THE FINANCIAL SERVICES TRIBUNAL

CASE NO.: JSE3/2023

KHALID ABDULLA **APPLICANT**

and

JSE LIMITED **FIRST RESPONDENT**

ANDRE VISSER N.O. **SECOND RESPONDENT**

Tribunal: C Woodrow SC (chair), PR Long, J Perna

For the applicant: QG Leach SC and JL Griffiths instructed by Clyde & Co

For the respondent: I Green SC and M Kruger instructed by Webber Wentzel

Decision: 14 December 2023

Summary: Reconsideration ito s 230 of the FSR Act -

- Non-executive director's contravention / failure to adhere to JSE Listings Requirements and conduct of non-executive director causing listed company to act in contravention of / non-adherence to JSE Listings Requirements
- Paragraphs 10.4 and 10.7 of the Listings Requirements, related party transactions
- Paragraph 8.57(a) of the Listings Requirements, preparation of interim reports
- General Principle (v), dissemination of information into the marketplace
- Sanction decision, public censure and R2 million penalty.

DECISION

Introduction:

1. The applicant, Mr Khalid Abdulla **("Mr Abdulla")** applies to this tribunal in terms of s 230 of the Financial Sector Regulation Act, Act 9 of 2017 (the **"FSR Act")** for the reconsideration of a decision of the respondent, the JSE Ltd (the **"JSE")** dated 13 January 2023 (the **"Decision").**[1]

2. The Decision of the JSE includes **(a)** a decision on the merits (the **"merits decision")** and **(b)** a decision on sanction (the **"sanction decision").**

3. In respect of the merits decision, the JSE found that Mr Abdulla failed to comply with certain provisions of the JSE Listings Requirements including:

    3.1. Firstly, Mr Abdulla, in his capacity as a non-executive director of the listed company, Ayo Technology Solutions Limited **("Ayo"),** acted in breach of the provisions of paragraph 10.4 of the Listings Requirements, based on his role in facilitating and negotiating certain payments from Ayo to a related party, 3 Laws Capital (Pty) Ltd **("3 Laws Capital").** Mr Abdulla, through his role in the transactions, caused and/or contributed to Aye's breach of the Listings Requirements regarding related party transactions. (the **"related party breach")**

[1] The JSE decision letter dated 13 January 2023 is attached to the application for reconsideration and marked **"A",** Record, p 39 - 44 (the **"Decision").**

3.2. Secondly, Mr Abdulla gave instructions to Mr Abdul Malik Salie **("Mr Salie"),**[2] the Chief Investment Officer of African Equity Empowerment Investment Holdings Limited **("AEEI"),**[3] to effect adjustments to specific line items in Ayo's draft unaudited 2018 interim results which were improper and not in accordance with the requirements of IFRS, culminating in Ayo's misstated financial information that had to be corrected through restatement. Further, Mr Abdulla was one of the Ayo board members who approved the Ayo unaudited 2018 interim results which contained the improper adjustments for dissemination to shareholders and the market. Mr Abdulla's role in instructing the adjustments to the line items in Ayo's unaudited 2018 interim results caused and/or contributed to Ayo breaching IFRS and the Listings Requirements. Accordingly, the JSE found Mr Abdulla, in his capacity as a non-executive director of Ayo, to be in breach of **(a)** paragraph 8.57(a) of the Listings Requirements as his instructions to make improper adjustments to certain line items in Ayo's financial statements directly resulted and/or contributed to Ayo breaching the Listings Requirements; and **(b)** General Principle (v) of the Listings Requirements which required Mr Abdulla to ensure that all parties involved in the dissemination of information into the marketplace, whether directly to holders of relevant securities or to the public, observe the highest standards of care in doing so. (the **"interim results party breach")**

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[2] Mr Salie was neither a director of Ayo nor an employee of Ayo.

[3] AEEI is a separately listed company on the JSE and parent company of Ayo.

4. In respect of the sanction decision, for the reasons set out in the Decision and with reference to the findings of the JSE regarding the breach, the JSE imposed upon Mr Abdulla **(a)** a public censure and **(b)** a fine in the amount of R2 million.

5. Mr Abdulla applies for the reconsideration and setting aside of both **(a)** the JSE merits decision and **(b)** the JSE sanction decision.[4]

Context of the Reconsideration application:

6. As stated by this Tribunal in **Trustco Group Holdings Limited v JSE Limited (JSE1/2021)**[5] at par [11]: *"The JSE is a 'market infrastructure' as defined in the FSR Act. It is a 'decision-maker' and its decisions fall under the definition of 'decision' in sec 281(c) [the reference should be to the definition in s 218(c)]. They are subject to reconsideration by this Tribunal under sec 230(1). Apart from dismissing the application or setting the order aside and [referring] the matter back to the JSE, the Tribunal may substitute the decision with its own decision (sec 234(1)(b))."*

[4] In the event the Tribunal finds that the JSE made out a proper case in respect of some or all of the merits decision, Mr Abdulla contends that the administrative penalty is inappropriate, disproportionate and excessive and that an appropriate administrative penalty would be a private censure, and/or a significant reduction in the financial penalty. (Heads obo Mr Abdulla, par 61)

[5] [2021] ZAFST 9 (22 November 2021)

7. This Tribunal conducts an appeal in the fullest sense. It is not restricted by the JSE's decision. It has the power to conduct a complete rehearing, reconsideration and fresh determination of the entire matter that was before the JSE, with or without new evidence or information. It exercises an appeal jurisdiction in the widest sense as contemplated in the first category referred to **in Tikly v Johannes NO** 1963 (2) SA 588 (T) at 590F-591A. Because we are dealing with an 'appeal in the fullest sense', the Tribunal is concerned with the result more than the reasons.[6]

Corporate structure and position of Mr Abdulla:

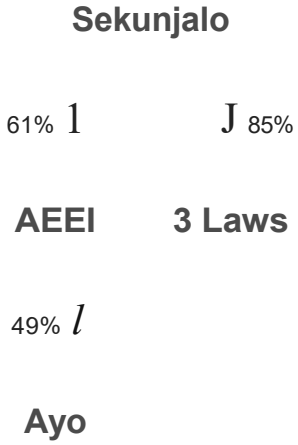
8. The corporate structure of / relationship between the entities referred to in this matter and Mr Abdulla's position in respect of such entities, which is relevant also to understanding the 3 Laws Capital transactions, was as follows and is further graphically depicted below. At the time of the conclusion of the transactions with 3 Laws Capital:

    8.1. The majority shareholder in 3 Laws Capital was Sekunjalo Investment Holdings (Pty) Ltd **("Sekunjalo")** which held 85% shareholding in 3 Laws Capital.

[6] *Cf.* **Teemed Africa (Pty) Ltd v Minister of Health and another** [2012] 4 All SA 149 (SCA) par [17].

8.2. Sekunjalo also held 61% shareholding in AEEI.

8.3. AEEI held 49% shareholding in Ayo.



9. Mr Abdulla was the CEO of AEEI,[7] a parent company of Ayo. He was a non-executive director of Ayo and had been so since 2008.

The relevant Listings Requirements:[8]

[7] He had been appointed as a director of AEEI on 29 August 2007 - See Record p 831.

[8] The legal representatives for Mr Abdulla in their bundle of authorities provided a copy of the Listings Requirements (we were informed that this constitutes "Service issue 25") and submitted (in effect) that whilst these were the Listings Requirements applicable slightly post the period relevant to this matter, they contained the provisions (the "same differences") applicable as at the period relevant to this matter. All paragraphs of the Listings Requirements quoted herein are extracted from the aforesaid copy so provided.

10. Under the heading **'General Principles',** the Listings Requirements explain that they (the Listings Requirements) fall into two categories:

    10.1. the "General Principles" "... *which must be obsetved in all corporate actions and also in all submissions pertaining to securities listed and to be listed';* and

    10.2. the "main body" consisting of the sections, schedules, and practice notes, and "... *derived from the application and interpretation of the General Principles by the JSE."*

11. Users of the Listings Requirements "... *must at all times obsetve the spirit as well as the precise wording of the General Principles and main body."*

12. General principle (v) provides as follows:

    "(v) to ensure that ***all parties involved*** *in the dissemination of information into the market place. whether directly to holders of relevant securities or to the public, obsetve the highest standards of care in doing so;"*

    (our emphasis)

13. Paragraph 10.4 of the Listings Requirements, under the heading *"Usual requirements for a related party transaction"* provides:

"10.4 If an issuer, or any of its subsidiaries, proposes to enter into a related party transaction or, if the JSE determines that a transaction is a related party transaction, the issuer must:

(a) make an announcement containing:

(i) the information specified in paragraph 9.15;

(ii) the name of the related party concerned; and

(iii) details of the nature and extent of the interest of the related party in the transaction;

(b) furnish the agreement to the JSE;

(c) send a circular to its shareholders containing the information required by paragraph 10.9;

(d) obtain the approval, by resolution, of its shareholders either prior to the transaction being entered into or, if it is expressed to be conditional on such approval, prior to completion of the transaction;

(e) include in the ordinary resolution to approve or give effect to the transaction, a condition that the validity, for the purposes of the Listings Requirements, of the resolution will be subject to a *simple majority of the votes of shareholders, other than the related party and its associates, being cast in favour of the resolution; and*

(f) include a statement by the board of directors confirming whether the transaction is fair insofar as the shareholders of the issuer are concerned and that the board of directors has been so

advised by an independent expert acceptable to the JSE. The board of directors must obtain a fairness opinion (which must be included in the circular) prepared in accordance with Schedule 5, before making this statement unless ... [this part is irrelevant]'

14. Section 8 of the Listings Requirements deals with **"Financial Information".** Paragraph 8.57(a) of the Listings Requirements, headed *"Minimum contents of interim reports, preliminary reports, provisional annual financial statements ("provisional reports'? and abridged annual financial statements ("abridged annual reports'?",* provides as follows:[9]

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[9] The JSE "Guidance Letter: Summary of financial statements" dated 25 July 2011 states also in this regard *inter alia:*

"

... the summary must:

• be prepared in accordance with the framework concepts and measurement and recognition requirements of IFRS and the AC 500 standards as issued by the Accounting Practices Board or its successor; and

• must also as a minimum contain -

- *the information required by /AS 34: Interim Financial Reporting (in other words the disclosure requirements); and*
- *a statement confirming that it has been so prepared."*

In the event that a company wishes to provide a summary of their interim financial reports, preliminary reports, provisional reports and abridged reports, such a summary must fully comply with paragraph 8.57 of the Listings Requirements."

See also: the JSE "Guidance Letter: Presentation of financial results", dated 14 September 2007.

"8.57 Every listed company, in addition to complying with the statutory requirements concerning interim reports, preliminary reports, provisional reports and abridged reports must prepare and present such financial information as *follows:*

(a) interim reports must be prepared in accordance with and containing the information required by /AS 34: Interim Financial Reporting, as *well* as *the SA/CA Financial Reporting Guides as issued by the Accounting Practices Committee and Financial Pronouncements* as *issued by Financial Reporting Standards Council, and* a *statement confirming that it* has *been so prepared must be included in the report;*

"

15. Paragraph 1.21 and 1.22 of the Listings Requirements provide as follows in material part:

"Censure and penalties

1.21 Where the JSE finds that an applicant issuer or any of an applicant issuer's director(s), officer(s) ... has ***contravened or failed to adhere*** *to the provisions of the Listings Requirements, the JSE may, in accordance with the provisions of the FMA and without derogating from its powers of suspension and/or removal:*

(a) censure the applicant issuer and/or the applicant issuer's director(s)/officer(s), individually or jointly, by means of private censure;

(b) censure the applicant issuer and or the applicant issuer's director(s)lofficer(s), individually or jointly, and/or the applicant issuer's officer(s) by means of public censure;

(c) in the instance of either paragraph 1.21(a) or (b), impose a *fine not exceeding such amount as stipulated by the FMA on the applicant issuer and/or the applicant issuer's director(s)lofficer(s), individually or jointly;*

1.22 In the event that an applicant issuer or any of an applicant issuer's director(s) contravenes or fails to adhere to the provisions of the Listings Requirements, the JSE may elect in its discretion, that:

(a) full particulars regarding the imposition of a *penalty may be published in the Gazette, national newspapers, the website of the JSE or through SENS; and/or*

(b) ..."

(our emphasis)

16. In the event that a party does not pay a fine imposed in terms of section 1.21 of the Listings Requirements, the JSE may follow the procedure described in 1.23 of the Listings Requirements resulting (in effect) in a 'civil judgment' in favour of the JSE.

17. In terms of paragraph 1.28 of the Listings Requirements, under the heading "Publication", the JSE is given very wide discretionary powers to make publication:

> *"1.28 Without derogating from any other powers of publication referred to in these Listings Requirements, the JSE may, in its **absolute discretion** and in **such manner as it may deem fit**, state or announce that it has:*
>
> *(c) censured an applicant issuer's director(s);*
>
> *(g) imposed a fine on an applicant issuer's director(s);*
>
> "
>
> (our emphasis)

Synopsis of facts:

18. The JSE considered the conduct of Mr Abdulla in his capacity as a director of Ayo for the period December 2017 to August 2018.

19. Mr Abdulla had been appointed as a non-executive director of Ayo in January 2008 (before the listing of Ayo) and served as such (also from date of Ayo's listing in December 2017) until August 2018.

20. On 22 December 2017 (the day after its listing on the JSE), Ayo entered into the first of three agreements with 3 Laws Capital. Two further agreements were concluded with 3 Laws Capital. The JSE set out the details of the agreements entered into between Ayo and 3 Laws Capital as follows:

20.1. PMA1

- Verbal agreement entered into on 22 December 2017.
- R70 million advanced to 3 Laws Capital on 22 December 2017 and returned to Ayo on 22 February 2019.

20.2. PMA2

- Written agreement entered into on 28 February 2018 in terms of a resolution of the board of directors of Ayo subject to these funds being returned to Ayo by 31 August 2018.
- R400 million advanced to 3 Laws Capital on 5 March 2018 and returned to Ayo on 20 August 2018.

20.3. PMA3

- Written agreement entered into on 27 November 2018 in terms of a resolution of the board of directors of Ayo.
- R400 million advanced to 3 Laws Capital on 29 November 2018 and returned to Ayo on 22 February 2019.

21. Mr Abdulla requested / instructed payments to be made to 3 Laws Capital, a related party to Ayo. This aspect is dealt with further when we deal with the reconsideration grounds.

22. Mr Abdulla was involved in the drafting of Ayo's unaudited interim results for the six months ended 28 February 2018. This aspect is dealt with further when we deal with the reconsideration grounds.

23. On 27 August 2020, the JSE imposed a public censure and financial penalties in the sum of R6.5 million on Ayo due to its transgressions of the Listings Requirements.

24. The JSE initiated an investigation into the conduct of Mr Abdulla relating to the transactions with the related party (3 Laws Capital) and the drafting and approval of Ayo's unaudited interim results for the six months ended 28 February 2018, results that had to be restated due to the misstatements and errors therein.

25. Following the investigation, and on 1 December 2021, the JSE in a letter to Mr Abdulla indicated that it had concluded that the actions and conduct of Mr Abdulla were the proximate cause of and/or contributed to Ayo's failure to comply with important provisions of the Listings Requirements and that Mr Abdulla had breached the following provisions of the Listings Requirements:

25.1. Paragraph 8.57(a) for his actions and instructions to make improper adjustments to certain line items in Ayo's unaudited interim results for the six months ended 28 February 2018 which did not comply with IFRS;

25.2. Paragraph 10.4 for his role and instructions to make payments to 3 Laws Capital in respect of PMA1 and PMA2 and for the payment to Sekunjalo; and

25.3. General Principle (v) for not observing the highest standards of care when disseminating information to the public and marketplace.

26. Mr Abdulla was afforded an opportunity to respond and to object to the decision and findings of breach against him, which he did in a written response dated 1 March 2022.

27. On 1 July 2022, the JSE upheld the objection of Mr Abdulla to the finding of breach of paragraph 10.4 of the Listings Requirements in respect of his role in making payment of R35 million to Sekunjalo. The objections of Mr Abdulla to the remainder of the decisions and findings contained in the letter of the JSE dated 1 December 2021 were dismissed and the decisions of the JSE regarding such breaches were confirmed. Mr Abdulla was afforded an opportunity to provide the JSE with his submissions in respect of an appropriate sanction as a result of his contraventions of the listings requirements, which he did.

28. The JSE dismissed his objection.

29. Mr Abdulla accordingly brought the present reconsideration application.

30. We deal with the grounds for reconsideration raised by Mr Abdulla below.

Grounds raised in the reconsideration application:

31. Mr Abdulla sets out the grounds for reconsideration in his reconsideration application under certain headings which we deal with below.

"Flawed investigation and disciplinary process adversely impacted the decision"

32. Mr Abdulla contends that the JSE *"failed to place correct weight"* on the fact that **(a)** he was a non-executive director **(b)** could not have been personally involved in the daily affairs of Ayo and **(c)** was not a member of the Audit Risk Committee.

33. We disagree with the contention that the JSE did not place the correct weight on the above factors:

    33.1. The Decision of the JSE deals specifically with the factual conduct of Mr Abdulla "... *in his capacity as* a *non-executive director of AYO at the time...".* (see, for example, record page 42 -44.) It is further evident from

the expansive evidence on record that the JSE dealt with the conduct of Mr Abdulla as a non-executive director.

33.2. The allegation that Mr Abdulla *"could nof"* have been personally involved in the daily affairs of Ayo is not borne out by the facts. Mr Abdulla, on his own version and which is supported by the evidence, in truth and in fact played a significant role with reference to the affairs of Ayo. It is not helpful to say of Mr Abdulla that he *"could nof"* have been personally involved in the daily affairs of Ayo. We must look at the facts, at the actual involvement of Mr Abdulla, and determine whether he acted in contravention of the Listings Requirements and/or caused Ayo to act in breach of the Listings Requirements.[10] Be this as it may, the JSE took the Decision cognisant of the fact that Mr Abdulla was a non-executive director of Ayo and based on the factual evidence of his involvement.

33.3. Regarding the fact that Mr Abdulla was not a member of the Audit Risk Committee, it is correct that the JSE was initially under the impression that Mr Abdulla was a member of the ARC (see for example the *'audf* letter dated 18 December 2020, at record page 730 - 731, paragraph 28 - 31). However, in the subsequent *'audf* letters and in the Decision itself, it is evident that the JSE made no findings against Mr Abdulla based on his membership of the ARC.

[1O] Counsel for the JSE make the point with reference to **Howard v Herrigel and Another NNO** 1991 (2) SA 660 (A) 678, that it is a principle of the common law that the mere fact that someone is a non-executive director does not diminish their duties.

34. The allegation of Mr Abdulla that the JSE *"failed to bring an unbiased judgement to bear on the issue"* (Reconsideration application, paragraph 14), was (in our view correctly) not advanced by counsel for Mr Abdulla in heads of argument or in argument before us. It is in any event without substance or merit. We further reject the allegation of *"Perception of bias and/or lack of impartiality or objectivity when considering the facts".* No case is made out in the aforesaid regard. *(cf.* **Trustco Group Holdings Limited v JSE Limited** (JSE1/2022) [2022] ZAFST 130 (18 November 2022) par [68])

"Inadmissible evidence and procedural unfairness"

35. The arguments on behalf of Mr Abdulla in his reconsideration application under this heading are without substance. *(cf.* **Jooste v Financial Sector Conduct Authority; Ocsan Investment Enterprises (Pty) Ltd v Financial Sector Conduct Authority** (A64/2020) [2021] ZAFST 3 (13 December 2021) at par [39] -[51])

36. The JSE did not simply rely on the findings contained in the PIC Report but took various facts into account from various sources.

37. Most importantly, the facts and the views of the JSE were put to Mr Abdulla in a number of *'audr* letters, and he was invited and given a reasonable opportunity to respond. **(Heatherdale Farms (Pty) Ltd v Deputy Minister of**

Agriculture 1980 (3) SA 476 (T)) Mr Abdulla exercised his rights and responded to the *'audt'* letters.

38. Finally, even if one accepts that there was some or other procedural irregularity committed by the JSE (which we do not), it is trite that procedural irregularities at first instance may, depending on the circumstances, be cured by a procedurally fair appeal. **(Amanda Dolores Laetitia Niemec and Others v Constantia Insurance Co Ltd and Others** (Case No PA1/2021) par 40, and the further cases there cited). We have considered all of the submissions that Mr Abdulla has made relevant to the Decision afresh, as envisaged in the Niemec decision.

39. We have considered the procedural complaints raised by Mr Abdulla, including those raised in his supplemented grounds (record p 842 - 859, which further incorporates par 10 - 14 of his replying affidavit in the suspension application). The procedural complaints raised by Mr Abdulla are without merit and are dismissed.

"JSE's findings were based on a contravention of the PMAs' written terms in circumstances where those terms had not been formalised into writing and nor had they been in existence in their current form when Mr Abdulla acted as a director of AYO"

40. The argument of Mr Abdulla misses the point: the crux of the JSE's decision in regard to the 3 Laws Capital transactions is that Mr Abdulla caused and/or contributed to Ayo's breach of the provisions of paragraph 10.4 of the Listings

Requirements (dealing with related party transactions), based on his role in facilitating and negotiating certain payments from Ayo to a related party (3 Laws Capital), payment being made to the bank accounts of 3 Laws Capital, thereby executing a related party transaction without having complied with the Listings Requirements relevant to related party transactions. The fact that a payment may have been made at a time when there was only an oral agreement in place, (that was later embodied / formalised in writing) makes no difference to whether the agreement constituted a related party transaction as contemplated in the Listings Requirements.

41. We deal with the 3 Laws Capital transactions in more detail later in this decision.

Arguments raised on behalf of Mr Abdulla in argmnant:

42. We deal with the arguments raised by counsel for Mr Abdulla in argument before us hereafter.

The implied 'fault element' argument

43. Counsel for Mr Abdulla submit that: *"A director cannot contravene* a *specific requirement of the main body of the Listing Requirements, unless the obligation is placed on the directors. In the absence of such* a *provision, ... the obligations placed on directors arise from either* ***[a]*** *the directors undertaking to ensure the company's compliance or* ***{b]*** *the General Principles. ...* ***[In] respect of such***

contraventions fault is required." (Mr Abdulla does not identify the type of fault that he contends must be proven, whether in the form of intent or negligence).

(our emphasis)

44. Counsel for Mr Abdulla submit that: *"Penal statutes are to be strictly construed so as to require fault as an element of* a *statutory offence."* and cite **S v Coetzee and Others** 1997 (3) SA 827 (CC); **Rex v Milne and Erleigh** 1951 (1) SA 791 (A) at 823; **S v Arenstein** 1963 (3) SA 243 **(N)** at 246 in support thereof. As a general proposition of law (in respect of 'penal statutes'), the submission is correct. However, in the present matter we are not dealing with a 'penal statute', and the cases cited do not assist the argument that fault is required *in* casu.[11] The further submission that: ***"****Where administrative or criminal sanctions arise from statute or regulations,* a *restrictive approach to interpretation is (sic) must be applied, and any uncertainty is to be resolved against the risk of being penalised."* relying on **Democratic Alliance v African National Congress** 2015 (2) SA 232 (CC), at par. 129-131, does not assist Mr Abdulla due to the facts and context of the matter under consideration. In our view, the sanctions imposed by

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[11] In **S v Coetzee** the accused were standing trial in the High Court on *inter alia* 12 counts of fraud, and the trial was suspended in order to refer to the Constitutional Court the issue of the constitutionality of sections 245 and 332(5) of the Criminal Procedure Act. The High Court case was a criminal trial. The general principle of our common law that criminal liability arises only where there has been unlawful conduct *(actus reus)* and blameworthiness or fault *(mens rea)* does not arise in the present regulatory context of findings and sanctions regarding breaches of the Listings Requirements. (For the same reason, the present matter is distinguishable not only in fact but in context from **Rex v Milne and Erleigh** and **S v Arenstein.** See also the appellate decision **S v Arenstein** 1964 (1) SA 361 (A).)

the JSE serve regulatory rather than penal purposes. (*Cf.* **Pather v FSB** 2018 (1) SA 161 (SCA) par [34] - [35]) Thus, the element of fault is not to be imported into or implied where the Listings Requirements do not require this.

45. What is required is an interpretation of the relevant Listings Requirements, applying the trite legal principles of interpretation, in order to determine whether applying the relevant facts to such Listing Requirement there has or has not been a breach / non-adherence thereto.

46. Where the JSE finds that an issuer's director has contravened or failed to adhere to the provisions of the Listings Requirements, the JSE may, *inter alia* censure such director (privately or publicly) and impose a fine. (Listings Requirement paragraph 1.21) The finding of the JSE of a contravention or a failure to adhere to the provisions of the Listings Requirements, is the jurisdictional fact entitling the JSE to sanction. (cf. **Jooste v Financial Sector Conduct Authority; Ocsan Investment Enterprises (Pty) Ltd v Financial Sector Conduct Authority** (A64/2020) [2021] ZAFST 3 (13 December 2021) at par [37]) The question of a contravention or a failure to adhere to the provisions of the Listings Requirements is to be considered objectively and is not related to guilt in the criminal or delictual sense. (Although in a slightly different context *cf.* **Blue Financial Services Limited and JSE** Case No: A17/2018 p 8)

47. Neither the Schedule 13 undertaking nor General principle (v) (being the provisions that Mr Abdulla identifies as requiring 'fault' to be proven) require the JSE to prove fault. In fact, the Schedule 13 undertaking (quoted under the next

sub-heading in this decision below) properly interpreted points away from requiring fault (whether in the form of intent or negligence) providing *inter a/ia* that the "...*delegation of any of my duties to any sub-committee or anyone else will not absolve me of my duties and responsibilities in terms of the Listings Requirements".* General principle (v) contains its own requirements, including the observation of *"the highest standards of care"* when disseminating information into the market place. It makes no sense, and would conflict with the Listing Requirement, to insert a different test and standard.[12]

48. In conclusion we find that each relevant Listing Requirement is to be objectively interpreted to determine whether or not there has been a breach thereof, and that fault is not to be implied therein where the Listing Requirement objectively interpreted does not require fault.

The Listings Requirements apply only to Ayo (and not to Mr Abdulla)

49. Mr Abdulla submits that the statutory regime makes a clear distinction between the standards imposed on the listed company and its directors, and those imposed only on the listed company. In essence the submission is that Mr Abdulla cannot be in breach of a Listing Requirement that applies only to the listed company.

[12] Such as that for negligence: **Kruger v Coetzee** 1966 (2) SA 428 (A) at 430 E-G.

50. This argument loses sight of the fact that the listed company acts through its board. The listed company and its directors must comply with the Listings Requirements. Section 11(5) of the FMA provides as follows: *"Listing requirements and any other conditions of listing are binding on an issuer and an authorised user and their directors, officers, employees and agents".* Further, in this regard, paragraph 1.2 of the Listings Requirements provides *inter* alia: *"Listings are granted subject to compliance with the Listings Requirements and new applicants and their directors must comply with the Listings Requirements* ...." Section 3 of the Listings Requirements (titled *"Continuing Obligations"*[13]) provides: *"This section* sets *out certain of the continuing obligations that an issuer* is *required to observe once any of its securities have been admitted to listing* " - paragraph 3.62 provides as follows: *"All directors of* issuers *are bound by and must comply with the Listings Requirements,* as *amended from time to time, in their capacities* as *directors and in their personal capacities.".* Further, paragraph 1.21 of the Listings Requirements provides that censures and penalties may be imposed individually or jointly.

51. In addition, in terms paragraph 3.60 of the Listings Requirements: *"An issuer must submit to the JSE and its sponsor, the relevant director's declaration in*

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[13] Section 3 provides further that:

"Additional continuing obligations are set out in thefollowing sections:

Section 8 Financial Information

Section 9 Transactions

Section 10 Transactions with Related Parties

respect of each of its appointed directors within 14 days of their appointment in the form specified in Schedule 13 ..." In terms of the Schedule 13 declaration (which was in fact signed by Mr Abdulla in materially the same terms)[14], the following is agreed to and undertaken:

"

I also acknowledge that ..... [THE LISTED ***COMPANY]*** *..... of which I* am a *director has agreed to be bound by and to comply with the JSE's Listings Requirements, as amended from time to time, and, in my capacity as* a *director, I* ***undertake and agree to discharge my duties in ensuring <u>such compliance</u> whilst I*** **am** ***a director.*** *The delegation of any of my duties to any sub-committee or anyone else will not absolve me of my duties and responsibilities in terms of the Listings Requirements.*

(our emphasis)

52. 'Such compliance' refers to the compliance with the Listings Requirements by the listed company. Directors agree and undertake to discharge their duties to ensure the compliance by the listed company of its obligations in terms of the Listings Requirements.

[14] See Record, p 833 - signed on 27 November 2017.

53. Whilst statutorily mandated, the Schedule 13 undertaking and agreement also create a type of contractual relationship between director and the JSE. *(cf.* **Herbert Porter & Co Ltd and Another v Johannesburg Stock Exchange** 1974 (4) SA 781 (W) at 788C) In terms of schedule 13 of the Listings Requirements directors of listed companies agree to ensure compliance by the listed company with the JSE Listings Requirements. The FMA and the Listings Requirements further require directors to so comply.

54. In terms of the Schedule 13 undertaking, Mr Abdulla has undertaken and agreed to discharge his duties in ensuring that Ayo complies with its obligations in terms of the JSE Listings Requirements. (raised in record p 736, par 48 - 49; p 829 - 830, par 7.2)

55. Directors may be held accountable for causing a listed company to act in breach of the Listings Requirements. *(cf.* **Markus Johannes Jooste v JSE Limited** Case No.:JSE4/2022)

The JSE did not prove the alleged contraventions:

The 2018 Interim Results:

56. The following is apparent from a conspectus of the evidence:

    56.1. Mr Abdulla was involved in the finalisation of the interim results of Ayo by virtue of the fact that he was one of the non-executive directors of

Ayo, he had also served on its investment committee, and he was an invitee to its Audit Risk Committee. (record, page 743, par 8.2.1)[15]

56.2. On 26 April 2018, Ms Gamieldien, the Chief Financial Officer of Ayo, met with Mr Abdulla for purposes of finalising the interim results. (record, page 55, par 23 - 24)

56.3. Ms Gamieldien prepared and presented the draft interim results of Ayo to Mr Abdulla in a spreadsheet on her laptop (the **"draft interim results")** ("AYO?", page 127). The draft interim results reflected a net profit after tax **("NPAT")** of R32 million (in fact R32,391,472). The draft interim results reflected a gross profit margin **("GPM")** of 30.63% (Gross profit of R106,812,458 divided by revenue of R348,671,921 = 0.306340865 ie 30.63%)

56.4. Mr Abdulla asked Ms Gamieldien to make adjustments to the draft interim results so that they would reflect the GPM of Ayo as 35% instead of the GPM reflected in the draft interim results of 30.63%.[16] (record,

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[15] As submitted by the JSE, having assumed a *"special obligation"* rooted in his accounting *"knowledge and experience",* he was responsible for the content of the unaudited 2018 interim results. (citing **Fisheries Development Corporation of SA Ltd v Jorgensen and Another** 1980 (4) SA 156 (W))

[16] Ayo states in this regard that: *"In the meeting [of 26 April 2018}, Abdulla asked Gamieldien to adjust the GPM in annexure "AYO7" to 35% in order to bring it in line with AYO's historical GPM. Gamieldien then adjusted the costs of sales figure from R241,859,463 to R228,069,792,*

page 55, par 30) In truth and in fact all this means is that the figures in the draft interim results would need to be changed in order to arrive at the desired **GPM.**

56.5. In order to arrive at a GPM of 35%, the gross profit of AYO that was reflected in the draft interim results would have to be amended upwards. This was done by amending the cost of sales downward from R241,859,463 to the sum of R228,069,792 - i.e. by reducing the figure in the costs of sales by R13,789,671. By doing so the gross profit was increased in the sum of R13,789,671 to arrive at a gross profit of R120,602, 129 (instead of the gross profit reflected in the draft interim results of R106,812,458). R120,602,129 divided by revenue of R348,671,921 = 0.345889994 i.e. 34.5889994% - which appears to have been rounded up to 35%). By so changing the figures in the draft interim results by increasing the gross profit amount (by means of reducing the costs of sales amount), would also affect the NPAT amount upwards.

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a difference of R13,789,671. After this change, the GPM was 35%. This figure was subject to further review." Firstly, such conduct does not constitute simply an AR (analytical review) as contended for by Mr Abdulla - it constitutes an instruction to amend figures. (See also, p 14, par 17.2 - "*... review and draft the interim results..")* It is clear from the draft interim results (AY07) that it does not in and of itself reflect a GPM. It is necessary to amend numbers within the draft interim results in order to arrive at any particular GPM. In order to arrive at a higher GPM than that reflected in the draft interim results one would need to increase the gross profit reflected in the interim results. This can be done either by increasing the 'revenue' amount or by decreasing the 'costs of sales' amount.

We find that the conduct of Mr Abdulla was not limited to simply performing an 'AR' (analytical review).

56.6. According to the evidence of Mr Salie, when he received the spreadsheet with the interim results, it reflected a profit of R50 million, (record, p. 676) which was later increased on instruction of Mr Abdulla. (record, p 678 - 679). The versions of both Ms Gamieldien and Mr Salie are consistent that Mr Abdulla required the profit figure to be increased.

56.7. Mr Abdulla attended the board meeting on 4 May 2018. (record, p 750, par 17.23)

56.8. After the board meeting Mr Abdulla and Mr Salie reviewed Aye's GPM figures. Mr Abdulla and Mr Salie reviewed the revenue and cost of sales figures in the subsidiaries of Ayo, and established that *"the issue lay in Puleng, which comprised 80% of AYO's revenue".* (record, page 56, par 31) Mr Salie extracted the sales and costs of sales figures from Puleng's management accounts ("AYO10"). *"On the strength of the schedule,* a *further adjustment of R4,210,329 was made to AYO's* GPM'.[17]

[17] This is obviously not an adjustment to Ayo's GPM but rather a decrease of the costs of sales. (see record, page 56, paragraph 35). GPM reflects a margin or a percentage - the figures have to be changed if one wishes to increase the GPM.

56.9. The 'adjustment' of R13,789,671 and R4,210,329 "... *brought the total downward adjustment to the cost of sales to R18 million."* This was the *"net decrease in the costs of sales required to produce* a *GPM in AYO of 35.8%."* (record, page 56, par 35)

56.10. Mr Abdulla gave instructions to Mr Salie, the CIO of AEEI[18] - neither a director nor employee of Ayo - to attend to the amendment of certain figures in the draft interim results.

56.11. The aforesaid adjustments to the costs of sales in order to arrive at the GPM required by Mr Abdulla resulted in an 'amended' NPAT from R32 million (R32,391,472) to R50 million.

56.12. Mr Abdulla was quite clearly involved in amending the figures in the draft interim results.

56.13. Mr Abdulla was one of the Ayo board members who approved the unaudited 2018 interim results which contained the improper adjustments for dissemination to shareholders and the market. (Mr Abdulla having been directly involved in the amendment of line items in the draft interim financials in order to arrive at the desired GPM had direct knowledge of such amendments/adjustments). The conduct of Mr

[18] Mr Salie reported directly to Mr Abdulla in Mr Abdulla's capacity as AEEI group chief executive officer. (Record, page 18, paragraph 26.4)

Abdulla in fact resulted in the misstated financial information that had to be corrected through restatement of the financials which reduced the NPAT. The fact that Ayo did not have sufficient systems in place to detect the misstatements and that others within Ayo ought to have picked up such misstatements does not change the fact set out in the previous sentence. The restatements were the result of the adjustments in which Mr Abdulla was implicated and on which the JSE found him to have contravened the Listings Requirements.

56.14. Ayo failed to comply with paragraph 8.57(a) of the Listings Requirements. The interim results for February 2018 had to be restated. (record, page 76, par 153)

56.15. The conduct of Mr Abdulla materially caused the aforesaid non-compliance/breach of the Listings Requirements.

57. The facts set out above demonstrate that Mr Abdulla failed to act in accordance with paragraph 8.57(a) of the Listings Requirements and caused Ayo to act in breach thereof. It is not necessary for us to deal with all of the further evidence which further demonstrates the aforesaid breaches. The facts further demonstrate that Mr Abdulla acted in breach of General Principle (v).

58. We have dealt with the argument of Mr Abdulla that the relevant Listings Requirements do not place an obligation on him (as a director). The directors of

listed companies are directly responsible for ensuring compliance and for the reasons already provided the argument is dismissed.

59. In our view, the JSE did not err in its findings regarding the breach of paragraph 8.57(a) and General Principle (v) of the Listings Requirements.

3 Laws Capital Transactions

60. On a conspectus of the evidence, it is not in dispute that Mr Abdulla gave instructions (or on his version 'requested') the relevant payments to be made to 3 Laws Capital - for example: "... *on 22 December 2018, I requested that the payments be made to 3 Laws ..."* (Record, page 798, par 21.1). On the same day R70 million was paid to 3 Laws Capital and Sekunjalo (R35 million to each). On 1 March 2018, Mr Abdulla contacted Ms Gamieldien and requested/instructed her to make payment of R400 million to 3 Laws Capital. This payment was made on 5 March 2018.

61. Ms Gamieldien furnished evidence that after the 21 December 2017 listing of Ayo, Mr Abdulla telephonically instructed her on 22 December 2017 to transfer R35 million to 3 Laws Capital and a further R35 million to Sekunjalo, which she did. Further, that Mr Abdulla telephonically instructed her on 1 March 2018 to transfer a further R400 million to 3 Laws Capital, which was paid on 5 March 2018.

62. The evidence supports the fact that the transactions with 3 Laws Capital constituted related party transactions/agreements and should have been categorised and disclosed accordingly. The conduct of Mr Abdulla in instructing/requesting payments to be made to 3 Laws Capital, payments which were made into the bank accounts of 3 Laws Capital (R35 million with reference to PMA1 and R400 million with reference to PMA2) on his instruction / at his request, constituted the execution of performance in respect of related party transactions/agreements. When this was done, there had not been compliance with paragraph 10 of the Listings Requirements. Mr Abdulla does not allege compliance with paragraph 10 of the Listings Requirements at the time that the payments were made to 3 Laws Capital.

63. Mr Abdulla facilitated the implementation of the transactions and gave instructions/requests for payments to be made to 3 Laws Capital, which were paid directly into 3 Laws' current bank account. (R35 million on 22 December 2018 and R400 million on 5 March 2018).

64. Mr Abdulla, through his role in the transactions, caused and/or contributed to Ayo's breach / non-adherence to the Listings Requirements.

65. However, this is not the end of the matter in this regard. In argument before us regarding sanction, counsel for Mr Abdulla referred to the decision of the JSE dated 25 November 2022 in respect of Ayo **("KA1**", p 860 - 866 (the **"Ayo 2022 decision"))** in which Ayo's 'related party transaction breaches' in respect of

PMA1 and PMA2 (amongst others) were categorised as breaches of paragraph 10.7 of the Listings Requirements i.e. relevant to 'small related party transactions'.

66. Before dealing with this aspect further, we must point out that neither in the application for reconsideration nor in the supplemented grounds for reconsideration was this ground raised - i.e. that Ayo breached par 10.7 of the Listings Requirements as opposed to paragraph 10.4 of the Listings Requirements. In fact, the document referred to by counsel for Mr Abdulla in argument regarding this aspect **("KA1",** p 860 - 866 i.e. the Ayo 2022 decision) was attached by Mr Abdulla to his 'supplemented grounds' in support of a ground of *"bias by the JSE"* (augmented grounds, at record p 847 - p 848) and specifically in support of the fact that Mr Abdulla was not mentioned in such decision (see p 848, par 18). (We have already dealt with and rejected the 'bias' and other procedural grounds). Further, Mr Abdulla did not properly engage with the finding of the JSE that on the facts that the relevant transaction constituted a 'category 1' transaction with a related party. (at *inter alia* record p 771, par 17)

67. Section 230(3) of the FSR Act provides that an application in terms of section 230(1) of the FSR Act" *...must be made in accordance with the Tribunal rules..."* Rule 10 of the Tribunal Rules provides: *"The application for reconsideration must contain the full particulars of the grounds (stated succinctly) on which the application is based ...".* (our emphasis) In terms of the Tribunal Rules, within 10 days of receipt of the decision-maker's underlying documents and further

reasons an applicant is entitled by notice to "... *amend or augment the grounds on which the application is based, if necessary."*

68. Whilst referred to in one paragraph of the heads of argument filed on behalf of Mr Abdulla (par 27 thereof) dealing with the merits, this was not a ground for reconsideration raised by Mr Abdulla in his reconsideration application. As indicated, in argument before us, this aspect (that Ayo had been held liable for breach of par 10.7 of the Listings Requirements - as opposed to par 10.4 - in relation to PMA1 and PMA2) was referred to with reference to an argument regarding sanction. (the **"par 10.7 issue")**

69. Be that as it may, it is not in dispute that Ayo was found to have breached par 10.7 of the Listings Requirements in respect of PMA1 and PMA2. (record p 213, par 44.2 read with **"AA6",** p 435 (the **"Ayo 2022 censure"))** This is in terms of the documentation of the JSE itself. That being so, the decision of the JSE that Mr Abdulla is to be held responsible for causing Ayo to be in breach of par 10.4 of the Listings Requirements in respect of the same transactions (PMA1 and PMA2) cannot stand. On reconsideration, we intend to set that decision aside and to substitute such decision with our own in this regard. (FSR Act, s 234(1)(b))

70. The argument of Mr Abdulla in respect of Ayo being in breach of paragraph 10.7 of the Listings Requirements (as opposed to par 10.4) is akin to a type of 'avoidance and confession'[19] argument. In order to avoid a breach of paragraph

[19] Our own term to describe such argument.

10.4 of the Listings Requirements, a breach of paragraph 10.7 must be confessed. But for this aspect (never properly raised as a ground of objection by Mr Abdulla), we reject the grounds of reconsideration raised by Mr Abdulla. The facts have been exhaustively detailed in the substantial record, and Mr Abdulla has been confronted with the related party transactions at a factual level and has repeatedly responded thereto. We have all the facts at our disposal to substitute the decision of the JSE (the market infrastructure) with our own. It is common cause that 3 Laws Capital is a related party. We have found that PMA1 and PMA2 constitute related party transactions. The Ayo 2022 decision and the Ayo 2022 censure indicate that the aforesaid constitute 'small related party transactions'. Ayo did not comply with any part of paragraph 10.7 of the Listings Requirements in respect of the aforesaid transactions - Ayo did not inform the JSE in writing of the details of the proposed transaction; did not provide the JSE with written confirmation from an independent professional expert that the terms of the transactions were fair *et cetera.* The conduct of Mr Abdulla through his role in the transactions, caused and/or contributed to Ayo's breach of the Listings Requirements regarding related party transactions, specifically in respect of paragraph 10.7 of the Listings Requirements.

71. Our order shall reflect the aforesaid decision.

The sanction decision:

72. In his reconsideration application, Mr Abdulla sets out various *"mitigating factors",* such as his capacity as non-executive director, his compliance history

and the fact that he is a first-time offender, the nature, seriousness and duration of the breach, the degree of fault, evidence of material harm or prejudice, cooperation with the JSE and steps taken to correct Ayo's conduct *et cetera.* Mr Abdulla submits that the penalty induces a sense of shock, and he requests in the circumstances of the matter, that if the JSE's findings are upheld, the public censure be substituted for a private censure and the fine be significantly reduced.

73. As submitted by counsel for Mr Abdulla, the ordinary rule to be applied in reconsideration applications is that the Tribunal may interfere with the JSE's exercise of its sanctioning discretion where: **(a)** it failed to bring an unbiased judgment to bear; **(b)** it did not act for substantial reasons; **(c)** it exercised its discretion capriciously; or **(d)** it exercised its discretion upon a wrong principle. **(MET Collective Investments (RF) (Pty) Ltd v FSCA and another,** A23/2019, 29 July 2020 par [67]; **Mwale and Another v The Prudential Authority and Another,** PA1/2019, 12 Jun 2019 p. 16. see, also: **Renault Otto Kay v The Financial Sector Conduct Authority** (FST, case no: A19/2022 6 February 2023) par [471)

74. But for the par 10.7 issue, Mr Abdulla fails to make out a case for a reconsideration of the sanction decision on the above basis. The JSE provided its reasons for its sanction decision, including the role of directors in ensuring that listed companies comply with the Listings Requirements, which Listings Requirements bind directors, and accurate, reliable financial information published by companies in ensuring a fair, efficient, and transparent market,

which is one of the fundamental aims of the Listings Requirements. The reasons cannot be faulted and the JSE exercised a discretion in this regard.

75. Counsel for Mr Abdulla submit further that the JSE: "... *failed to consider or afford any, or appropriate weight, to either the obligatory or the discretionary requirements of section 167(2) of the FSR Act* ... " (Heads obo Mr Abdulla, par 40) However, (as pointed out in the heads of argument for the JSE) section 167 of the FSR Act does not regulate the JSE's power to impose sanctions: s 167 regulates the power of a *"responsible authority";* s 1 of the FSR Act defines *"responsible authority"* as the *"responsible authority for the financial sector law as defined in section* 5". Section 5 refers to schedule 2 of the FSR Act. Schedule 2 refers to the Prudential Authority, the Financial Sector Conduct Authority, and the Reserve Bank. It does not refer to the JSE; Accordingly, s 167 of the FSR Act does not apply to the JSE. It does not apply to the JSE because the JSE, for the purposes of the FSR Act, is a *"market infrastructure"* not a *"responsible authority".* (see also: **Markus Johannes Jooste v JSE Limited** Case No.:JSE4/2022 at par [72])

76. The argument that the present sanction is not in line with prior sanctions in other matters does not assist. Each particular matter is fact and context specific. Further, such argument does not fall within the grounds that we have addressed above.

77. What is relevant however is the 'par 10.7 issue'. Mr Abdulla was sanctioned for a breach of *inter alia* paragraph 10.4 of the Listings Requirements whereas the breach related to paragraph 10.7 of the Listings Requirements (as dealt with above). As is apparent from the Ayo 2022 decision (p 860) the JSE in exercising its discretion regarding the *quantum* of a fine sanctions substantially differently in respect of breaches of paragraph 10.4 of the Listings Requirements (PMA3) (for which Ayo initially received a fine of R1 million reduced to R500,000 - par 4.2, p 861) versus breaches of paragraph 10.7 of the Listings Requirements (PMA1 and PMA2) (for which Ayo received a fine of R100,000 for each transaction / breach - par 4.1, p 860 - 861) Accordingly, and with specific reference to the related party transactions *in casu,* the JSE exercised its discretion upon a wrong principle in this specific regard.

78. Whilst there is no precise science to the determination, and cognisant of the fact that the JSE exercises a discretion in this regard, we intend to reduce the fine payable by Mr Abdulla firstly by applying the discretion that the JSE exercised but with reference to a breach of paragraph 10.7 as opposed to 10.4 of the Listings Requirements. The decision relevant to Mr Abdulla does not indicate what part of the R2 million fine is attributable to the interim results breach and what part to the related party breach. However, with reference to the Ayo 2022 decision (p 860) it is apparent that the fine imposed in respect of PMA3 (par 10.4 breach) was initially in the sum of R1 million. The Ayo 2022 decision (p 860) imposes a fine on Ayo of R100,000 for each of the small related party transactions - i.e. a total fine of R200,000 for the PMA1 and PMA2 par 10.7 breaches. Applying the aforesaid findings to the facts before us, the total fine

imposed on Mr Abdulla of R 2 million stands to be reduced in the sum of R800,000. (R1 million minus R200,000)

79. Furthermore, applying the principles that the JSE applies in determining the quantum of fines to be imposed for breaches of the Listings Requirements to the facts of this matter and the decisions (as corrected) a total fine of R1,200,000 is in our view fair, reasonable, appropriate and proportionate.

80. Regarding the challenge to the public censure to be imposed on Mr Abdulla, in our view no proper case is made out in this regard. Enforcement action by the JSE through *inter alia* censures serve to ensure compliance by issuers, directors and officers with the Listings Requirements. It also serves to protect investors, stakeholders and the integrity of the South African financial markets. The supervision and enforcement of the Listings Requirements are fundamental cornerstones of protecting the public interest and advancing the objects and purpose of the FMA. Enforcement actions are further aimed at deterring transgressions of the Listings Requirements by issuers. They also contribute to educate the market, influence compliance culture and attitude, and enhance corporate governance. These aims cannot be properly achieved through private censure, as proposed by Mr Abdulla. Mr Abdulla has acted in breach and has caused Ayo to act in breach of important Listings Requirements. A public censure, of course reflecting his actual breaches / non-compliance, is appropriate. In addition, the JSE is entitled to publish the particulars. (Listings Requirements, par 1.22 and 1.28)

Costs:

81. Costs were not sought in the application, nor in either parties' heads of argument. There are no exceptional circumstances as envisaged in s 234(2) of the FSR Act.

Order:

82. The reconsideration application is upheld to the following extent:

82.1. The decision of the JSE finding Mr Abdulla, in his capacity as a non-executive director of Ayo Technology Solutions Limited, to be in breach of the provisions of paragraph 10.4 of the Listings Requirements for his role in facilitating and negotiating the payments directly into 3 Laws Capital (Pty) Ltd bank account in respect of PMA1 and PMA2 is set aside and substituted with a decision and finding that:

> *"Mr Abdulla, in his capacity* as a *non-executive director of Ayo Technology Solutions Limited, is found to be in breach of the provisions of paragraph 10.7 of the Listings Requirements for his role in facilitating and negotiating the payments directly into 3 Laws Capital (Pty) Ltd bank account in respect of PMA1 and PMA2."*

82.2. The decision of the JSE to impose a fine in the amount of R2 million (two million rand) on Mr Abdulla is set aside and substituted with a decision to impose a fine in the amount of R1.2 million (one million, two hundred thousand rand) on Mr Abdulla.

83. But for the aforesaid, the remainder of the application for reconsideration is dismissed.

Signed on behalf of the Tribunal panel.

C Woodrow SC

(together with panel members PR Long, J Perna)