



**IN THE MATTER OF THE COMPANIES ACT CAP 106**  
**IN THE MATTER OF AN APPLICATION TO THE REGISTRAR OF COMPANIES**  
**APPLICATION CAUSE NO. 45582 OF 2025**  
**IN THE MATTER OF KICHEMBE BROTHERS CO LIMITED**  
**JOY TINDIWEGI:..... APPLICANT**

**VERSUS**

- 1. JULIA TIGEITA MUNUBI**
- 2. HARRIET NYANJURA MUNUBI:.....RESPONDENTS**

**RULING ON A PRELIMINARY OBJECTION**

**BEFORE: DANIEL NASASIRA – ASSISTANT REGISTRAR OF COMPANIES**

**A. Representation**

- 1. Counsel Asasira Ingrid from M/S Ngaruye Ruhindi, Spencer and Co. Advocates represented the applicant while Counsel Rubeizi Jacob and Muhereza Wilbert from Owesigire, Muhereza & Co Advocates represented the respondents.*

**B. Background**

2. The applicant filed this application seeking various orders including rectification of the register of Kihembe Brothers Co. Limited by expunging the resolutions filed on the 08<sup>th</sup> day of July 2024, 17<sup>th</sup> day of December 2024 and all company decisions and transactions made in the absence of the applicant under the Companies (Powers of the Registrar) Regulations SI No. 71 of 2016. The applicant contends

that a number of resolutions were passed by the two respondents without her knowledge and consent. The requirement to issue notices inviting members for meetings to discuss proposed resolutions was not complied with. One of such resolutions passed without the applicant's knowledge/consent includes a resolution appointing Byabashaija Jimmy as a representative of the company in a bid engagement with Nile Breweries dated 08<sup>th</sup> July 2024, another resolution was filed on 18<sup>th</sup> December 2024 changing bank account signatories. The applicant contends that these resolutions were passed without the requisite twenty one days notice required to hold a meeting to discuss matters pertaining to the company.

3. The applicant contends in her complaint that as result of the respondents actions, they covertly withdrew money worth UGX 300,000,000/= from Stanbic Bank in April 2024 without the applicants knowledge or consent.
4. When the matter came up for hearing on 03<sup>rd</sup> April 2024, the respondents through their lawyers raised a preliminary objection arguing that the matter was barred by the doctrine of res subjudice as at the time of filing this application, there was a pending civil suit in the High Court of Bushenyi filed on 28<sup>th</sup> January 2025 while the present application was filed on 31<sup>st</sup> January 2025.
5. I instructed both counsel for the applicants and respondents to present written submissions and issued schedules as follows;
  - a) The Applicant hadn't filed a rejoinder to the respondents statutory declaration and they were instructed to file and serve by 09<sup>th</sup> April 2025
  - b) Respondents Submissions on the preliminary objection was to be filed and served by 11<sup>th</sup> April 2025
  - c) Applicants Submissions in reply were to be filed and served by 16<sup>th</sup> April 2025
  - d) Any rejoinder by the respondents was to be filed by 22<sup>nd</sup> April 2025
6. The respondents filed their written submissions regarding the preliminary points of law raised on 07<sup>th</sup> April 2025, well ahead of the established deadline according

to the filing schedules issued to the parties listed above. The applicants submitted their reply on 17<sup>th</sup> April 2025, outside of the previously established time frame for filings. I take note that this was a day after the established deadline/schedule for filings, however, I exercise my discretion under Regulation 34 of the *Companies (Powers of the Registrar) Regulations SI No 71 of 2016* to acknowledge their reply, which has been taken into consideration in reaching this decision, notwithstanding its late submission. The rejoinder was also filed a day beyond the established filing deadline on 23<sup>rd</sup> April 2025 but I take it that this was due to the one day late submission of the applicants reply; so, it is justifiable to acknowledge it as the applicants delay in filing a reply caused the late filing of the rejoinder.

### **C. Issue / Preliminary Objection**

7. During the hearing of this application, a preliminary point of law was raised by the respondents which forms the issue for determination in this matter;

*Whether Application Cause No. 44582 of 2025 is barred by the doctrine of res subjudice*

### **D. Submissions on the Preliminary Objection**

#### ***a) Respondents Submissions***

8. The respondents argue that since Civil Suit No.2 filed at the High Court in Bushenyi came first, the application filed to the Registrar of Companies cannot be handled as this contravenes Regulation 4 and 23 (a) of the Companies (Powers of the Registrar) Regulations SI No. 71 of 2016. Additionally, the respondents contend that the questions of mismanagement being raised in Civil Suit No. 02 of 2025 have a bearing on the matter now before the Registrar of Companies.
9. Regulation 4 of the Companies (Powers of the Registrar) Regulations provides that *“the Registrar shall not hear any matter or application pending before Court which has been brought to his attention. Regulation 4 (2) (b) stipulates that the matter shall be deemed to be before Court in civil proceedings if arrangements for hearing, such as setting down matters for hearing have been made, until the proceedings are ended by judgment,*

*settlement of withdrawal.” Regulation 23 (a) provides that “where an application is made to the Registrar under the Act or these regulations, the registrar may, dismiss the application where the registrar is satisfied that the application is frivolous, vexatious or based on a matter previously determined by the Registrar or matter which is before Court.”*

These are the provisions the Respondents rely on to argue that the matter before the registrar is *res subjudice* and pray for the matter to be dismissed with costs to the respondents.

10. The Respondents also contend that while Joy Tindiwegi is not a party to Civil Suit No. 002 of 2025, her participation in the fraudulent scheme of embezzling and mismanagement of the finances of Kihembe Brothers Co. Ltd as a former shareholder in Jolabet Investments Limited are apparent. Jolabet Investments Limited was used by the applicant to commit fraudulent actions against Kihembe Brothers Co. Ltd and the chief architect of this fraud was the applicant in this matter. In any case, the respondents argued that the applicant can apply to be added to civil suit No. 002 of 2025 if she so wishes.

***b) Applicants Submissions in Reply***

11. The Applicant argued that the instant application is between Joy Tindiwegi V Julia Tigeita Munubi and Harriet Nyanjura Munubi while the Civil Suit filed at the High Court in Bushenyi is between Kihembe Brothers Company Limited V Musinguzi Laban, Tukahirwa Betty Bibaho and Jolabet Investments Ltd. The Applicant further argued that aside from the parties being different, the facts and prayers being sought in the two cases is also different.
12. The facts of the matter before the Registrar of Companies are that the respondents, without notifying the Applicant held meetings on 08<sup>th</sup> July 2024, 17<sup>th</sup> December 2024 and several other meetings and made various resolutions without causing any meeting of the directors and without the consent of the Applicant. On the other hand, the facts constituting the cause of action in Civil Suit No.002 of 2025

are that the 1<sup>st</sup> and 2<sup>nd</sup> defendants who are former employees of Kihembe Brothers Company Limited together with Jolabet Investment Ltd grossly mismanaged and embezzled company finances. Additionally, the prayers being sought in the two matters are also different.

13. The Applicant asserts that Civil Suit No. 2 of 2025, involving Kihembe Brothers Co. Ltd and its employees regarding mismanagement of company funds, is distinct from the case currently before the Registrar of Companies. In this particular case, the applicant, as a shareholder of Kihembe Brothers Co. Ltd, is raising concerns against her fellow shareholders (the respondents) for enacting resolutions without providing her notice of any meetings. The applicant contended that this matter falls squarely within the jurisdiction of the Registrar of Companies and will not affect the proceedings of Civil Suit No. 2 of 2025 pending at the High Court in Bushenyi.

*c) Respondents rejoinder*

14. The respondents counsel in rejoinder argued that Regulations 4 and 23 of the Companies (Powers of the Registrar) Regulations SI. No 71 of 2016 only require the respondents to demonstrate to the Registrar of Companies that the application before him is already subject of an ongoing court case. The respondents argued that taking this further would be to argue the merits of the case, which is unnecessary for a preliminary objection.
15. The respondents counsel argued that while the applicant is not a party to the Civil Suit No.002 of 2025 filed in the High Court in Bushenyi, she was a former shareholder of the third respondent Jolabet Investments Limited that perpetrated a number of fraudulent activities that affected Kihembe Brothers Co. Ltd at the time she was a member. The nexus between the applicant and Jolabet Investments Limited therefore makes her subject to the trial in Civil Suit No.002 of 2025 even if she is not a party.

16. The respondents' counsel additionally argued that the applicant's complaints in the proceedings before the Registrar of Companies clearly align with the definition of unfair prejudicial conduct, which falls under the jurisdiction of the High Court as stipulated in Section 244 of the Companies Act Cap 106, rather than that of the Registrar of Companies. The respondents' counsel argued that claims of prejudicial conduct submitted to a Registrar of Companies should be dismissed, as the Registrar lacks the jurisdiction to address such claims, which fall under the jurisdiction of the High Court.

#### **E. Determination**

##### **Whether Application Cause No. 44582 of 2025 is barred by the doctrine of res subjudice**

17. The term "*res subjudice*," derived from Latin meaning "*a matter under judgment*," refers to a legal principle that prohibits multiple courts/forums from concurrently adjudicating the same case. This principle indicates that when a case is pending in one court/forum, another court/forum should refrain from considering a similar suit until the initial case is concluded. It effectively bars the initiation of a second lawsuit when a related case involving the same parties and subject matter is already active in a different court. Court in *Avodia Antipas Swai v. Asha Ahmed Jama and 4 Others, Miscellaneous Land Application No. 07 of 2023 HC-Dodoma* highlights the main grounds for the doctrine of res subjudice to succeed at page 8, '*the main conditions for the doctrine of res subjudice to succeed are that the matter in issue in both cases are to be substantially the same and the previously instituted suit must be pending in the same or any other Court competent to grant relief claimed in the suit and relief claimed in subsequent suit.*'

18. For a matter to be considered "*res subjudice*," it is necessary for the following ingredients to be satisfied. Firstly, there ought to be two lawsuits that are now being considered, with one of them being filed before the other, including the same

parties. Secondly the suits should involve the same subject matter. Finally, the court handling the matter should possess the requisite jurisdiction to handle the case. Once the doctrine of *res subjudice* is satisfied, the appropriate course of action is to either stay the proceedings in the subsequent matter until the first suit is resolved or to dismiss the latter suit entirely. (See decision in *Gupte Cardiac Care Centre and Hospital V. Olympic Pharma Care Pvt. Ltd. 2004 AIR SCW 2427*). I will delve into each of the above ingredients below

**a) There ought to be two lawsuits that are now being considered, with one of them being filed before the other, including the same parties.**

19. The instant application is between Joy Tindiwegi versus Julia Tigeita Munubi and Harriet Nyanjura Munubi while Civil Suit No. 002 of 2025 filed in the High Court in Bushenyi is between Kihembe Brothers Co Ltd versus Musinguzi Laban, Tukahirwa Betty Bibaho and Jolabet Investments Limited. This shows that the parties in the two suits are different. The determination of whether the decision in this matter will affect the forthcoming decree in Civil Suit No. 002 of 2025 in the High Court of Bushenyi will be addressed while evaluating the additional criteria regarding the similarity of subject matter in both cases. It is apparent that, *prima facie*, the two cases involve different parties; thus, the criterion concerning *res subjudice*, which requires the involvement of the same parties, is not met. I want to address the respondent's argument that the applicant Joy Tindiwegi has the option to submit an application to be added as a party to the Civil Suit at the High Court in Bushenyi. On two fronts, I consider that this reasoning is flawed. Firstly, the respondents had a choice to include the applicant in the case if they desired to have identical problems that were brought up in this matter resolved at the High Court in Bushenyi. Secondly, a party cannot be compelled to include herself in a legal dispute.

20. Civil Suit No. 002 of 2025 was initiated in the High Court of Uganda at Bushenyi on January 28, 2025, whereas the current application/complaint to the Registrar of Companies was submitted on January 31, 2025. Although Civil Suit No. 002 of 2025 was filed first, it is essential to ascertain whether the subject matter in the two actions are similar for the matter before the Registrar of Companies to be considered barred by the doctrine of *res subjudice*. I will therefore delve into the second criterion for the doctrine of *res subjudice* to succeed below.

**b) The suits should involve the same subject matter.**

21. The respondents counsel relies on Regulations 4 and 23 (a) of the *Companies (Powers of the Registrar) Regulations SI No. 71 of 2016* to argue that Civil Suit No. 002 of 2025 filed in the High Court at Bushenyi raises similar subject matter as in the instant application before the Registrar of Companies and therefore ought to be dismissed and poses challenges of passing contradictory findings, rulings and orders.

22. Regulation 4 of the *Companies (Powers of the Registrar) Regulations SI No. 71 of 2016* provides that, “*the Registrar shall not hear any matter or application pending before Court which has been brought to his attention.*” Regulation 4 (2) (b) stipulates that, “*the matter shall be deemed to be before Court in civil proceedings if arrangements for hearing, such as setting down matters for hearing have been made, until the proceedings are ended by judgement, settlement or withdrawal.*” In similar terms, Regulation 23 (a) of the *Companies (Powers of the Registrar) Regulations* provides that, “*where an application is made to the registrar under the Act or these regulations, the registrar may; dismiss the application, where the registrar is satisfied that the application is frivolous, vexatious or based on a matter previously determined by the registrar or a matter which is before court.*”

23. The question to determine for the doctrine of *res subjudice* to succeed is whether Civil Suit No.002 of 2025 raises similar questions of law and fact as those in the



present matter before the Registrar of Companies. Court in *Isihaka Said Lukindo v Leah Ulaya & 21 others, Miscellaneous Application no. 5213 of 2024, High Court Dar es Salaam*, underscored the necessity for the matter directly and substantially in issue in both cases to be similar. The court determined that the cases must be identical, rather than being significantly distinct.

24. In *Badugu Ginning Co. Ltd v. CRDB Bank Pic and 2 others, Civil Appeal No. 265 Of 2019 CAT - MZA Registry, (2021) (unreported)* at page 18 last paragraph and page 19 first paragraph respectively by relying on the book by Mulla, 13th Edition, Vol 1, the Court did interpret the meaning of phrase "matter directly and substantially in issue" as follows: *'The law is accordingly well settled that to invoke the bar of res subjudice, it is not necessarily that the cause of action in the two suits should be identical. It is only required that the matters directly and substantially in issue should be the same in both suits.... Every matter in respect of which relief is claimed in a suit is necessarily a matter "directly and substantially in issue.'*

25. The prayers/reliefs sought in Civil Suit No.002 of 2025 are around mismanagement of the affairs of Kihembe Brothers Co. Ltd. The prayers made in Civil Suit No.002 of 2025 are;

- a) *A declaration that the 1<sup>st</sup> defendant in concert with the 2<sup>nd</sup> and 3<sup>rd</sup> defendants grossly mismanaged and embezzled finances of the plaintiff*
- b) *A declaration that the depositing of money from sales of the plaintiff business stock on the 2<sup>nd</sup> defendants personal Stanbic Bank Account No.9030011086569 was illegal and fraudulent.*
- c) *A declaration that the depositing of money from sales of the plaintiff business stock on the 3<sup>rd</sup> defendants Stanbic Account No. 9030016018928 was illegal and fraudulent.*
- d) *A declaration that the 2<sup>nd</sup> defendant's actions of paying money to Nile Breweries Ltd on behalf of the plaintiff was illegal, fraudulent and done without authority.*

- e) *An order directing the 2<sup>nd</sup> and 3<sup>rd</sup> defendants to pay the plaintiff all the money illegally and fraudulently deposited on their Stanbic Bank Accounts No. 9030011086569 and No. 9030016018928 respectively.*
- f) *An order compelling the 1<sup>st</sup> defendant to pay the plaintiff all money he mismanaged and embezzled during his tenure as managing director.*
- g) *An order compelling the 1<sup>st</sup> defendant to pay any pending debt to Nile Breweries accumulated during his tenure as managing director.*
- h) *An order for general damages against the defendants jointly and severally for economic loss, fraud, illegality and general inconvenience caused to the directors of the plaintiff.*
- i) *An order of punitive damages against the defendants jointly and severally for their malicious and intentional fraud and financial mismanagement.*

26. The prayers/reliefs being sought by the applicants before the Registrar of Companies are;

- a) *Production of all books of accounts of the Company for inspection, to wit, annual books of accounts, bank statements and balance sheets.*
- b) *Rectification of the register of Kihembe Brothers Company Limited by expunging the resolutions filed on the 12<sup>th</sup> day of April 2024, 8<sup>th</sup> day of July 2024 and 17<sup>th</sup> day of December 2024 as per the Companies (Powers of the Registrar) Regulations*
- c) *Invalidating the said Powers of Attorney*
- d) *Initiating further legal action if necessary to ensure compliance.*

27. I have endeavored to reiterate the prayers/reliefs being sought in Civil Suit No. 002 of 2025 at the High Court in Bushenyi and the prayers in the Application Cause No.45582 of 2025 before the Registrar of Companies to illustrate that there is no correlation between any of the aforementioned prayers/reliefs in the two cases. The remedies sought are different and the parties in the two cases are also different. The case before the Registrar of Companies will examine issues related to matters of rectification of the register which is well within the jurisdiction of the

Registrar to handle while the Civil Suit at the High Court in Bushenyi is solely focused on the management and governance issues of Kihembe Brothers Company Limited.

28. Based on the prayers/reliefs sought and subject matter of Civil Suit No. 002 of 2025 in the High Court in Bushenyi, there appears to be no direct connection that would justify a stay or dismissal of the current matter before the Registrar of Companies entirely, as the two cases present some distinct issues for consideration by the two forums. Civil Suit No.002 of 2025 pertains to claims of fraud and mismanagement involving Musinguzi Laban, Tukahirwa Betty Bibaho, and Jolabet Investments Limited. Conversely, the application submitted to the Registrar of Companies will focus on requests for rectification of the register, particularly concerning resolutions passed without the applicants' consent or knowledge as shareholder/director.

**c) The court/forum handling the matter should possess the requisite jurisdiction to handle the case.**

29. It is trite that jurisdiction is a creature of statute and no Court or tribunal can confer upon itself jurisdiction and where a court that has no jurisdiction entertains a matter any proceedings arising therefrom are a nullity. (*See Baku Raphael & Anor V AG SCCA No.1 of 2005 cited with approval in National Medical Stores V Penguins Ltd HCCS No. 29 of 2010*). The learned Justice Musa Ssekaana in Company Cause No.13 of 2020 **Bryan Xsabo Strategy Consultants (Uganda) Limited & 2 Ors V Great Lakes Energy Company N.V** found that, '*the exercise of power by the Registrar of Companies contemplates the adjudication of rival claims... they decide both questions of fact as well as of law and determine a variety of applications, claims, controversies and disputes.*' It follows from this authority that issues relating to rectification of the register raise both questions of law and fact that is well within the Jurisdiction of the Registrar of Companies to determine.

30. The respondent in his submissions on the preliminary objection seems to suggest that the Registrar of Companies is not a court of law and therefore has no jurisdiction to entertain the instant matter. Counsel relied on the decision of Hon. Justice Boniface Wamala in *Mohamed Allibhai V Attorney General 2022 UGHCCD 94*, where the learned justice opined that, “*It is not in dispute that the mandate to hear and adjudicate disputes lies with the courts.*” I wish to respond to this assertion by highlighting that the Registrar of Companies has a quasi-judicial mandate both under the Companies Act Cap 106 and the Companies (Powers of the Registrar) Regulations SI No. 71 of 2016. The Black's Law Dictionary defines a quasi-judicial body as *an entity outside the conventional judiciary that possesses the authority to render decisions with legal implications, analogous to a court of law*. The Registrar of Companies, when exercising the quasi-judicial powers granted under the Companies Act Cap 106 and the Companies (Powers of the Registrar) Regulations SI No 71 of 2016, operates in a capacity akin to that of a judicial body. Unless the Registrar provides remedies beyond their authority or addresses issues typically reserved for the High Court or pending before Court, such as actions constituting prejudicial conduct under Section 244 of the Companies Act Cap 106, their decisions/rulings will consistently be deemed within the scope of their quasi judicial mandate under the Companies Act Cap 106 and the Companies (Powers of the Registrar) Regulations SI No 71 of 2016. I therefore find counsels submission misconceived and misguided.

31. Regulation 8 (1) of the Companies (Powers of the Registrar) Regulations SI No. 71 of 2016 gives powers to the Registrar of Companies to rectify and update the register to ensure that it is accurate. Regulation 8 (2) goes further to state that the registrar may expunge from the register, any information or document included in the register which;

a) *Is misleading*

- b) *Is inaccurate*
- c) *Is issued in error*
- d) *Contains an entry or endorsement made in error*
- e) *Contains an illegal endorsement*
- f) *Is illegally or wrongfully obtained; or*
- g) *Which a court has ordered the registrar to expunge from the register*

32. The Registrar of Companies will focus on addressing matters pertaining to the rectification of the register, particularly concerning alleged claims of resolutions and decisions made without the applicants or complainant's consent and knowledge as a shareholder and director in the company. Both parties should therefore limit their arguments and submissions to issues regarding register rectification.

#### **F. Remedies**

33. In light of the above analysis, I find that the present matter before the Registrar of Companies presents distinct issues from Civil Suit No.002 of 2025 filed at the High Court in Bushenyi especially in regards to the second prayer/relief sought for rectification of the Registrar. *(Refer to the applicant's complaint filed on 31<sup>st</sup> January 2025)*. I therefore exercise discretion pursuant to Regulation 32 the ***Companies (Powers of the Registrar) Regulations, SI No.71 of 2016***, to overrule the objection and order that the application shall proceed for a formal hearing. I make no order as to costs.

*I so order.*

*Given under my hand, this \_\_\_\_\_ day of \_\_\_\_\_ 2025.*

---

*DANIEL NASASIRA*

*Ass. Registrar of Companies*