IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

In the matter of an Application for Orders in the nature of Writs of Certiorari, Prohibition and Mandamus under Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

CA (Writ) App. No. 326/2019

Lanka Securities (Private) Limited,
No. 228/1, Galle Road,
Colombo 04.

PETITIONER

Vs.

1. Colombo Stock Exchange

2. Professor Jeeva Niriella,
Chairperson of the Dispute
Resolution Committee.

3. Ray Abeywardene,
A member of the Dispute
Resolution Committee.

4. Anton Godfrey,
A member of the Dispute
Resolution Committee.

5. Shanil Fernando,
A member of the Dispute
Resolution Committee.

6. Renuke Wijewardhane,
Chairman of the Panel of Inquiry of the 2nd Defendant- Colombo Stock Exchange.

7. Renu Ranatunge (Ms),
   A member of the Panel of Inquiry of the 2nd Defendant- Colombo Stock Exchange.

8. Kanishka Munasinghe (Ms),
   A member of the Panel of Inquiry of the 2nd Defendant- Colombo Stock Exchange.

   The addresses of all the above Respondents
   No.04-01, West Tower, World Trade Cente, Echelon Square,
   Colombo 01.

9. Biren Molamure,
   Representative of N.R. Molamure (Mrs), (Deceased),
   No. 57, Gangaboda Road,
   Piliyandala.

RESPONDENTS

Before: Dr. D. F. H. Gunawardhana, J.

Counsel:

W.R.J. Peiris instructed by C.K. Rannulu for the Petitioner.

Avindra Rodrigo, P.C., with K. Jayaweera instructed by FJ & G de Saram for the 1st to 8th Respondents.

Nigel Bartholomeuz with Aslesha Weerasekera and Aaruran Nanthagobalan instructed by V.W. Kularatn Associates for the 9th Respondent.

Argued on: 13.02.2026 & 31.03.2026

Delivered on: 05.08.2026

Dr. D. F. H. Gunawardhana, J.

Judgement

Introduction

The Petitioner is 'Lanka Securities Limited', which is a body corporate incorporated under the Companies Act, No. 7 of 2007, and it can sue and be sued in its corporate name. It mainly engages in the business of stock brokering, investment consulting and advising, buying and selling shares in the share market, and maintaining accounts as a broker for its customers. It has a license to engage in the share market of the Colombo Stock Exchange, which is the 1^{st} Respondent, who is also incorporated under Act No. 7 of 2007 and can sue and be sued in its corporate name, and from time-to-time it promulgates rules with regard to the functions and businesses thereof; it is governed by the rules and regulations issued by the Security Exchange Commission (SEC), which is also incorporated under the Security and Exchange Commission Act, No. 36 or 1987 (as amended) (hereinafter referred to as the "SEC Act").

The 2^{nd} to 5^{th} Respondents are Members of the 1^{st} Respondent Board of Directors, who the Petitioner alleges has taken the decision against the Petitioner, whilst the 6^{th} to 8^{th} Respondents are the Members of the Panel of Inquiry appointed by the 1^{st} Respondent to inquire into the allegations made by the 9^{th} Respondent, who is a customer or client of the Petitioner.

After the issuance of formal notice, the 1^{st} to 8^{th} and 9^{th} Respondents have filed their respective Objections, and they have denied the allegations levelled against them by the Petitioner and moved for the dismissal of this Application. I will refer to the Objections in detail in the body of this judgement.

This came up for Argument before me on 13.02.2026 and 31.03.2026, and in addition to the oral submissions made by the counsel for the Petitioner and the 1^{st} and 9^{th} Respondents, they have filed their respective written submissions, elaborating their oral submissions; hence, this judgement.

The Petitioner's position

The Petitioner asserts that, as a stockbroker, it is engaged in the business of stock brokering, and in advising its customers on when to purchase and sell their shares, maintaining their accounts, and buying and selling shares on behalf of them in the share market. The Petitioner further asserts that it has a license to be engaged in the platform of the share market run by the 1st Respondent, and for that purpose, the 1st Respondent has promulgated certain rules that apply to the conduct of the businesses and procedures thereof; such rules are marked as **P7** annexed to the Petition.

The Petitioner further asserts that the 9th Respondent had been one of its customers, who had engaged the Petitioner and made use of the Petitioner's service to invest in the share market while maintaining an account called Central Depository System (CDS) Account with the Petitioner. The Petitioner further asserts that the 9th Respondent had invested in shares and sold and purchased shares while investing so in the share market, and during the during the course, she had experienced loses and gains due to such purchases and sales of shares.

The Petitioner further asserts that the 9th Respondent had already being an investor in the share market, prior to commencing her business through the Petitioner, through a different broker named 'Somerville Stock Broker (Private) Limited', and therefore, she had a lot of experience in investing in the share market. Thus, she was well aware about the procedures and conduct of businesses that took place in the share market through stockbrokers.

However, by letter marked as **P9** and dated 07.04.2017, the 9th Respondent had made a complaint to the 1st Respondent against certain transactions conducted and made by the Petitioner for and on behalf of the 9th Respondent, and the Petitioner asserts that such complaint should not have been made directly to the 1st Respondent before taking up the issue with the compliance officer appointed in that behalf attached to the Petitioner. Additionally, the Petitioner alleges that the 1st Respondent had accepted the said complaint and thereafter, by covering letter **P10**, dated 15.05.2017, informed the Petitioner about the complaint and called for the Petitioner's observations.

The Petitioner states that, though the 9th Respondent made a complaint to the 1st Respondent against certain transactions conducted by the Petitioner on behalf of the 9th Respondent, the Petitioner asserts that such complaints should not have been made.

The Petitioner further asserts that it had express authority from Mrs. Biren Molamure, the 9th Respondent, to trade in shares in her account using the skill and judgment of the Petitioner, which was also followed by and approved by the 9th Respondent, Mrs. Biren Molamure. At all times, she was aware of the transactions conducted by the Petitioner. Further, until she disputed the transactions by **P9**, she had never disputed any transaction conducted by the Petitioner with the authority of Mrs. Biren Molamure, the 9th Respondent.

Thereafter, the Petitioner submitted its observations by letter dated 22.05.2017; the said letter is marked as **P11**. In addition to that, the letter was submitted together with certain annexures marked as **P11(a)** to **P11(j)**, which are annexed to the Petition.

The Petitioner further pleads that the said annexures establish affirmatively that the investment advisor, Mr. Kapila Bandara, who performed duties on behalf of the Petitioner, had prudently kept Mrs. Molamure, the 9th Respondent, duly informed at all times of the activities and performance of her account and, in fact, had obtained her written acknowledgment and approval for the transactions in the manner in which they had been carried out.

Further, the Petitioner asserts that the annexures to **P11**, marked as **P11(d)**, **P11(e)**, **P11(g)**, and **P11(h)**, are several documents manually signed by the 9th Respondent, Mrs. Molamure, and handed over to the 1st Respondent at the inquiry.

Consequent to the said observations, a Panel of Inquiry was appointed by the 1st Respondent, in which the 6th to 8th Respondents were members. There had been several items of correspondence and meetings between the parties, and finally the Petitioner alleges that the Panel of Inquiry made its determination dated 01.10.2018, which is produced as **P6(b)**.

Thereafter, the Petitioner lodged an appeal against the said determination before the Dispute Resolution Committee, of which the 2nd Respondent is the Chairman and the 3rd to 5th Respondents are members.

Consequent to the said appeal lodged by the Petitioner on 01.11.2018, the Dispute Resolution Committee held discussions on 09.01.2019.

Having heard the Petitioner both orally and in writing, as well as the 9th Respondent, the Dispute Resolution Committee made its determination dated 04.06.2019, which is marked as **P6(a)**. The Dispute Resolution Committee affirmed the determination of the Panel of Inquiry dated 01.10.2018, marked as **P6(b)**. The Petitioner challenges both those determinations by this Application and seeks to quash the said determinations.

The Respondents' Objections

According to the Objections of the 1st to 8th Respondents, the 1st Respondent is a body corporate incorporated under the laws of Sri Lanka, and it has derived its powers in terms of Section 13(a) of the Securities and Exchange Commission Act, No. 36 of 1987. It further asserts that the Security Exchange Commission (SEC) is empowered with the powers germane to all securities and the share market of Sri Lanka, and the 1st Respondent has been licensed by the Security Exchange Commission as a body corporate who operates the share market in Sri

Lanka. Further, it asserts that the 2nd to 5th Respondents are its Members of the Board of Directors at the time the inquiry took place on the complaint made by the 9th Respondent.

Further, the 1st Respondent avers that in terms of Section 13(b) of the Securities and Exchange Commission Act, the Petitioner is licensed by the Security Exchange Commission to carry on the business of a stockbroker, who also places a vital role in the stock market.

In addition to the rules and regulations made under the Securities Exchange Commission Act, for the purpose of conducting its affairs, the 1st Respondent has promulgated certain rules under the authority that it derives from Section 24 of the SEC Act. The said rules are marked as **X2**, and the Petitioner is a member of the 1st Respondent who operates as a provider of the platform to operate the share market.

Accordingly, it is the position of the 1st Respondent that in addition to the articles of association of the 1st Respondent as a body corporate, it is governed by the rules and regulations made under the SEC Act by the Securities Exchange Commission, as well as the provisions of the Securities Exchange Commission Act, No. 36 of 1987.

Further, it is asserted that the Security Exchange Commission, being the body corporate incorporated under the SEC Act, is a necessary party for the purpose of this Application; therefore, they raised a preliminary objection as to the maintainability of this Application without the SEC being a party to this Application.

The next objection raised is that the nexus between the Petitioner and the 1st Respondent is the membership of the Petitioner being a member of the 1st Respondent; thus, since it is of contractual nature, no writ lies as no public law element is involved therein.

In addition to that, it is the position of the 1st Respondent that since there certain questions of facts are involved and the parties are of variance of those facts, the Writ Court is not the forum for the Petitioner to urge its grievance to obtain relief based on those facts; therefore, this Application should be dismissed *in limine*.

In addition to that, it is the position of the 1st Respondent that the 9th Respondent, who is a customer and an investor of securities in the share market through the Petitioner who is a stockbroker, had maintained a CDS Account bearing No. LSL305352080VN/00 with the Petitioner. However, the 9th Respondent has made a complaint to the SEC directly, with a copy to the 1st Respondent, against the Petitioner and certain officers of the Petitioner, mainly based on the deflation of her account, which as at 31.12.2014 was about Rs. 8,394,524/- and had come down to Rs. 100,000/- as at 31.12.2016. The transactions that had taken place during that time through her account was without her knowledge and her express sanction or authorisation, and she has also not been kept informed of the transactions that had taken place through and under her account; therefore, she had made allegations to inquire into the matter. The said copy of the letter is marked as X2 annexed to the objections.

After receiving the same, the 1st Respondent has responded to the said complaint informing the 9th Respondent to refer the matter to the compliance officer of the 1st Respondent, to whom the investor of a broker company should first refer its disputes of any transaction within three months of such transaction taking place, in terms of Rule 10.1 of the Rules of **X2**; the said response letter is marked as **X4**.

However, in reply to the said letter **X4**, the 9th Respondent had written a letter indicating that she has no trust in the Petitioner or its officers as there was unauthorised transactions that had taken place under her account; as such, she has lost her investment, and therefore, she sought an early investigation into the matter. The said letter and the reply thereto marked as **X6** and **X7** annexed to the respectively Statement of Objections.

Thereafter, by **X8** (which is the same letter marked as **P10** annexed to the Petition), the 1st Respondent had called for observation of the Petitioner. The Petitioner had given its observations by **P11**, and there are certain documents annexed to **P11**.

Thereafter, the Chairman of the 1st Respondent had appointed a panel of inquirers, who are the 6th to 8th Respondents, to inquire into the matter in terms of Rule 10.3 of **X2**. Accordingly, the parties were informed of the same; however, the 9th Respondent, by letter marked as **X9** annexed to the Statement of Objections, informed the 1st Respondent that she is unable to physically attend any meeting or inquiry since she was asked by her doctor to bed rest, and in addition to that, she has further indicated that there is no person of family in Sri Lanka to attend the meeting of the Committee who is aware of the transactions that had taken place or the business of the 9th Respondent engaged with the Petitioner.

Thereafter, the Members of the Panel of Inquiry (the 6th to 8th Respondents) decided to have online meetings with the Petitioner; accordingly, the Petitioner was informed of the same.

Thereafter, the 1st Respondent states that the 6th to 8th Respondents had agreed to connect the complainant (the 9th Respondent) to the meetings via conference, and the same was communicated to the Petitioner and the complainant; the said document is marked as **P12(b)**. The first meeting between the parties presided over by the 6th to 8th Respondents was held on 11.08.2017, at the office of the 1st Respondent, and in order to obtain further clarifications regarding the complaint against the Petitioner, the Petitioner was represented by its CEO, compliance officer, and relevant investment officer one Mr. Kapila Bandara, who were physically present at the meeting while the complainant 9th Respondent was only connected via conference calls. According to the Petitioner, the procedures adopted were approved by the Board of Directors of the 1st Respondent; therefore, such meetings were required to be recorded by the 1st Respondent, and proper minutes had to be kept and obtain confirmation of the parties by signing each and every page of the minutes. Accordingly, the 6th Respondent, by way of a letter dated 08.09.2017 and annexed to the Petition marked as **P12(e)**, shared the minutes of the meeting with the complainant and the Petitioner for confirmation of the matters recorded therein, and the Petitioner by way of her letter dated 06.10.2017 and marked as **P15** annexed to the Petition, confirmed each and every page of the minutes. Later, on behalf of the 9th Respondent, the same has been confirmed and marked as **P22** annexed to the Petition.

At the meeting so held in responding to the allegation made by the complainant, the following matters were mentioned by the Petitioner;

(1) The complainant had authorised the Petitioner to hold proceeds of sales of transactions carried out in her securities account by the letter dated 11.02.2014.

(2) By way of the letter dated 10.01.2014, the complainant authorised the investment advisor Mr. Kapila Bandara of the Petitioner, to carry out transactions in her account according to his discretion.

(3) Again, by letter dated 10.01.2014, the complainant further agreed to extend credit to the Petitioner to carry out transactions.

(4) The investment advisor, Mr. Kapila Bandara, obtained the complainant's consent and approval over phone for several transactions.

However, the Petitioner informed at the said meeting that they would submit all the telephone conversations that had taken place between Mr. Kapila Bandara and the complainant (9th Respondent), authorising the transactions that had taken place during the period concerned. The Members of the Committee, the 6th to 8th Respondents, informed them that such recordings should be submitted with the confirmation of the service provider as to the time and authenticity thereof. However, no such document was submitted by the Petitioner for the perusal of the Committee.

Thereafter, the Committee had sent a reminder, and then the Petitioner had submitted a document which is marked as **P15** annexed to the Petition, stating that they are not in a position to submit the said documents.

Thereafter, it is the position of the 1st Respondent that the complainant by way of letter annexed to the Petition and marked as **P16**, requested the balance portfolio in her securities account and remit the sales proceedings by way of a cheque. The Petitioner thereafter informed the complainant, by way of a letter marked as **P17**, that a cheque for a sum of Rs. 155,809.55 was sent to the complainant upon selling the balance portfolio of the complainant's securities.

In the meantime, the 9th Respondent, by way of the letter dated 04.10.2017 addressed to the 6th Respondent, informed that she will await the response of the Petitioner to the letter marked as **P16** and revert to the 6th Respondent should she require further action with regard to the complaint; the true copy of the said letter dated 04.10.2017 is marked as **X10** annexed to the Statement of Objections.

Thereafter, the 6th Respondent has inquired from the 9th Respondent by the letter marked as **P18** annexed to the Petition, and sought clarification, and she has responded that she wishes to pursue her complaint against the Petitioner. Accordingly, the 6th to 8th Respondents decided to hold the second meeting with the parties in order to seek further clarification on the dispute. Accordingly, on 27.04.2018, with the participation of the representatives of the Petitioner and the 9th Respondent, the second meeting had been conducted; the minutes are marked as **X11** annexed to the Statement of Objections.

Thereafter, according to the findings of the Committee in their final report which is marked as **P6(b)** annexed to the Petition, which the Petitioner seeks a *Writ of Certiorari* to quash the same, the 6th to 8th Respondents came to the following findings and determination;

(i) The 9th Respondent securities account maintained with the Petitioner is not a discretionary account, and there was no discretionary power authorising the Petitioner or any of its officers, including Mr. Kapila Bandara, given by any letter.

(ii) Some of the letters produced by the Petitioner were fabricated which were said to have been sent by the 9th Respondent (the complainant).

(iii) The Petitioner has violated the rules in all the transactions that took place during the period of 2014 to 2016.

(iv) There was a delay on the part of the 9th Respondent to make a formal complaint, and the delay was due to the fact that she was misled by the officers of the Petitioner; thus, the compliance with Rule 3.1 can be waved off by the Committee and the Board of Directors.

(v) Therefore, they have come to the finding against the Petitioner.

The 9th Respondent has also filed her Statement of Objections, and according to it, similar preliminary objections thereof 1st to 8th Respondents have been taken with the regard to the maintainability of this action, including the jurisdiction of this Court, and in view of the arbitration clause, it is the position of the 9th Respondent that the matter should be referred to arbitration.

Further, it is the 9th Respondent's position that she had never authorised any transactions during the time of December 2014 to December 2016; despite all that, since there was a depletion in her account, and later having realised that there is depletion in her account, she had made a formal complaint to the SEC with a copy to the 1st Respondent, and thereafter, the Panel of Inquiry was appointed; after inquiry, it was found that the Petitioner has violated the rules promulgated by the 1st Respondent in conducting the affairs of the Petitioner in addition to the violation of the SEC Act. Therefore, the Petitioner has no right to obtain any relief from this Court, and thus, moved for the dismissal of this Application.

In support of the averments, the 9th Respondent has marked documents **9R1** to **9R13**. Since most of them are similar documents to that of the 1st to 8th Respondents and the Petitioner, to store away the repetition, I shall refrain from elaborating them in detail for the present case; however, I will consider and deal with them in the following paragraphs of this judgement.

In view of the matters averred in the Petition, the matters averred in the Objections filed by the 1st to 8th Respondents and the 9th Respondent respectively, the Counter-Affidavits filed by the Petitioner.

Arguments

The thrust of the main argument advanced by Mr. Peiris was that N.R. Molamure, who was the client of the Petitioner, should have taken up the issue or dispute initially with the Petitioner in terms of Rule 10.1 of the Rules marked as **P7** annexed to the Petition.

The second matter advanced was that N.R. Molamure was well-versed in the transactions that had taken place, and therefore, was well-aware about what was taking place, as an experienced investor; thus, if she has not taken up any issue within seven days, with the Compliance Officer of the Petitioner, she is barred from taking up that issue later because there was a belated complaint made by her. Therefore, **P6(a)** and **P6(b)** are not tenable in law.

Further, Mr. Peiris argued that the Panel of Inquiry had ignored all the above-mentioned evidence and came to the erroneous conclusion; the Panel had also ignored the fact that the benefit of doubt should be given to the Petitioner of this Application against whom the complaint was made by Mrs. Molamure.

The main argument of Mr. Rodrigo, P.C., is that the authenticity of **P11(h)** is in question because when **P11(h)** is compared with other documents, particularly **X3** and **X5**, the name and signature are different; therefore, he argued that it is a fabricated document produced for this case.

Associating with the submissions advanced by Mr. Rodrigo, Mr. Bartholomeuz, the learned Counsel for the 9th Respondent argued that the Petitioner has violated Rules 3.5.1 and 3.5.3 of the Rules contained in **X2**; therefore, there was a serious question to be looked into.

In addition to that, since there was no agreement between N.R. Molamure and the Petitioner, to operate the CDS Account as a discretionary account, the Petitioner has violated Rule 7.1.2 of the Rules **X2**.

Furthermore, it is his submission that the Petitioner has violated Rule 11.1.1 as well.

In reply, Mr. Peiris, learned Counsel, moved Court that, in view of the preliminary objections raised by Counsel for the Respondents in respect of both his appeals, Court may exercise the revisionary powers conferred on it in terms of Article 140 of the Constitution.

In certain instances where serious questions of law are involved, it is his argument that Courts have also exercised their revisionary powers even when no revision application has been properly filed.

By way of their Written Submissions, they have elaborated on the above-mentioned arguments.

Issues arisen

In the view of the above-mentioned facts as pleaded in the Petition and the Statements of Objections of the respective Respondents, and the arguments advanced orally and in writing, the following questions arise for my consideration;

(I) Has the Petitioner violated the rules contained in the Rules **X2** promulgated by the 1st Respondent in the conduct of its affairs, in handling the investment account of Mrs. Molamure bearing No. LSL305352080VN/00?

(II) Has the Petitioner transacted without the authorization or sanction expressly given by Mrs. Molamure?

(III) Has Mrs. Molamure made a complaint in that regard?

(IV) Are the findings in the report marked as **P6(b)** justified?

(V) Has the Petitioner mishandled the funds in relation to the investment account of Mrs. Molamure without any sanction or without informing her in due course?

(VI) Was the complaint made by Mrs. Molamure a belated one?

(VII) When the 6th to 8th Respondents conducted the inquiry, have they violated any Rules or the rules of natural justice in arriving at their findings and conclusions in report **P6(b)**?

(VIII) Is the Petitioner guilty of violating the Rules by treating the account of Mrs. Molamure as a discretionary account without any express authorization or sanction in that behalf?

(IX) Is document **P6(a)** tenable in law?

Issues to be determined

I will summarise the above-mentioned issues into three main questions;

(i) Whether the Petitioner has violated the Rules contained in **X2**.

(ii) Whether the Committee, comprising of the 6th to 8th Respondents, had violated the Rules contained in **X2**.

(iii) If the answer to the question above is in the affirmative, whether the decision of the 6th to 8th Respondents contained in **P6(b)** is justified.

(iv) If the answer to the above question is also in the affirmative, whether the dismissal of the appeal by the Dispute Resolution Committee is justified.

Accordingly, I will first deal with the question of whether there was violation of rules by the Petitioner.

Violation of Rules in X2 by the Petitioner

I will deal with the issues raised above and the events that transpired, in their chronological order.

By April 2017, Mrs. Molamure, who was born in the year 1930, was 87 years old. She made a formal complaint in writing dated 05.04.2017 to the Securities and Exchange Commission, with a copy to the 1st Respondent, stating that the CDS (Central Depository System) Account that she maintained with the Petitioner had dwindled. The reason attributed by her for such a state of affairs was the unauthorized transactions carried out by the Petitioner, being her stockbroker, through the Central Depository System Account that the 9th Respondent maintained with the Petitioner. Therefore, she wanted justice to be done. The said complaint is marked as **P9** along with the Petition, and the 9th Respondent has also marked the same as **9R4(a)**, which the 1st Respondent has also marked as **X3**.

The 1st Respondent, by letter dated 12.04.2017, marked as **X4** and annexed to the Statement of Objections of the 1st to 8th Respondents, advised Mrs. Molamure to lodge a written complaint with the Compliance Officer of the Petitioner if she had not already made such a complaint, with reference to Rule 10.1 of the Stockbrokers Rules, which is marked as **X2** along with the 1st to 8th Respondents' Objections.

However, by letter dated 03.05.2017, Mrs. Molamure wrote to the Head of Legal of the 1st Respondent, requesting him to do the needful since she did not have trust in the Petitioner or its officers. She further stated that the 'deliberations with the Petitioner had not been truthful'; the said letter is marked as **X5** annexed to the Objections of the 1st to 8th Respondent.

Thereafter, there was correspondence between the 1st Respondent and the 9th Respondent, Mrs. Molamure. The 1st Respondent then appointed a Panel of Inquiry in terms of the Stockbrokers Rules by **P10** on 15.05.2017. Thereafter, the Chairman of the said Panel called upon the Petitioner for its observations on the complaint, and the said letter is marked as **P10**.

The Petitioner, by document **P11** annexed to the Petition dated 02.05.2017, responded with its observations to **P10** and its annexures, **P11(a)** to **P11(i)**. The most important letter annexed to the said observations is marked as **P11(h)**, on which I will make my observations because it is the vital letter that all the parties, including the Panel and the Appellate Body, made use of in holding against the Petitioner.

Thereafter, the Chairman of the Panel wrote to Mrs. Molamure and requested that she appoint a representative with a clear understanding of the events as reflected in **X8** annexed to the Objections of the 1st to 8th Respondent. However, Mrs. Molamure responded to the said letter by letter dated 31.07.2017, stating that there was nobody in Sri Lanka to attend to these matters personally and physically. She further stated that she was also unable to attend, since she had been advised by her doctors to have bed rest due to her illness and old age; this letter is marked as **X9** annexed to the Objections.

Thereafter, the Chairman of the Panel, by letter dated 10.08.2017, responded to Mrs. Molamure and requested that she make herself available for a conference call while the Panel was conducting its meetings. Accordingly, to commence the meeting, Mrs. Molamure and the Petitioner were informed by letter dated 10.08.2017 to be available for the first meeting to be held on 11.08.2017.

Mrs. Molamure attended the said meeting by way of a conference call. However, on the other hand, the Petitioner was represented by several employees of the Petitioner, including Mr.

Kapila Bandara, who was mainly involved in the transactions of Mrs. Molamure's CDS Account as the adviser and employee of the Petitioner.

The inquiry was thereafter conducted, and the inquiry notes were circulated to both the Petitioner and Mrs. Molamure, the complainant. Thereafter, Mrs. Molamure confirmed the inquiry notes by signing each and every page, and the Petitioner also signed the said inquiry notes and minutes on each and every page. Thereafter, there had been further correspondence, and at the same time, the Chairman of the Panel requested both parties, namely Mrs. Molamure and the Petitioner, to attend another meeting.

Another meeting was to be held on 27.04.2018. The said notices therein are marked as **P21** and **P22** annexed to the Petition. Thereafter, on 27.04.2018, the said meeting was held, and by letter dated 10.05.2018, Mrs. Molamure wrote to the Chairman of the Panel making clarifications regarding her position in respect of the complaint made by her.

The minutes of the said meeting was confirmed by Mrs. Molamure on 28.05.2018, and the same was also confirmed by the Petitioner.

Thereafter, by its report marked as **P6(b)**, dated 06.10.2018, the Panel came to certain findings. The first finding was that the Petitioner had transacted through the CDS Account maintained by Mrs. Molamure, without her consent and authorisation, though they claim that they had received expressed authorisation to do so. As such, Mrs. Molamure was unaware of the transactions that took place during the time of 09.01.2014 to 31.12.2016, and thus, Mrs. Molamure, the 9th Respondent, is not liable for any outstanding balance that had arisen in the CDS Account maintained by her with the Petitioner. The Panel further found that the Petitioner, being the stockbroker, is required to reinstate the portfolio in the CDS Account of the complainant as at 09.01.2014, since there had been transactions consisting of certain alleged purchases and sales during the period between January 2014 and December 2016. The Panel further held that the Petitioner, being the stockbroker firm, is required to pay compensation and the balance due to the complainant as a result of such actions from January 2014, amounting to Rs. 4,030,863.78/-.

According to the sequence of events that I have enumerated above, the first complaint was made by Mrs. Molamure. However, during the inquiry, among the stands taken by the Petitioner;

(1) Without making a complaint directly to the Compliance Officer of the Petitioner with regard to the issues concerning the Petitioner and her account, she had directly made the complaint to the Securities and Exchange Commission with a copy to the 1st Respondent. Therefore, according to the Petitioner, she had violated the first step required to be taken.

(2) The Petitioner also contended that the complaint made by her was belated, since, if at all, it had to be made within three months from the date of the dispute.

(3) Mrs. Molamure had authorised the Petitioner to use its discretion by the letter marked as **P11(h)**, and therefore the CDS Account operated in the name of Mrs. Molamure had, from that time onwards, been treated as a discretionary account. Therefore, the Petitioner used its discretion in carrying out the transactions.

Therefore, it was very necessary for the Panel, at the outset, to decide whether it was a discretionary account or not. However, in the course of the inquiry, Mrs. Molamure flatly denied that she had ever authorized the Petitioner or any of its officers to use their discretion in dealing with the transactions relating to her account. In fact, she also flatly denied that she had ever signed or authorized the signature appearing in **P11(h)**.

However, the Panel of Inquiry, having compared her signature appearing in the other documents, noted that Mrs. Molamure had never signed in the manner in which she was said to have signed in **P11(h)**. The word "Molamure" was spelt therein as "Mulumure", which she had never used. In fact, her correct name is "Molamure". Therefore, she had never signed using the spelling "Mulumure", and even below the signature it is mentioned as "Mulumure". She denied that fact, and the Panel of Inquiry also noted the same.

In fact, the learned Counsel for the 9th Respondents heavily relied upon the signature, and it was his position that **P11(h)** was a fabricated document when compared with the other documents. Further, I also noted those facts. In addition to that, it was the submission of learned Counsel Mr. Bartholomeuz that "Molamure" is not an ordinary name; it is a very famous name written in the annals of the history of this country, and it cannot be misspelt as "Mulumure".

Further, it is pointed out that Mrs. N.R. Molamure, the 9th Respondent, is a scion of the Molamure family of the Sabaragamuwa Province. Therefore, she would never have misspelt her own name, being an educated lady who studied at Bishop's College, Colombo, and who had handled share transactions and investments for many years. In fact, the learned Counsel for the Petitioner, Mr. Peiris, also conceded that it has been mentioned in the Petition that she is well versed in such transactions.

However, it appears that, due to Mrs. N.R. Molamure’s old age, the officers of the Petitioner had attempted to exploit that situation. It further appears that they had fabricated that document by drawing a signature and producing it at the inquiry in order to show that Mrs. Molamure had given authorization to use her CDS account as a discretionary account.

In all these circumstances, it is very clear that the Petitioner and its officers have committed a fraud by acting without instructions in dealing with the CDS account maintained by Mrs. Molamure. They appear to have done so, probably due to her old age, with the intention of taking her money fraudulently.

In my view, when compared with the signatures appearing in document **X3** and **X5** (the complaint, and the letter sent to the Head of Legal of the 1st Respondent), and the other documents, it is my view that she would never have signed using the spelling "N.R. Mulamure" but signed as "Molamure". Therefore, **P11 (g)** and **P11(h)** appears to me to be a fabricated documents to establish the Petitioner's defence. To establish that such documents were in fact, signed by Mrs. Molamure, the burden lies upon the Petitioner in terms of Section 103 of the Evidence Ordinance.

This is because Mrs. Molamure has flatly denied signing the said document, and it is a document not signed by her. The different spelling of her well-known family name, "Molamure", indicates that the Petitioner and its officers had misspelt it in **P11(h)** and had not obtained the signature of the true owner of the signature. Therefore, it is not the signature of Mrs. Molamure. Accordingly, I hold that it is a **P11(g)** and **P11(h)** documents fabricated for the purpose of this case. I hold that Mrs. Molamure has never signed the documents marked as **P11(g)**, and particularly **P11(h)**.

Therefore, the alleged authorisation said to have been given by Mrs. Molamure by **P11(h)** is not a proper authorisation, and there was no valid authorisation.

In addition to the above, the Petitioner heavily relied upon the telephone conversations contemporaneously recorded by it in order to establish that Mrs. Molamure had authorized and sanctioned the Petitioner to exercise its discretion in carrying out the transactions. However, none of those telephone conversations produced by the Petitioner were authenticated by the relevant service provider; despite the Petitioner undertook to produce authenticated records, the Petitioner has failed to do so. Therefore, it must be noted that those telephone conversations have not been properly established, and the Petitioner has failed to produce authenticated recordings certified by the service provider.

Therefore, it is my view that the Panel correctly came to the conclusion that the transactions which took place from February 2014 until 31.12.2016 were unauthorised transactions and were illegally carried out flouting the relevant Rules contained in **X2**.

Accordingly, the findings and conclusions reached by the Panel of Inquiry, of which the 6th to 8th Respondents were members, as contained in report **P6(b)**, are fully justified and were correctly arrived at.

Accordingly, the issues that I have raised above are answered in the affirmative in favour of the 9th Respondent and the 1st Respondent.

The 1st Respondent flouted Rules

The next issue that I have raised is whether the 1st Respondent has flouted any Rules or deviated from any applicable Rules in **X2** by entertaining a complaint made by Mrs. Molamure directly, or by appointing the Panel and the manner in which it conducted the inquiry.

As mentioned above, and as contended by the 1st Respondent and the 9th Respondent, the initial complaint was made by Mrs. Molamure to the Securities and Exchange Commission, with a copy being forwarded to the 1st Respondent. The 1st Respondent, being the service provider for the share market platform, has promulgated Rules **X2**, annexed to the Objections. However, only a part thereof has been annexed by the Petitioner to his Petition in an attempt to bring the matter within the ambit of Rule 3.1 only, solely to demonstrate that Mrs. Molamure should have taken the initiative of lodging her complaint with the Compliance Officer attached to the Petitioner. Nevertheless, the Petitioner has failed to annex the other relevant Rules to the Petition. Thereby, the Petitioner has also thereby flouted the Court of Appeal Rules promulgated in 1990, which are applicable. However, be it as it is now, I will come to the facts of the case.

The 1st Respondent referred Mrs. Molamure to make a formal complaint with the Compliance Officer in terms of Rule 10.1 by **X4**. However, Mrs. Molamure responded to the said request by the letter marked as **X5** dated 03.05.2017, indicating that her efforts with the Petitioner were not fruitful and that she did not have any trust in them or their officers therein. Therefore, she wanted to directly handle the complaint with the 1st Respondent or the Securities and Exchange Commission and demanded justice. Thereafter, after corresponding with the parties, the 1st Respondent decided to appoint a Panel of Inquiry, of which the 6th to 8th Respondents were members.

Accordingly, the Panel wrote to both parties, and both parties were available for the inquiry. Therefore, deviating from the Rules that the complainant should first make the complaint to the Compliance Officer, in this case, it has not prejudiced the Petitioner, nor was there any bias in favour of Mrs. Molamure. This was because her complaint was of a serious nature, and even the Compliance Officer attached to the Petitioner was someone in whom she did not have trust, being an officer attached to the Petitioner.

Therefore, finally, as the Petitioner is a member operating under the 1st Respondent, it is governed by the Rules marked as **X2**. Therefore, it is the finding that the 1st Respondent was entitled to take action against the Petitioner.

Accordingly, the 1st Respondent took steps to appoint the Panel. The Petitioner never complained against such appointment, and in fact, the Petitioner submitted to its jurisdiction its position, and its officers were physically available, including Mr. Bandara, who was mainly responsible for the transactions in question. They attended the two meetings, signed each and every page of the minutes, and confirmed the said minutes.

Based on the minutes recorded, the Panel came to the conclusions and findings contained in **P6(b)**. Therefore, it is my view that there was no serious deviation, and no flouting of the rules of natural justice. As such, it is my view that the Panel was justified in arriving at the said conclusion.

Though the Panel has recommended to impose the reimbursement of the lost money to Mrs. N.R. Molamure or her successor, it is my view that the Panel should have considered recommending some measures against the Petitioner and its officers, preventing them from committing such offences in the future, since a broker is a professional job engaged by a body corporate, that not only handle the CDS Account for the investor for mere commission or profit; there should be absolute trust. If such brokers are in breach of such trust, it undermines the whole system. This trust has been violated by the Petitioner.

Dismissal of the Appeal

It was the decision of the Dispute Resolution Committee, on the appeal made by the Petitioner against the decision marked as **P6(b)**, that the Committee had arrived at its decision in terms of the Stockbroker Rules of the Colombo Stock Exchange, which are marked as **X2** and annexed to the 1st Respondent's objections, in relation to the complaint made by Mrs. N.R. Molamure dated 05.04.2017.

The Dispute Resolution Committee of the Colombo Stock Exchange, upon perusing the submissions made by the Appellant, found that it could not identify any legal error in the decision of the Committee marked as **P16**. Therefore, the Dispute Resolution Committee decided to affirm the said decision.

In view of the reasons adumbrated by me, the dismissal of the appeal is also justified.

Preliminary issue of Jurisdiction of this court

The 1st to 8th Respondents as well as the 9th Respondent have raised an objection as to the maintainability of this Application; the basis of the said objection is that the relationship that exists between the Petitioner and the 1st Respondent is only contractual in nature, and therefore there is no room to invoke the jurisdiction of this Court by way of public law remedies as far as this relationship is concerned.

However, the 1st Respondent has definitely and expressly adverted to the fact that it derives its rights and powers directly from Section 13(a) and Section 24 of the SEC Act. Therefore, even the Rules promulgated thereunder marked as **X2**, derive their powers from Section 24 of the SEC Act.

To further buttress my view, I reproduce Section 24 of SEC Act No. 36 of 1987;

> "*24.(1) The rules of a licensed stock exchange, in so far as they have been approved by the Council, shall not be amended, varied or rescinded without the prior approval of the Council.*
>
> *(2) Where the Board of Directors of a licensed stock exchange wish to amend its rules it shall forward by written notice to the Commission the amendments, whether by rescission, alteration or addition, to such rules which such licensed stock exchange wish to make.*
>
> *(3) The Commission shall, after hearing the licensed stock exchange, and within twenty-one days of receipt of a notice under subsection (2) give written notice to the stock exchange stating whether such amendments to the rules are allowed or disallowed.*
>
> *(4) Upon receipt of notice under subsection (3). the stock exchange, shall give immediate effect to such notice.*
>
> *(5) Notwithstanding the provisions contained in subsections (3) and (4) of this section, amendments to rules of a stock exchange of such categories as may be specified by the Commission by rules made in that behalf. shall take effect immediately upon the*

forwarding of the written notice referred to in subsection (2) subject to the condition that the Commission may within twenty one days of such amendment taking effect disallow such amendment without prejudice to anything previously done thereunder and require the stock exchange to comply with the provisions of subsection (4) of this section."

The other matter is that the 1st Respondent has provided a platform for the players to perform their respective roles in the share market, and such platform is provided under the powers of the SEC Act. Therefore, it is my view that there is a public law element involved. As such, the objection of the Respondents based on the said ground is overruled for the purpose of assuming jurisdiction to decide the issues that I have raised above.

In addition to the above, even if the parties intended to refer the matter to arbitration, they should have done so. However, the said objection was also seriously raised before me by the 9th Respondent.

Therefore, I hold that I assume jurisdiction deriving from the statutory powers which the 1st Respondent claims to have exercised, deriving from the SEC Act.

Therefore, as Justice Marsoof held in the case of *Saheer and Others v. Board of Governors, Zahira College and Others*,[1] when there is a public element and a public duty is performed even by a private entity, such as the Board of Governors of Zahira College, Maradana, the public nature of such performance cannot be denied.

In the same way, the public nature of the 1st Respondent and the privileges and powers exercised by it in the nature of the public law domain cannot be denied.

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[1] [2002] 3 Sri L.R. 405.

Therefore, it is my view that this Court has justification to hear and decide this application for the reason that the 1st Respondent, the 6th to 8th Respondents, and the 2nd to 5th Respondents have taken decisions affecting the rights of the Petitioner, which rights also derive from the SEC Act and ancillary matters connected thereto and deriving therefrom.

Conclusion

For the reasons adumbrated above, it is my view that the Petitioner has not made out a case. Accordingly, I dismiss this Application, subject to costs payable by the Petitioner to the 9th Respondent (the substituted 9th Respondent) and the 1st Respondent, in the sum of Rs. 157,500/- (One Hundred and Fifty-Seven Thousand Five Hundred Rupees) each.

JUDGE OF THE COURT OF APPEAL