THE REPUBLIC OF UGANDA
IN THE MATTER OF THE COMPANIES ACT CAP 106
AND
IN THE MATTER OF THE COMPANIES (POWERS OF THE REGISTRAR) REGULATIONS SI NO. 71 OF 2016
AND
IN THE MATTER OF GARUGA PROPERTIES LIMITED
AND
IN THE MATTER OF KINKIZI DEVELOPMENT COMPANY LIMITED
AND
IN THE MATTER OF INCAFEX LIMITED
AND
IN THE MATTER OF CONSOLIDATED APPLICATIONS Nos. 82542/ 18228/ 03111 OF 2026
BRN: 80010000118228/ 80010000082542/ 80010000103111

MATHEW RUKIKAIRE ::APPLICANT

VERSUS

1. **GARUGA PROPERTIES LIMITED**
2. **KINKIZI DEVELOPMENT COMPANY LIMITED**
3. **INCAFEX LIMITED**
4. **AGABA MAGURU::RESPONDENTS**

RULING

Before: Daniel Nasasira - Assistant Registrar of Companies

A. Representation.

1. *Counsel Mandela Nelson and Munguriek James from Falcon Associated Advocates and Barenzi & Partners Advocates, respectively, represented the Applicant, whereas Counsel Peter Walubiri and Kamwami Arthur Ivan from KBW Advocates represented the Respondents.*

B. Introduction and Background.

2. The Applicant, Mathew Rukikaire, is a shareholder of Garuga Properties Limited holding approximately 0.45% of the issued share capital. Garuga

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Properties Limited holds 140,000,000 shares in Incafex Limited and 6,565 shares in Kinkizi Development Company Limited.

3. The first Respondent Company, Garuga Properties Limited (hereinafter referred to as 'the First Respondent Company'), was incorporated on the 29th day of May 1980 under registration number 80010000082542 as a private company limited by shares.
4. The second Respondent Company, Kinkizi Development Company Limited (hereinafter referred to as 'the Second Respondent Company'), was incorporated on the 20th day of December 1984 under registration number 80010000118228 as a private company limited by shares.
5. The third Respondent Company, Incafex Limited (hereinafter referred to as 'the Third Respondent Company'), was incorporated on the 23rd day of June 1982 under registration number 80010000103111 as a private company limited by shares.
6. The Fourth Respondent, Agaba Maguru, is an advocate of the High Court of Uganda and a director in the named Respondent Companies.
7. These Applications were filed by Mr. Mathew Rukikaire (hereinafter referred to as the "Applicant"), a shareholder in Garuga Properties Limited that holds majority shares in Kinkizi Development Company Limited and Incafex Limited. The Applicant seeks to rectify the register to expunge filings that made the Fourth Respondent, Agaba Maguru, a director in the Respondent Companies.
8. By way of background, the Applicant filed three Applications on 19th May 2026, alleging that the Fourth Respondent had unlawfully assumed the office of director in the Respondent Companies. The Applicant further contended that, following the death of the late Dr. Musinguzi James Garuga, who was the majority shareholder and Managing Director of Garuga Properties Limited, Mr. Agaba Maguru embarked on a scheme of fraudulent conduct aimed at interfering with the management and affairs of the Companies with a view to

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disposing of their assets. It was the Applicant's case that the resolutions purportedly passed and the consequent filings made in furtherance of those actions were neither validly authorised nor lawfully adopted and were therefore incapable of conferring any legal rights, authority, or effect.

9. The Fourth Respondent categorically denied the Applicant's allegations. As a preliminary objection, the Respondents contended that the Applications constituted an abuse of court process, arguing that the Registrar had previously pronounced himself on the very issues now raised by the Applicant in earlier matters instituted by Mr. Musinguzi Alwyn Garuga. Those matters were dismissed for various reasons, among which included the fact that the Applicant, Mr. Musinguzi Alwyn Garuga, lacked *locus standi.*
10. In support of the Respondents' position, Mr. Nganwa Henry Hapa, a director of the First and Third Respondent Companies, filed a declaration affirming that the Fourth Respondent had been validly appointed to the Board. Likewise, Mr. Twinamasiko Jackson, a director of the Second Respondent Company, filed a declaration confirming that the Fourth Respondent's appointment to the Board of Kinkizi Development Company Limited was duly effected pursuant to properly convened board meetings. The Respondents therefore maintained that the Applications were devoid of merit and invited the Registrar to dismiss all three Applications with costs.

C. *Consolidation of Applications*

11. While the Applicant filed three separate Applications concerning the contested appointment of the Fourth Respondent as a Company Director in the Respondent Companies and several other claims, the three Applications appear to arise from similar events and involve interrelated companies, which are represented by the same counsel for both the Applicant and the Respondents. The issues and evidence in the matters are substantially identical, and it is unlikely that the rulings would differ. In ***Patrick Nkoba v Rwenzori***

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Highlands Tea Co. & Another [1999] KALR 762, it was noted that the court could, on its own volition, consolidate actions into one.

12. Justice B.N. Olao, at page 2 of his ruling in ***Francis Wainana Kariuki v Samuel Kiongo Ndegwa and National Bank of Kenya, ELC Case No. 726 of 2013,*** while referring to the Indian Supreme Court of ***Rem Lala Nahata & Another vs Chandi Prasad Sikaria 2007 2 Supreme Court Cases 551 at paragraph 18,*** observed that, *'Consolidation is a process by which two or more causes or matters are by order of the Court combined or united and treated as one cause or matter. The main purpose of consolidation is therefore to save costs, time and effort and to make the conduct of several actions more convenient by treating them as one action. The jurisdiction to consolidate arises where there are two or more matters or causes pending in the Court and it appears to the Court that some common questions of law or fact arise in both or all the suits or that the rights to relief claimed in the suits are in respect of or arise out of the same transaction or series of transactions; or that for some other reason, it is desirable to make an order consolidating the suits".* Thus, consolidation is appropriate where there are common questions of law or fact, shared causes of action, or overlapping series of transactions. Similarly, Kneller J., in ***Stumberg v Potgeiter 1970 E.A. 323,*** outlined considerations for consolidation, including;

    a. *Pending matter before the court/tribunal*
    b. *Similar questions of law or fact*
    c. *Same causes of action*
    d. *Will save expense*
    e. *Same/similar series of transactions*.

13. Applying these principles, and to ensure efficiency and consistency in the determination of these disputes, I find it prudent to consolidate Company Applications 18228, 82542, and 03111 of 2026. By consent of the parties, all three matters were heard together as they involve common questions regarding the validity of the appointment of the Fourth Respondent Director, the procedures

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followed, and the *locus* of the Applicant to bring these claims. As enunciated by the Supreme Court in ***Law Society of Kenya v The Center for Human Rights and Democracy, Petition No. 14 of 2013,*** *'the essence of consolidation is to facilitate the efficient and expeditious disposal of disputes and to provide a framework for a fair and impartial dispensation of justice to the parties.'*

D. Applicant's case.

14. The Applicant's case was founded on the declaration of Mr. Mathew Rukikaire, who described himself as a shareholder in Garuga Properties Limited and Incafex Limited. He stated that he holds 90,000 shares in Garuga Properties Limited, representing approximately 0.45% of its issued share capital, and that Garuga Properties Limited is itself a shareholder in Incafex Limited. He further relied on the decision of the Supreme Court in *Civil Appeal No. 3 of 2015, Rukikaire Mathew v Incafex Limited*, in which he was found to hold a 45% shareholding in Incafex Limited. By virtue of these holdings, the Applicant contended that he has both a direct and indirect interest in the affairs, management, and assets of Incafex Limited and related companies.

15. The Applicant averred that Garuga Properties Limited was incorporated on 29th May 1980 and that the late Dr. Musinguzi James Garuga was its majority and controlling shareholder and Managing Director, holding 9,897,000 shares representing 49.49% of the issued share capital. He further stated that the late Dr. Garuga also held a significant shareholding in Kinkizi Development Company Limited. Following his death on 6th August 2025, the Applicant contended that Garuga Properties Limited was left with only one surviving director, Mr. Nganwa Henry Hapa, thereby rendering the Board incapable of lawfully transacting business for want of quorum as required under the Companies Act and the Articles of Association. He further stated that the process of appointing legal representatives of the estates of the late Dr. Garuga and the late Tumusiime Mutebile, who together held a majority shareholding, was still ongoing at the material time.

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16. The Applicant further asserted that Garuga Properties Limited held controlling interests in several related companies, including Kinkizi Development Company Limited, Kigezi Highland Tea Limited, Kamwenge Community Development Project Limited, and Incafex Limited. He stated that Kinkizi Development Company Limited itself held controlling interests in Kigezi Highland Tea Limited and Kamwenge Community Development Project Limited.
17. The Applicant averred that upon examining records at the Companies Registry, he discovered that on 5th January 2026, a Special Resolution and Company Form 20 had been lodged appointing Mr. Agaba Maguru, the Fourth Respondent, as a director of Garuga Properties Limited. He further stated that on 17th December 2025, similar filings were lodged in respect of Kinkizi Development Company Limited, and on 23rd January 2026, a special resolution and Company Form 20 were lodged appointing the said Mr. Agaba Maguru as a director of Incafex Limited.
18. The Applicant maintained that he did not receive any notice of, nor participate in, any Extraordinary General Meeting or shareholders' meeting authorising the said appointment or authorising Mr. Agaba Maguru to represent Garuga Properties Limited in the affairs of any of the affected companies.
19. Relying on legal advice, which he verily believed to be true, the Applicant contended that the impugned actions and filings were undertaken without the approval of Garuga Properties Limited as a majority shareholder; without a duly constituted Board of Directors; without any requisition of members; without participation or representation of the majority shareholders or their estates; without the requisite quorum of both directors and shareholders; and without valid meetings, notices, or minutes, and were therefore devoid of any lawful authority. He further asserted that no lawful resolution was ever passed appointing Mr. Agaba Maguru to represent Garuga Properties Limited in any of the affected companies.

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20. The Applicant further stated that on 27th January 2026, the High Court (Commercial Division) ordered an audit to determine the status of his 45% shareholding in Incafex Limited and, if unpaid, to have the same regularised; however, he alleged that the Second Respondent frustrated the implementation of that order.

21. The Applicant therefore contended that the impugned resolutions and filings were irregular, unlawful, null and void, and incapable of conferring any valid authority. He further argued that their continued existence on the Companies Register enabled Mr. Agaba Maguru to hold himself out as a director without lawful authority, exposed the companies to unauthorised transactions, and created a real risk of dissipation of company assets.

22. Accordingly, the Applicant prayed for orders rectifying the registers of Garuga Properties Limited, Kinkizi Development Company Limited, and Incafex Limited by expunging the impugned special resolutions and Company Form 20 filings, restoring the registers to reflect the lawful position, together with costs of the Application and any other orders deemed appropriate by the Registrar.

E. <u>Respondents' case.</u>

23. The Fourth Respondent, Mr. Agaba Maguru, together with Mr. Nganwa Henry Hapa, a director of Garuga Properties Limited and Incafex Limited, and Mr. Twinamasiko Jackson, a director of Kinkizi Development Company Limited, each swore statutory declarations affirming the lawful appointment of Mr. Agaba Maguru as a director within the Respondent Companies and denying the allegations raised by the Applicant in all three Applications.

24. The Respondents' first and most fundamental objection was that the Applicant lacks the *locus standi* to institute or maintain the proceedings. The Respondents contended that the Applicant holds a mere 0.45% shareholding in Garuga Properties Limited and that this interest, however modest, could not translate into any legal stake in the affairs, management, or assets of the subsidiary and

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affiliated companies, namely Kinkizi Development Company Limited and Incafex Limited. The Respondents relied on the established principle of separate corporate personality, submitting that each company is a distinct legal entity from its shareholders, and that the shareholding, liabilities, and assets of one company could not be attributed to or substituted for those of another. On this basis, the Respondents argued that the Applicant was a stranger to the Second and Third Respondent Companies and had no capacity to bring or sustain the Applications.

25. With specific regard to Incafex Limited, the Respondents further contended that the Applicant had no beneficial interest in that company whatsoever. They averred that the shares registered in the Applicant's name were allocated to him not in his personal capacity but as a nominee holding those shares in trust on behalf of Multiple Hauliers (EA) Ltd, a foreign company incorporated and based in Nairobi, Kenya. The shares were issued in consideration of investments that Multiple Hauliers (EA) Ltd had made in companies affiliated to the third Respondent. The Respondents averred that Multiple Hauliers (EA) Ltd subsequently withdrew from the investment arrangement and was duly compensated for its investments. Critically, it was argued that neither the Applicant in his personal capacity, nor Multiple Hauliers (EA) Ltd, ever paid for the shares in question. As a consequence, the Respondents contended that the Applicant ceased to have any role, interest, or business connection with Incafex Limited.

26. The Respondents argued that the aforementioned submission was well established by a history of litigation between the parties. It was argued that in 2004, the Applicant filed a petition before the Commercial Division of the High Court in Company Cause No. 3 of 2004, claiming to be an oppressed minority shareholder of Incafex Limited. At the hearing of that petition, the Applicant failed to prove that he had paid for the shares he claimed to own, although his name remained on the return of allotment. The High Court, in its

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determination, ordered that a special audit be conducted to ascertain whether the 45% foreign shareholders represented by the Applicant had withdrawn from the company and been compensated for their shares, and if not, to determine the fair value of those shares with a view to facilitating their purchase by other members or by the company itself.

27. The Respondents further argued that the Court of Appeal subsequently set aside the High Court's orders in Civil Appeal No. 67 of 2010, but that the Supreme Court restored those orders upon further appeal in Civil Appeal No. 03 of 2015. Undeterred, the Applicant filed several further applications in the Supreme Court, including Miscellaneous Application No. 14 of 2022, in which he sought, among other remedies, winding up orders against Incafex Limited. The Supreme Court declined to grant those remedies and instead directed that the Commercial Division of the High Court determine all outstanding issues. In response, the Applicant filed Miscellaneous Application No. 768 of 2025 in the High Court seeking execution of the Supreme Court's order, whereupon the High Court directed that the special audit proceed within sixty days of the ruling.

28. The Respondents placed particular emphasis on a significant observation made by the High Court in that ruling, namely that Multiple Hauliers (EA) Ltd was by then under administration, and that only its administrator could authenticate documentary evidence for the special audit or authorize the Applicant to represent Multiple Hauliers (EA) Ltd in the audit process. The Respondents averred that, to date, the special audit has not taken place, and that despite numerous written correspondences from Incafex Limited's advocates to the Applicant's advocates — including letters dated 3rd March 2026 and 13th May 2026 — the Applicant has taken no steps whatsoever to obtain the requisite authority from Multiple Hauliers (EA) Ltd or to facilitate the administrator's participation in the audit. The Respondents argued that the Applicant's own conduct in the prior proceedings amounted to an admission

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that he was acting in a representative capacity for Multiple Hauliers (EA) Ltd, a matter of which the High Court itself took cognizance. The Respondents accordingly contended that the Applicant has no capacity to swear or maintain any declaration purporting to assert rights in Incafex Limited, a right which properly belongs to the directors or administrators of Multiple Hauliers (EA) Ltd, or their duly authorized nominee.

29. Regarding the legitimacy of the Fourth Respondent's appointment as a Company Director, the Respondents denied that the appointment of Agaba Maguru as a director in each of the Respondent Companies was irregular, unlawful, or motivated by any improper purpose. All the Respondent deponents deposed that following the death of the late Musinguzi James Garuga, who had been a director across the group of companies, it became necessary and urgent to appoint a second director in each company to ensure that their operations could continue without interruption. In each case, the Respondents averred that the majority shareholders lawfully convened extraordinary general meetings, issued proper notice to all member shareholders in advance of those meetings, achieved the necessary authority and quorum under the respective Articles of Association, recorded minutes of the proceedings, and passed valid resolutions appointing Agaba Maguru as director in place of the late Musinguzi James Garuga.

30. In the case of Garuga Properties Limited, it was contended that the extraordinary general meeting was convened and held on 25th August 2025 at 11:00 am at the company's premises, pursuant to Articles 21, 22, and 23(c) of its Articles of Association. The estates of the late Musinguzi James Garuga and the late Professor Emmanuel Tumusiime Mutebile were unrepresented at the meeting as no personal representatives had at that time been appointed over those estates, which explained the absence of those interests from the meeting.

31. In the case of Kinkizi Development Company Limited, the extraordinary general meeting was convened and held on 27th August 2025 at 11:00 am at the

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company's premises, pursuant to Articles 47 and 51 of its Articles of Association. In that instance, a prior meeting of the shareholders of Garuga Properties Limited was convened at 10:00 am on the same day, at which an Ordinary Resolution was passed authorizing Agaba Maguru to attend and vote at the extraordinary general meeting of Kinkizi Development Company Limited on behalf of Garuga Properties Limited as a corporate shareholder.

32. In the case of Incafex Limited, the same process was followed, with the extraordinary general meeting of that company convened and held on 30th August 2025 at 11:00 am at the company's premises, pursuant to Articles 1 and 9 of its Articles of Association, preceded by a meeting of the shareholders of Garuga Properties Limited at 10:00 am on the same day, at which authority was similarly granted to Agaba Maguru to represent Garuga Properties Limited.

33. In each case, the Respondents acknowledged that the resolution appointing Agaba Maguru was an ordinary resolution that was erroneously titled a "Special Resolution," but they maintained that this mislabelling is a formal irregularity that does not affect the substantive validity or lawfulness of the appointment. The Respondents firmly denied the Applicant's allegations that the appointments were made to interfere with the affairs of related companies, to fraudulently seize control, or to facilitate the disposal of company assets.

34. Finally, the Respondents drew the Registrar's attention to prior proceedings before the Registrar of Companies in which the Applicant was a material participant and deponent. In Company Petitions Nos. 82542, 18228, and 03111 of 2026, Musinguzi Alwyn Carl Garuga had filed petitions against the Respondents before the Registrar of Companies, raising grounds and seeking reliefs that were in substance identical to those advanced in the present Applications. The Applicant had sworn and filed statutory declarations in those proceedings on 7th April 2026 in support of Musinguzi Alwyn Carl Garuga's petitions. All three petitions were dismissed by the Assistant

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Registrar of Companies on 13th May 2026. The Respondents contended that the present Applications were nothing more than an attempt by the Applicant to resurrect and advance the very case that was dismissed in those earlier proceedings, and that the Applications therefore constituted an abuse of court process.

35. The Respondents prayed that all the Applications be dismissed with costs.

F. Applicant's Rejoinder

36. The Applicant, Mathew Rukikaire, filed Statutory Declarations in Rejoinder dated 22nd June 2026 in response to the Respondents' Statutory Declarations in Reply. The Applicant maintained his position in its entirety and advanced the following case in rejoinder.

37. The Applicant raised preliminary points contending that the declarants on behalf of the Respondent Companies in the respective applications, namely Nganwa Henry Hapa and Twinamasiko Jackson, lacked the requisite authority to swear statutory declarations on behalf of the Respondent Companies. The Applicant averred that no registered Board Resolution of the Companies' Boards of Directors was obtained and produced to authorize those declarants to depose on behalf of the Respondent Companies.

38. Similarly, the Applicant contended that KBW Advocates, who drew and filed the Respondents' pleadings, had no lawful instructions from the Respondent Companies by way of registered Board Resolutions, and that any pleadings or declarations purportedly filed on the companies' behalf were therefore incompetent and ought to be struck out.

39. The Applicant further contended that the conduct of the Respondents' advocates offends the Advocates (Professional Conduct) Regulations, Statutory Instrument 267-2, which prohibits advocates from acting for a client without instructions and from deposing to contentious matters of fact on behalf of their clients.

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40. The Applicant firmly rejected the Respondents' challenge to his standing/*locus standi* to bring these proceedings. He deposed that the Respondents themselves, in paragraph 4 of their respective replies, admitted and did not dispute his status as a shareholder holding 0.45% of the issued share capital of Garuga Properties Limited, as well as the incorporation details of the second and third Respondent Companies. The Applicant submitted that his *locus standi* is therefore fully established and uncontested on the Respondents' own admissions.

41. With respect to Kinkizi Development Company Limited and Incafex Limited, the Applicant averred that he is an aggrieved person and an interested party within the meaning of Regulation 20 of the Companies (Powers of the Registrar) Regulations, S.I. No. 71 of 2016, by virtue of his shareholding in Garuga Properties Limited, which is the majority shareholder of those companies. He averred that while the principle of separate corporate personality was acknowledged, it could not be deployed as a shield for fraud, statutory manipulation, or the illegal usurpation of corporate directorships. He argued that his shareholding in Garuga Properties Limited, which holds an overwhelming 65.65% majority stake in Kinkizi Development Company Limited and 70% of the shareholding in Incafex Limited, directly entitled him to challenge any unauthorized or simulated representations of Garuga Properties Limited at those companies' meetings.

42. With respect to Incafex Limited specifically, the Applicant asserted that he is a lawful 45% shareholder in that company, as conclusively determined by the Supreme Court of Uganda, and that he brought the proceedings in that capacity as well. He categorically denied the Respondents' portrayal of his interest as being purely derivative or representative of Multiple Hauliers (EA) Ltd.

43. The Applicant challenged as inherently contradictory, factually false, and legally untenable the Respondents' assertions regarding the majority shareholding in Garuga Properties Limited. He averred that the late Musinguzi

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James Garuga alone held 49.49% of the shares in Garuga Properties Limited, and the late Professor Emmanuel Tumusiime Mutebile held a further 25.18%, meaning that the estates of the two deceased members collectively controlled 74.67% of the total voting rights in the company. Against this background, the Applicant submitted that the combined holdings of Agaba Maguru and Nganwa Henry Hapa amounted to only approximately 24% of the shareholding, which completely stripped them of any legal mandate or capacity to form a quorum of members or pass resolutions on behalf of the company. He argued that their minority holdings could not be manipulated to arrogate unto themselves a lawful majority and that they were in no position to satisfy the mandatory statutory threshold required to pass special resolutions.

44. The Applicant argued in rejoinder what he contended to be a material and revealing sequence of events that exposed the fraudulent nature of the purported meetings. He drew attention to the fact that at the time notices were issued for the extraordinary general meetings, the late Musinguzi James Garuga was still alive. In the case of Garuga Properties Limited, the notice for the EGM was dated as early as 1st August 2025 and 6th August 2025 — yet the late Musinguzi James Garuga did not pass away until 6th August 2025. The Applicant deposed that despite being alive at the material time when notice should have been issued, the late Musinguzi James Garuga was deliberately excluded and never served with any notice of the proposed meetings. It was argued that no evidence of a requisition for a meeting by any member was placed before the Registrar, and no board resolution authorizing the calling of those meetings was exhibited. The Applicant averred that this deliberate exclusion of the majority shareholder rendered the entire process fraudulent and a nullity from its very inception.

45. Following the death of the late Musinguzi James Garuga, the Applicant contended that the Board of Directors of Garuga Properties Limited became

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legally defunct, leaving Nganwa Henry Hapa as the sole surviving director. A sole surviving director, the Applicant argued, could not unilaterally form board quorum, issue a valid notice, or pass a resolution authorizing the Fourth Respondent to represent Garuga Properties Limited at any company meeting. Consequently, the Applicant deposed that no lawful extraordinary general meeting of Garuga Properties Limited could have been convened on 27th August 2025 or 30th August 2025, and that the purported resolutions purporting to authorize Agaba Maguru to attend and vote on behalf of Garuga Properties Limited at the meetings of Kinkizi Development Company Limited and Incafex Limited were absolute legal nullities.

46. Furthermore, the Applicant averred that the EGMs of Kinkizi Development Company Limited held on 27th August 2025, and of Incafex Limited held on 30th August 2025, were themselves illegal and in direct contravention of Section 135 of the Companies Act, as they were not convened by the directors of those companies, there was no requisition by members holding the requisite 10% shareholding, and there was no valid representation authority from Garuga Properties Limited as required under Section 142 of the Companies Act. The Applicant further deposed that since Garuga Properties Limited did not lawfully appoint Agaba Maguru as its representative, the meetings of both Kinkizi Development Company Limited and Incafex Limited lacked the requisite quorum of members, rendering all resolutions passed thereat null, void, and incapable of enforcement. The Applicant maintained that neither he nor any lawful representative of the estates of the deceased majority shareholders was ever served with notice of any of these meetings, a deliberate omission designed to freeze the majority shareholding interests out of the governance of the companies.

47. The Applicant took strong issue with the Respondents' attempt to retroactively cure the labeling of the impugned resolutions as "Special Resolutions" by characterizing the titling as a mere clerical error. The Applicant, as advised by

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his counsel, firmly believed that a deeply flawed and illegal document could not be regularized by a mere post-facto change of nomenclature after its validity had been legally challenged. The documents in question were explicitly executed, signed, and registered as Special Resolutions. The Respondents could not, in the Applicant's assertion, now retroactively purge a fundamental statutory illegality by casually pleading in a statutory declaration that the documents were "*erroneously titled*." An incurable statutory defect of this nature could not be cured by retroactive nomenclature adjustments in a pleading. The Applicant further highlighted in rejoinder that the Respondents' own admission that a Special Resolution was erroneously filed was fatal to their case, as it demonstrated the absence of a duly constituted board and the required quorum of members. The Applicant invited the Registrar to take cognizance of the fact that the Registrar's office could not accommodate admitted errors of this nature on the public register, as they are bound to mislead the public, and that the only appropriate remedy was expunging the offending documents from the register.

48. Regarding the allegations concerning Incafex Limited and Multiple Hauliers (EA) Ltd**,** the Applicant deposed that all of the Respondents' extensive narration regarding Incafex Limited, Multiple Hauliers (EA) Ltd, and the historical litigation stretching back to 2004 was entirely irrelevant, extraneous, and introduced deliberately to cloud the core issue of rectification of the register before the Registrar. The Applicant pointed out that Incafex Limited is not a shareholder or member of Garuga Properties Limited, and that the historical disputes narrated by the Respondents constituted a "copy and paste" mechanism wholly misplaced and legally immaterial to the question of rectification of the company register. The Applicant argued that since the Respondents themselves conceded that the Applicant's shareholding in Garuga Properties Limited is not in dispute, any disputes, judgments, or pending

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audits regarding a separate corporate entity were legally immaterial and were introduced merely as a bad-faith diversionary tactic.

49. Concerning the abuse of process argument and *res judicata* argument, the Applicant firmly denied that these Applications were an abuse of process or were barred by the doctrine of r*es judicata*. He drew a clear distinction between his position in the earlier proceedings — Company Petitions Nos. 82542, 18228, and 03111 of 2026 — in which he appeared solely as a witness in support of Musinguzi Alwyn Carl Garuga, and the present Applications, which he brought in his own right as a registered shareholder. The Applicant was not a party to those earlier proceedings, and the technical dismissal of those petitions by the Assistant Registrar could not operate as *res judicata* against his independent statutory right as a registered shareholder to challenge illegal filings that directly affected his investments and the governance of the companies.

50. The Applicant further drew the Registrar's attention to the fact that the High Court of Uganda has since appointed the Administrator General as the legal representative of the estate of the late Musinguzi James Garuga. Notwithstanding this appointment, the Applicant averred that the Respondents stubbornly continued to usurp the authority of the Boards of the Respondent Companies without any participation or consultation of the Administrator General. The Applicant averred that if the Respondents genuinely intended to ensure smooth company operations, they ought to have sought court intervention through proper legal channels rather than convening meetings and filing resolutions without the knowledge or participation of the majority shareholding interests. The Applicant contended that their failure to engage the Administrator General betrayed their true motive, which was to maintain fraudulent control over the companies and their assets.

51. The Applicant asserted that Agaba Maguru had already fraudulently transferred properties of Incafex Limited and was illegally advertising

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properties of Garuga Properties Limited in Garuga Entebbe through social media platforms and other publications for sale, contrary to court injunctions. He specifically identified properties including Block 937 Plot 2 Bulemezi, Block 1002 Plot 7, and Ranch 15 Kabula as having been unlawfully alienated without shareholder approval, resolution, or compliance with the Supreme Court's injunction orders.

52. The Applicant maintained that the impugned Special Resolutions and Company Form 20 filed in respect of all three companies were null and void *ab initio*, and that their continued presence on the register posed an existential threat to the Respondent Companies and their subsidiaries. The Applicant called upon the Registrar to exercise the powers vested in the office to expunge the fraudulently filed documents from the company register, to rectify the register accordingly, and to order that a lawful meeting be convened under the supervision of the Registrar and the Administrator General to reconstitute the Boards of the affected companies. The Applicant prayed that the Applications be granted with costs.

G. <u>Schedules</u>

53. Considering that both parties had submitted their respective pleadings, including the statutory declarations pursuant to Section 286 of the Companies Act Cap. 106, I issued schedules for written submissions as outlined below;

   a) *Written submissions by the Applicant were to be filed and served by 06th July 2026.*

   b) *Written submissions from the Respondents were to be filed and served by the 17th day of July 2026.*

   c) *Any submissions in rejoinder were to be filed and served by the 22nd day of July 2026.*

54. I informed the parties that the ruling would be issued on notice.

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H. Issues

55. The following issues were agreed upon with the legal representatives of the parties as sufficient to determine this dispute;

    a. *Whether KBW Advocates has instructions to represent the Respondent Companies?*

    b. *Whether the statutory declarations of Nganwa Henry Hapa and Twinamasiko Jackson were properly filed?*

    c. *Whether the Applicant has locus standi to file any of the Applications?*

    d. *Whether the Applications are an abuse of Court process?*

    e. *Whether the contested documents were validly filed?*

    f. *What remedies are available to the parties?*

I. Determination

56. These Applications arise from a dispute concerning the appointment of the Fourth Respondent, Agaba Maguru, as a director of the Respondent Companies following the demise of Dr. Musinguzi James Garuga. The Applicant seeks, *inter alia*, rectification of the Companies Register and expungement of resolutions and filings on grounds of illegality.

57. Before considering the substantive issues arising in these Applications, it is necessary to first determine the preliminary jurisdictional question raised by the Respondents during the hearing, namely, whether the pendency of High Court Civil Suit No. 1314 of 2025 deprives the Registrar of Companies, by virtue of Regulation 4 of the Companies (Powers of the Registrar) Regulations, S.I. No. 71 of 2016, of jurisdiction to entertain and determine the present Applications.

58. It is settled law that jurisdiction is a creature of statute and that no court or tribunal may arrogate to itself jurisdiction not conferred upon it by law. Equally, where jurisdiction has been expressly conferred by statute, the court or tribunal is under a corresponding duty to exercise it unless the law expressly provides otherwise. In ***Baku Raphael & Another v Attorney General, Supreme Court Civil Appeal No. 1 of 2005***, cited with approval in ***National Medical***

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Stores v Penguins Ltd, HCCS No. 29 of 2010, the courts reiterated that proceedings conducted without jurisdiction are a nullity.

59. The jurisdiction of the Registrar of Companies is expressly provided for under the Companies Act, Cap. 106 and the Companies (Powers of the Registrar) Regulations, S.I. No. 71 of 2016. As observed by Ssekaana J. in ***Bryan Xsabo Strategy Consultants (Uganda) Ltd & 2 Others v Great Lakes Energy Company N.V, Company Cause No. 13 of 2020***, the Registrar exercises adjudicatory powers involving both questions of fact and law in determining disputes arising under the Companies Act. Likewise, in ***Tumuhimbise v Turyamwijuka & 4 Others, 2024 UGRSB 14***, it was held that the Registrar's jurisdiction extends, among other things, to applications for rectification of the register under Regulation 8 of the Companies (Powers of the Registrar) Regulations SI No. 71 of 2016.

60. The present Applications invoke that specific statutory jurisdiction. The Applicant seeks orders rectifying the registers of Garuga Properties Limited, Kinkizi Development Company Limited and Incafex Limited by expunging the impugned filings through which Mr. Agaba Maguru was appointed and registered as a director. The relief sought is therefore directed at the integrity and accuracy of the Companies Register, a function entrusted to the Registrar of Companies.

61. The Respondents, however, contended that the present Applications ought not to proceed because High Court Civil Suit No. 1314 of 2025 raises issues concerning the constitution of the Board of Directors of Garuga Properties Limited. I have carefully considered that submission together with the pleadings filed in the High Court.

62. Although I am mindful that a similar objection was raised and determined in ***Musinguzi Alwyn Carl Garuga v Kinkizi Development Company Limited and Others (Consolidated Petitions Nos. 18228, 82542 and 03111 of 2026)***, where the issue was resolved in the affirmative, I find that the circumstances of the

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present Applications are materially distinguishable. The instant proceedings are brought by Mathew Rukikaire, who is not a party to High Court Civil Suit No. 1314 of 2025 and is therefore not bound by the pleadings or reliefs sought in that suit. This materially distinguishes the present proceedings. Whereas the High Court proceedings concern issues relating to the constitution and governance of the Board of Directors, the present Applications, brought by Mathew Rukikaire, principally seek the rectification of the Companies Register, a statutory remedy falling within the Registrar's jurisdiction under the Companies (Powers of the Registrar) Regulations SI. No 71 of 2016. The question of rectification of the register brought by the Applicant is not before the High Court. Consequently, the determination made in the earlier proceedings neither precludes nor disposes of the issues raised in these Applications, each matter having to be considered on its own facts, the identity of the parties, and the distinct statutory reliefs sought.

63. Additionally, while there is undoubtedly a factual overlap between the two proceedings, I am not persuaded that they concern the same subject matter for purposes of Regulation 4 of the Companies (Powers of the Registrar) Regulations. The High Court proceedings principally seek the determination of civil rights and obligations arising from the governance of Garuga Properties Limited, including the legality of the constitution of its Board of Directors. By contrast, the present Applications invite the Registrar to exercise a distinct statutory power of rectification by determining whether documents presently maintained on the Companies Register were illegally or wrongfully obtained and, if so, whether they ought to be expunged from the register pursuant to Regulation 8.

64. The two proceedings, though founded upon related facts, pursue different legal remedies before different statutory forums exercising different jurisdictions. The High Court is not exercising the Registrar's statutory function of maintaining an accurate Companies Register, just as the Registrar is not

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exercising the High Court's jurisdiction to grant declaratory or other civil remedies arising out of disputes between parties.

65. In my considered view, Regulation 4 was not intended to divest the Registrar of jurisdiction merely because another court is seized of proceedings arising from the same factual background. Such an interpretation would unnecessarily impede the Registrar's statutory mandate to maintain the accuracy and integrity of the Companies Register. Rather, the prohibition under Regulation 4 is engaged where the Registrar is invited to determine substantially the same question that is already pending determination before a court of competent jurisdiction.

66. That is not the position in the present Applications. While the High Court may determine questions relating to the validity of meetings, resolutions, or the constitution of the Board of Directors, the present Applications seek the exercise of the Registrar's independent statutory power to determine whether the impugned filings ought to remain on the public register. That jurisdiction is expressly conferred upon the Registrar by Regulation 8 and serves an important public purpose. The Companies Register is a public register relied upon by shareholders, creditors, investors, financial institutions, government agencies, and members of the public in conducting commercial affairs. The Registrar is entrusted with the responsibility of ensuring that the register accurately reflects the lawful state of corporate affairs.

67. Accordingly, I find that the pendency of High Court Civil Suit No. 1314 of 2025 does not, in the circumstances of this case, operate as a bar to the exercise of the Registrar's statutory jurisdiction under Regulation 8 of the Companies (Powers of the Registrar) Regulations, S.I. No. 71 of 2016. I shall therefore proceed to determine the merits of the Applications.

a. ***<u>Whether KBW Advocates has instructions to represent the Respondent Companies?</u>***

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68. The Applicant contended that KBW Advocates lacked lawful instructions to act for the Respondent Companies because no Board Resolution authorising the firm to represent the companies was produced. It was argued that, in the absence of such a resolution, the pleadings and statutory declarations filed on behalf of the Respondent Companies were incompetent and ought to be struck out.

69. Counsel for the Applicant relied on **Regulation 35(1)** of Table A of the Companies Act Cap. 106 in support of the objection. The Regulation provides that *"the directors may at any time by power of attorney appoint any company, firm or person or body of persons... to be the attorney or attorneys of the company."*

70. I have carefully considered this objection and in my view this provision does not impose a mandatory requirement that a company can only appoint legal representatives through a formal Board Resolution or a power of attorney. The Legislature deliberately employed the word "*may*", which is ordinarily permissive rather than mandatory, thereby prescribing one permissible mode through which a company may appoint an attorney or representative, as opposed to the exclusive mode of doing so.

71. It is settled law that a company, being an artificial legal person, acts through natural persons authorised to act on its behalf. Such authority may be exercised by the Board of Directors or by officers and agents acting within the scope of their actual or ostensible authority. Consequently, there is no general principle of company law requiring that every instruction to legal counsel must invariably be evidenced by a formal Board Resolution.

72. The absence of a Board Resolution does not, without more, invalidate counsel's instructions. A Board Resolution is one mode of proving authority, but it is not the exclusive means by which such authority may be established. The proper inquiry is whether the person who instructed counsel possessed the requisite authority, whether actual or apparent, to bind the company. This position is consistent with the common law principles of agency as enunciated in ***Freeman***

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& Lockyer v Buckhurst Park Properties (Mangal) Ltd [1964] 2 QB 480 and the indoor management rule in ***Royal British Bank v Turquand (1856) 6 E & B 327***.

73. In the present Applications, the Applicant's challenge is founded solely on the absence of a Board Resolution authorising KBW Advocates to act. No evidence has been placed before the Registrar demonstrating that the advocates were, in fact, acting without instructions or that the persons who instructed them lacked any authority whatsoever to do so. Equally, there is no evidence that the Respondent Companies have repudiated the representation by KBW Advocates or disowned the pleadings filed on their behalf. On the contrary, the Respondent Companies have entered appearance, filed statutory declarations, and actively defended the Applications through the said advocates.

74. Accordingly, I find that the mere failure to exhibit a Board Resolution appointing KBW Advocates does not, of itself, render the advocates' representation incompetent. In the absence of evidence establishing that the firm acted without actual or ostensible authority from the Respondent Companies, the objection challenging KBW Advocates' authority to represent the Respondent Companies is without merit and is hereby dismissed.

b. Whether the statutory declarations of Nganwa Henry Hapa and Twinamasiko Jackson were properly filed?

75. The Applicant further challenged the competence of the statutory declarations sworn by Mr. Nganwa Henry Hapa and Mr. Twinamasiko Jackson on behalf of the Respondent Companies. It was contended that the two declarants lacked the requisite authority to depone on behalf of the companies because no registered company resolution and accompanying Power of Attorney had been passed or produced authorising them to swear the declarations. The Applicant consequently urged the Registrar to disregard or strike out the declarations as incompetent.

76. As mentioned in the preceding issue, a company, being an artificial legal person, can only act through natural persons. Those persons ordinarily include

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the directors, the company secretary, and other duly authorised officers. A director occupies the position of an officer of the company and is entrusted with the management and conduct of its affairs in accordance with the Companies Act and the company's Articles of Association. Consequently, where a director swears a statutory declaration in proceedings involving the company, the law does not require that such declaration must be preceded by a resolution accompanied by a Power of Attorney authorising the director to depone.

77. In ***United Assurance Co. Ltd v Attorney General, Supreme Court Civil Appeal No. 1 of 1998***, as reaffirmed in ***Tatu Naiga & Co. Emporium v Virjee Brothers Ltd, Supreme Court Civil Appeal No. 8 of 2000***, the Supreme Court departed from the earlier rigid approach adopted in ***Bugerere Coffee Growers Ltd v Sebaduka & Another [1970] EA 147*** and held that the absence of a Board Resolution does not, without more, render proceedings incompetent. The Court recognised that corporate authority may be established by means other than a formal resolution and that procedural objections relating to corporate authority should not be elevated above substantive justice. The same principle was applied by the High Court in ***Soon Production Ltd v Soon Yeon Hong & Another, Miscellaneous Application No. 190 of 2008***, where the Court held that a director may exercise the powers of the Board in matters relating to litigation on behalf of the company unless the contrary is shown.

78. The Applicant's objection appears to proceed on the assumption that every act undertaken by a director on behalf of a company must first be sanctioned by a formal resolution and accompanied by a Power of Attorney. I am unable to agree with that proposition as the law does not impose such a mandatory requirement.

79. A statutory declaration is an evidentiary document whose purpose is to place facts within the personal knowledge of the deponent before the adjudicating body. It is distinguishable from corporate acts such as the execution of contracts, the disposal of company property or the passing of resolutions, all of

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which involve the exercise of corporate decision-making. Provided the deponent is competent to speak to the matters deposed to by virtue of his office and personal knowledge, the declaration is not rendered incompetent merely because no resolution has been exhibited.

80. This principle was recently affirmed by the Commercial Court in ***Zirobwe Agali Awamu Agribusiness Training Association v Uganda Central Cooperative Financial Services & Another, Miscellaneous Application No. 532 of 2023***, where the Court held that a company secretary, being a principal officer of the company, was competent to swear an affidavit on behalf of the company regarding matters within his knowledge and that the absence of a resolution did not, by itself, invalidate the affidavit. The rationale underlying that decision applies with equal force to directors who, by virtue of their office, are charged with the management of the affairs of the company and are ordinarily best placed to depone to matters concerning the company's operations.

81. In the present Applications, the declarations were sworn by Mr. Nganwa Henry Hapa and Mr. Twinamasiko Jackson, both of whom are directors of the respective Respondent Companies.

82. Accordingly, I find that the absence of a resolution expressly authorising Mr. Nganwa Henry Hapa and Mr. Twinamasiko Jackson to swear statutory declarations does not, of itself, render the declarations incompetent or improperly filed. The declarations were competently filed by persons who, on the face of the record, are directors of the respective Respondent Companies and are therefore competent to depone to matters within their personal knowledge concerning the affairs of the companies.

83. The Applicant's objection to the competence of the statutory declarations is therefore without merit and is hereby dismissed.

c. <u>Whether the Applicant has locus standi to file any of the Applications?</u>

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84. Court in ***Law Society of Kenya vs. Commissioner of Lands and others, Civil case no. 464 of 2000***, stated that, *"locus standi signifies a right to be heard, a person must have sufficiency of interest to sustain his standing to sue in court."* Justice Stephen Mubiru in ***Dima Enterprises Poro vs. Inyani Godfrey, Civil Appeal No. 17 of 2016,*** described *locus standi* to mean *"...a place of standing. It means a right to appear in court, and conversely to say that a person has no locus standi means that he has no right to appear or be heard in a specified proceeding."*

85. The Respondents raised a preliminary objection challenging the Applicant's *locus standi* to institute and maintain the present Applications. They contended that the Applicant's shareholding of 0.45% in Garuga Properties Limited did not confer upon him any legal interest in the affairs, management or assets of Kinkizi Development Company Limited and Incafex Limited. Relying on the doctrine of separate corporate personality, the Respondents submitted that each company is a distinct legal entity and that the rights and liabilities of one company cannot be attributed to or enforced by the shareholders of another. Consequently, they argued that the Applicant was a stranger to the Second and Third Respondent Companies and lacked the requisite standing to challenge the contested resolutions and filings.

86. The Applicant, on the other hand, rejected the objection and maintained that he possesses the requisite *locus standi*. In respect of Garuga Properties Limited, he contended that as a shareholder of the company, he is expressly entitled under **Regulation 20** of the Companies (Powers of the Registrar) Regulations, S.I. No. 71 of 2016, to institute proceedings before the Registrar. As regards Kinkizi Development Company Limited and Incafex Limited, the Applicant argued that although he is not a registered member of those companies, he is nonetheless an interested and aggrieved party within the meaning of Regulation 20 by virtue of his shareholding in Garuga Properties Limited, which holds controlling interests in the two companies. He further contended that the doctrine of separate corporate personality cannot be invoked to shield

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alleged fraud, statutory non-compliance, or unlawful usurpation of corporate control.

87. The issue for determination, therefore, is whether the Applicant possesses a sufficient legal interest to invoke the jurisdiction of the Registrar in respect of the second and third Respondent Companies.

88. The concept of *locus standi* has been judicially defined in a number of authorities. In ***Law Society of Kenya v Commissioner of Lands & Others, Civil Case No. 464 of 2000***, Court observed that *"locus standi signifies a right to be heard; a person must have sufficiency of interest to sustain his standing to sue in court."* Similarly, in ***Dima Enterprises Poro v Inyani Godfrey, Civil Appeal No. 17 of 2016***, Mubiru J. stated that "*Locus standi means a place of standing. It means a right to appear in court, and conversely to say that a person has no locus standi means that he has no right to appear or be heard in a specified proceeding.*"

89. These authorities underscore the principle that the question of standing is determined by whether the applicant has demonstrated a sufficient legal interest in the subject matter of the dispute.

90. In the present matter, **Regulation 20** of the Companies (Powers of the Registrar) Regulations, S.I. No. 71 of 2016 confers the right to apply to the Registrar upon a broad category of persons, including *"<u>any interested party</u>."* In my view, the deliberate inclusion of the phrase "any interested party" was purposive and demonstrates that the Regulation was intended to extend standing so as to permit any person who demonstrates a direct and legally recognisable interest in the company or in the contested entries on the register to invoke the Registrar's jurisdiction.

91. Applying that interpretation, there can be no dispute that the Applicant, being a shareholder of Garuga Properties Limited, has the requisite standing to challenge the entries relating to that company. Regulation 20 expressly permits a member of a company to seek appropriate relief before the Registrar, and the extent of one's shareholding does not determine whether one possesses *locus*

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standi. Whether a member holds a majority or minority shareholding does not deprive that member of the right to be heard.

92. The contentious question is whether the Applicant has standing in relation to Kinkizi Development Company Limited and Incafex Limited, in which he is not a registered shareholder. I have carefully considered the Respondents' reliance on the doctrine of separate corporate personality. Undoubtedly, each company is a distinct legal entity, separate from its shareholders, and that doctrine remains a fundamental principle of company law. However, the present Applications are not brought by the Applicant as though he were enforcing personal shareholder rights in the Second and Third Respondent Companies. Rather, his complaint is that Garuga Properties Limited, of which he is admittedly a shareholder, was allegedly unlawfully represented in meetings of those companies through persons appointed without lawful authority, thereby resulting in the contested resolutions and filings.

93. The Applicant's grievance is therefore not remote. If, as alleged, Garuga Properties Limited was unlawfully represented in the affairs of the subsidiary companies, the consequence would directly affect the exercise of the rights and interests of Garuga Properties Limited as their majority shareholder. Thus, as a shareholder of Garuga Properties Limited, the Applicant possesses a direct and legally recognisable interest in the second and third Respondent Companies. His interest falls squarely within the category of an "interested party" contemplated under Regulation 20.

94. I am therefore unable to accept the Respondents' contention that the doctrine of separate corporate personality completely extinguishes the Applicant's standing in the circumstances of this case. While that doctrine preserves the distinct legal identity of each company, it cannot be applied so rigidly as to deny a party who demonstrates a direct and legitimate interest in the impugned corporate acts access to the statutory remedy expressly created under Regulation 20.

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95. Accordingly, I find that the Applicant has the requisite *locus standi* to institute the Application in respect of Garuga Properties Limited as a shareholder thereof. I further find that, by virtue of his shareholding in Garuga Properties Limited, which is the majority and controlling shareholder of Kinkizi Development Company Limited and Incafex Limited, the Applicant has demonstrated a sufficient and legally recognisable interest to qualify as an '*interested party*' under Regulation 20 of the Companies (Powers of the Registrar) Regulations, S.I. No. 71 of 2016. The preliminary objection challenging the Applicant's *locus standi* is therefore without merit and is hereby dismissed.

d. *<u>Whether the Applications are an abuse of Court process?</u>*

96. The Respondents contended that the present Applications constitute an abuse of court process. They drew the Registrar's attention to Company Petitions Nos. 82542, 18228 and 03111 of 2026, in which Musinguzi Alwyn Carl Garuga had previously petitioned the Registrar against the Respondents seeking substantially similar reliefs to those sought in the present Applications. The Respondents pointed out that the Applicant actively participated in those proceedings by swearing and filing statutory declarations in support of the petitions on 7th April 2026. They further averred that all the petitions were dismissed by the Assistant Registrar on 13th May 2026 and submitted that the present Applications were merely an attempt to revive matters that had already been determined, thereby constituting an abuse of the Registrar's process.

97. The Applicant, on the other hand, firmly denied that the present Applications amount to an abuse of process or are barred by the doctrine of *res judicata*. He distinguished the earlier proceedings from the present Applications on the basis that, in the former, he merely appeared as a witness and deponent in support of Musinguzi Alwyn Carl Garuga, whereas the present Applications were instituted by him in his own capacity as a registered shareholder of Garuga Properties Limited. The Applicant further contended that he was not a

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party to the earlier proceedings and that the dismissal of those petitions, which was founded on want of *locus standi*, could not extinguish or bar his independent statutory right to challenge the impugned filings before the Registrar.

98. The Respondents' objection is, in substance, predicated upon the doctrine of *res judicata*. The rationale underlying that doctrine is that there must be an end to litigation and that parties should not be vexed twice over the same cause of action. For the doctrine to apply, however, it must be demonstrated, among other things, that the former proceedings were between the same parties or those claiming under them, that the issues in dispute were directly and substantially the same, and, most importantly, that those issues were heard and finally determined by a court or tribunal of competent jurisdiction.

99. The principles governing the doctrine of *res judicata* are well settled. In ***Attorney General v James Mark Kamoga & Another, Supreme Court Civil Appeal No. 8 of 2004***, the Supreme Court reiterated that for the doctrine to apply, the former proceedings must have involved the same parties or those claiming under them, the matter in issue must have been directly and substantially the same, and, crucially, the matter must have been heard and finally determined by a court of competent jurisdiction. The doctrine is therefore inapplicable where the previous proceedings were disposed of on a preliminary point without a determination of the substantive issues in controversy.

100. Although Company Petitions Nos. 82542, 18228, and 03111 of 2026 concerned substantially similar subject matter and sought reliefs akin to those pursued in the present Applications, it is evident from the record that the consolidated petitions were not determined on their merits. Rather, they were dismissed on the preliminary ground that the petitioner lacked the requisite *locus standi* to institute the proceedings. The substantive questions relating to the legality of the contested resolutions, appointments, and filings were therefore never adjudicated upon.

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101. A dismissal founded solely upon want of *locus standi* cannot, in my view, constitute a final determination of the substantive rights and liabilities of the parties so as to give rise to the doctrine of *res judicata*. The doctrine presupposes that the issues in controversy have been heard and conclusively determined on their merits by a court or tribunal of competent jurisdiction which was not the case in the earlier petitions.

102. This principle finds further support in the decision of the former East African Court of Appeal in ***Mburu Kinyua v Gachini Tuti [1978] KLR 69***, where the Court observed that the doctrine of *res judicata* only operates where the previous decision finally determined the rights of the parties on the issues in dispute. A decision which merely disposes of proceedings on a preliminary or technical ground, without determining the substantive rights of the parties, cannot ordinarily found a plea of *res judicata*.

103. Accordingly, while the earlier petitions and the present Applications arise from substantially similar factual circumstances, I am not persuaded that the present proceedings amount to an abuse of the Registrar's process. Neither have the Respondents established the essential ingredients necessary to invoke the doctrine of *res judicata*.

104. I therefore find that the Respondents have failed to establish the essential ingredients of the doctrine of *res judicata*. Since the earlier consolidated petitions were dismissed on the preliminary ground of want of *locus standi*, there was no adjudication on the merits of the issues now before the Registrar. The present Applications cannot therefore be said to amount to an abuse of the Registrar's process merely because they arise from facts substantially similar to those in the earlier proceedings. The Applicant is asserting an independent statutory right in his own capacity as a shareholder, a right that was never adjudicated upon in the previous petitions. The preliminary objection is accordingly dismissed.

e. <u>Whether the contested documents were validly filed?</u>

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105. Turning to the merits of the Applications, the Applicant challenges the validity of the filings through which the Fourth Respondent, Mr. Agaba Maguru, was appointed as a director of Garuga Properties Limited, Kinkizi Development Company Limited, and Incafex Limited. I shall consider Garuga Properties independently, then Kinkizi Development Company Limited and Incafex Limited together.

Garuga Properties Limited:

106. The records of Garuga Properties Limited contain a Special Resolution filed on 5th January 2026, together with the corresponding Company Form 20 *(Notification of Appointment of Director and Secretary)*, by which Mr. Agaba Maguru was appointed a director of the Company. The contested resolution expressly states that *"At the Extraordinary General Meeting of the Company…"*

107. The Applicant challenges the said resolution, asserting that as a shareholder of the company, entitled to participate in the appointment of Directors, he did not receive any notice of, nor participate in, any Extraordinary General Meeting or shareholders' meeting authorising the said appointment of Mr. Agaba Maguru as a director of Garuga Properties Limited.

108. On the other hand, Nganwa Henry Hapa, a director of Garuga Properties Limited, as well as Agaba Maguru, deposed that the lawful notice of the extraordinary meeting held on 25th August 2025 at the company's office premises was given to the shareholders/members of Garuga Properties Limited, the meeting was duly convened, resolutions were duly passed, and the meeting minutes were recorded.

109. It is settled company law that directors are appointed by the members of a company in a general meeting convened for that purpose, whether at an Annual General Meeting or, where appropriate, an Extraordinary General Meeting. Equally undisputed is the fact that the Applicant is a registered shareholder of Garuga Properties Limited. His membership is borne out by the

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Company's records and was expressly admitted by the Respondents, who acknowledged that he holds 0.45% of the issued share capital of the Company.

110. The central issue for determination is therefore whether the Applicant, as a member entitled to participate in the appointment of directors, was duly notified of the Extraordinary General Meeting allegedly held on 25th August 2025.

111. In support of their contention, the Respondents annexed to the statutory declarations of Mr. Nganwa Henry Hapa and Mr. Agaba Maguru a document marked "NHH7", described as a '*Notice of Extraordinary General Meeting*' dated 1st August 2025. The notice bears the Applicant's name, Mr. Mathew Rukikaire, among the persons to whom it is addressed.

112. The Applicant, however, categorically denied ever receiving the notice and further alleged that the notice relied upon by the Respondents had been fabricated.

113. The essence of giving notice is to ensure that the person entitled to participate in the meeting is made aware of its date, time, venue, and agenda so as to afford him or her a meaningful opportunity to attend and participate. In line with Section 101 of the Evidence Act, Cap. 6, where service of notice is specifically challenged, it is incumbent upon the party asserting service to adduce evidence demonstrating that the notice was in fact transmitted to and received by the intended recipient. The mere production of a notice bearing the names of its intended recipients does not, without more, establish that the notice was actually served or brought to the attention of those persons.

114. In the present case, beyond exhibiting the Notice of Extraordinary General Meeting, the Respondents placed no evidence before the Registrar demonstrating that the notice was ever served upon the Applicant. No proof of electronic transmission, acknowledgement of receipt, or other evidence capable of establishing service was produced. The mere inclusion of the Applicant's name on the notice, without evidence that it was actually communicated to

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him, is insufficient to discharge the burden of proving that he was duly notified of the meeting.

115. In the absence of cogent evidence establishing that the Applicant was made aware of the Extraordinary General Meeting held on 25th August 2025, I find that he was not given notice of that meeting.

116. The legal consequence of failure to notify a member entitled to participate in a meeting is well settled. In ***Seremba Mark v Isanga Emmanuel & 3 Others (In the Matter of Greenville College Ltd), Companies Cause No. 27 of 2004***, Justice Geoffrey Kiryabwire observed that *"...meetings held without notifying the relevant members are null and void. Consequently, <u>such meetings render their outcomes worthless</u>."*

117. I respectfully adopt that reasoning. The right to receive notice of a general meeting and to participate in the appointment of directors is a fundamental incident of shareholding and one of the primary mechanisms through which members exercise control over the affairs of a company. Every shareholder, irrespective of the size of his or her shareholding, is entitled to be informed of meetings at which such decisions are to be taken and afforded an equal opportunity to attend, participate, and vote. Whether the shareholder ultimately elects to attend the meeting or abstains from doing so is a matter of personal choice. However, a meeting convened without notifying a member entitled to attend undermines the validity of the proceedings and any resolutions passed thereat.

118. Accordingly, I find that the Extraordinary General Meeting of Garuga Properties Limited purportedly held on 25th August 2025 was convened without notice to the Applicant, a member entitled to participate therein. The meeting was therefore irregular and incapable of lawfully transacting the business of appointing a director. It follows that the Special Resolution and the corresponding Company Form 20 appointing Mr. Agaba Maguru as a director of Garuga Properties Limited were unlawfully procured and are null and void

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ab initio. Consequently, the said filings cannot be permitted to remain on the Companies Register and are liable to be expunged.

Kinkizi Development Company Limited and Incafex Limited:

119. With respect to Kinkizi Development Company Limited and Incafex Limited, it is not disputed that Garuga Properties Limited is the majority and controlling shareholder in both companies.

120. The records of Kinkizi Development Company Limited contain a Special Resolution filed on 17th December 2025, appointing Mr. Agaba Maguru as a director of the Company. Similarly, the records of Incafex Limited contain a Special Resolution filed on 23rd January 2026 appointing Mr. Agaba Maguru as a director. Both resolutions were executed by Mr. Agaba Maguru on behalf of Garuga Properties Limited as the majority shareholder of the respective companies.

121. The Respondents contend that Mr. Agaba Maguru derived the requisite authority to execute the said resolutions from two Ordinary Resolutions of Garuga Properties Limited. According to the Respondents, those resolutions, passed at Extraordinary General Meetings of Garuga Properties Limited held on 27th August 2025 and 30th August 2025 respectively, authorised Mr. Agaba Maguru to attend and represent Garuga Properties Limited at the Extraordinary General Meetings of Kinkizi Development Company Limited and Incafex Limited.

122. The Applicant challenges that assertion. He contends that, as a shareholder and member of Garuga Properties Limited, he neither received notice of nor participated in any Extraordinary General Meeting at which Mr. Agaba Maguru was purportedly authorised to represent Garuga Properties Limited in the Extraordinary General Meetings of Kinkizi Development Company Limited and Incafex Limited. The Applicant therefore maintains that the authority allegedly conferred upon Mr. Agaba Maguru was unlawfully obtained.

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123. The Respondents, on the other hand, maintain that notices convening the Extraordinary General Meetings of Garuga Properties Limited were duly issued to the shareholders of the company, the meetings were properly constituted, the requisite resolutions were passed, and minutes of the proceedings were recorded. In support of that contention, they annexed notices of the respective meetings, each of which bears the Applicant's name among the persons to whom the notices were addressed.

124. However, as was the case with the impugned meeting of Garuga Properties Limited held on 25th August 2025, the Applicant categorically denied ever receiving either of the notices. He further alleged that the notices relied upon by the Respondents were fabricated after the commencement of these proceedings in an attempt to legitimise the impugned appointments.

125. Having carefully considered the evidence, I find that the Respondents have not discharged the burden of proving that the notices were actually served upon the Applicant. Beyond exhibiting the Notices of Extraordinary General Meetings, no evidence was adduced demonstrating that the notices were transmitted to, received by, or otherwise brought to the attention of the Applicant. No proof of service, electronic transmission, acknowledgement of receipt, or any other evidence capable of establishing service was placed before the Registrar. As I have already observed, the mere inclusion of a person's name among the intended recipients of a notice does not, without more, establish that the notice was actually communicated to that person.

126. Accordingly, I find that the Applicant was not notified of the Extraordinary General Meetings of Garuga Properties Limited allegedly held on 27th August 2025 and 30th August 2025, at which Mr. Agaba Maguru was purportedly authorised to represent Garuga Properties Limited in the affairs of Kinkizi Development Company Limited and Incafex Limited, respectively. The Applicant was thereby denied his right, as a member of Garuga Properties

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Limited, to participate in the deliberations concerning the appointment of the Company's representative.

127. The failure to notify a shareholder of a meeting at which directors are appointed effectively extinguishes that shareholder's right to participate in the governance of the company and undermines the legitimacy of the decisions taken at such a meeting. It is for this reason that the law regards the requirement of notice as mandatory rather than a mere procedural formality.

128. As I have already stated, I respectfully adopt the reasoning of Justice Geoffrey Kiryabwire in ***Seremba Mark v Isanga Emmanuel & 3 Others (In the Matter of Greenville College Ltd), Companies Cause No. 27 of 2004***, that "*...meetings held without notifying the relevant members are null and void. Consequently, such meetings render their outcomes worthless*."

129. It follows that the Extraordinary General Meetings of Garuga Properties Limited, allegedly held on 27th August 2025 and 30th August 2025, were convened in contravention of the Applicant's right to notice and participation and were therefore null and void. Consequently, the Ordinary Resolutions purportedly authorising Mr. Agaba Maguru to represent Garuga Properties Limited at the meetings of Kinkizi Development Company Limited and Incafex Limited are equally null and void.

130. Of particular significance is the fact that, upon a search and examination of the Companies Register maintained by the Registrar of Companies, I found no record of the purported Ordinary Resolutions of Garuga Properties Limited annexed to the Respondents' Statutory Declarations in Reply — being the resolutions by which Mr. Agaba Maguru is alleged to have been authorised to represent Garuga Properties Limited at meetings of Kinkizi Development Company Limited and Incafex Limited. Those resolutions do not appear anywhere on the Companies Register and, on the evidence available, were never lodged with the Registrar for registration.

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131. It is a fundamental principle of company law that the Companies Register constitutes the official and authoritative record of a company's constitutive and governance acts, and that the Registrar can only recognise and act upon documents that have been lawfully lodged and thereby form part of that official record. A document that has never been filed cannot, by definition, enjoy the presumption of regularity or the evidentiary weight that registration confers; it remains, at best, a private, unverified instrument incapable of independent corroboration through the public record. In the absence of any proof that the purported Ordinary Resolutions were duly lodged and registered, they cannot be accorded legal recognition, nor can they be relied upon as authentic corporate records. It follows that the purported Ordinary Resolutions, not having been filed or registered, are incapable of conferring any lawful authority on Mr. Agaba Maguru to represent Garuga Properties Limited in the affairs of Kinkizi Development Company Limited and Incafex Limited, and any acts purportedly done by him pursuant to that claimed authority are similarly impugned.

132. It necessarily follows that the Special Resolution dated 27th August 2025 appointing Mr. Agaba Maguru as a director of Kinkizi Development Company Limited, together with the corresponding Company Form 20, and the Special Resolution dated 30th August 2025 appointing him as a director of Incafex Limited, together with the corresponding Company Form 20, were unlawfully procured and are null and void *ab initio*. The said resolutions and consequential filings cannot therefore be permitted to remain on the Companies Register and are liable to be expunged.

f. __What remedies are available to the parties?__

133. The Registrar of Companies is empowered to rectify the Companies Register pursuant to **Regulation 8 of the Companies (Powers of the Registrar) Regulations SI No. 71 of 2016** and may expunge any information or document included in the register which;

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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*

134. Having carefully considered the evidence on record and the findings made herein, I am satisfied that the impugned filings appointing Mr. Agaba Maguru as a director of Garuga Properties Limited, Kinkizi Development Company Limited and Incafex Limited were wrongfully obtained. As already found, the appointments were founded upon meetings convened without proper notice to a member entitled to participate therein. Consequently, the resolutions authorising the appointments are null and void *ab initio* and incapable of conferring any lawful authority upon Mr. Agaba Maguru. It necessarily follows that the corresponding Company Form 20 filings and all consequential filings predicated upon those unlawful resolutions were likewise wrongfully obtained and cannot lawfully remain on the Companies Register.

135. I therefore implore the parties to convene fresh meetings in strict compliance with the Companies Act and the respective Articles of Association of the companies, so as to regularise the governance of the companies through the lawful appointment of directors and ensure the continuity of their operations.

136. Accordingly, pursuant to **Regulations 8** and **32 of the Companies (Powers of the Registrar) Regulations SI No 71 of 2016**, I hereby make the following orders;

1) *The Special Resolution of Garuga Properties Limited, the First Respondent Company herein, filed on 5th January 2026, purporting to appoint Mr. Agaba Maguru as a director of the Company, together with the corresponding*

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Company Form 20 (Notification of Appointment of Director), are hereby expunged from the Companies Register for having been wrongfully obtained.

2) *The Special Resolution of Kinkizi Development Company Limited, the Second Respondent Company herein, filed on 17th December 2025, purporting to appoint Mr. Agaba Maguru as a director of the Company, together with the corresponding Company Form 20 (Notification of Appointment of Director), are hereby expunged from the Companies Register for having been wrongfully obtained.*
3) *The Special Resolution of Incafex Limited, the Third Respondent Company herein, filed on 23rd January 2026, purporting to appoint Mr. Agaba Maguru as a director of the Company, together with the corresponding Company Form 20 (Notification of Appointment of Director), are hereby expunged from the Companies Register for having been wrongfully obtained.*
4) *I make no order as to costs.*

I so order.

Given under my hand this 24th day of July 2026

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Daniel Nasasira

Assistant Registrar of Companies