutory mandate in admitting and relying on the handwriting expert's report pursuant to section 35A (7) of the Capital Markets Act. The Appellant neither tendered contrary expert evidence nor meaningfully challenged the report, and the Tribunal was entitled to place weight on it in light of its relevance to the issues before it.

45. Premised on the foregoing analysis, I am of the view that the Tribunal did not err in directing the Appellant to compensate the estate of the deceased to the extent of 50% of the dividend accrued on the respective securities and to reinstate the 50% of the irregularly disposed of securities.

46. Accordingly, I find no reason to interfere with the judgment of the Tribunal. The upshot of the foregoing is that the appeal before this court lacks merit and is dismissed with costs awarded to the Respondent.

47. It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 20<sup>TH</sup> JANUARY 2026.**

A handwritten signature in blue ink, appearing to read 'Moses Ado', is written over a light-colored rectangular stamp or seal.

**HON. JUSTICE MOSES ADO**  
JUDGE

**In the presence of: -**

*C/A - Moses*

Odhiambo.....for the Appellant

Githendu..... for the Respondent