IN THE COMPANIES TRIBUNAL OF SOUTH AFRICA

HELD AT PRETORIA

Case no: CT02399ADJ/2025

In the matter between:

LAUNA JOANNA RAY BAGNALL – Applicant

and

SHANNON ROGOTZKI – First Respondent

BT GAMES (PTY) LTD – Second Respondent

DIGITAL KIDZ (PTY) LTD – Third Respondent

ULKO ACTIVE WEAR (PTY) LTD – Fourth Respondent

COMPANIES AND INTELLECTUAL PROPERTY COMMISSION – Fifth Respondent

Tribunal Member: D Terblanche

Date of Hearing: 25 March 2026

Date of Ruling: 10 April 2026

RULING – DECISION AND REASONS

A. INTRODUCTION

The Parties

1. The Applicant, Launa Joanna Ray Bagnall ("Applicant" or "Bagnall"), is an adult businesswoman.
2. The First Respondent, Shannon Rogotzki ("First Respondent" or "Rogotzki"), is an adult businesswoman.
3. The Second Respondent is BT Games (Pty) Ltd (reg. 2005/009144/07) ("Second Respondent" or "BT Games"), a private company incorporated under South African law, with its registered office at 239 Trademark Road, Northlands Industrial Park, Epsom Road, Gauteng, 2169.
4. The Third Respondent is Digital Kidz (Pty) Ltd (reg. 2013/131514/07) ("Third Respondent" or "Digital Kidz"), a private company incorporated under South African law, with its registered office at Plot 31 Riverside Road, Riverside Estates, Lanseria, Gauteng, 1740.

5. The Fourth Respondent is Ulko Active Wear (Pty) Ltd (reg. 2014/129510/07) ("Fourth Respondent" or "Ulko"), a private company incorporated under South African law, with its registered office at 239 Trademark Road, Northlands Industrial Park, Hoogland, 2169. The Second to Fourth Respondents are referred to collectively as "**the Companies**".
6. The Fifth Respondent is the Companies and Intellectual Property Commission ("CIPC") ("Fifth Respondent" or "CIPC"), a juristic person established under the Companies Act 71 of 2008 ("the Act"), a party to this application for the limited purpose of giving effect to any final order.

Nature of the Proceedings

7. This matter concerns a directorship dispute between two sisters who are co-directors and co-shareholders in the Companies.
8. The Applicant seeks: (a) confirmation of resolutions passed on 15 August 2025 purporting to remove the First Respondent as director of BT Games and Digital Kidz under section 71(1) of the Act; alternatively, (b) the First Respondent's removal from all three Companies under section 71(8) of the Act.
9. The First Respondent opposes the application and counter-applies for the Applicant's removal from the Companies under section 71(8) of the Act.
10. Each party alleges the other has neglected or been derelict in performing her directorial functions, alternatively that she is ineligible or disqualified under section 69 of the Act.

B. PROCEDURAL HISTORY

11. Following the filing of the main application (CTR142) and counter-application (CTR145), the Tribunal issued a directive on 12 December 2025 that: consolidated the two applications; dismissed the discovery application at that stage; joined the three Companies as necessary parties and the CIPC for limited purposes; closed pleadings; and directed the Registrar to convene a pre-hearing conference.
12. At the pre-hearing conference on 26 February 2026, the parties confirmed service on the joined companies, agreed to a one-day hearing, and

established a filing timeline for heads of argument, a joint practice note, and the enrolment date for the hearing on 25 March 2026.

13. The parties identified the primary legal issue as whether the First Respondent resigned as director via her WhatsApp message of 28 January 2025. A finding of resignation would render the alternative removal claims unnecessary.
14. The joint practice note filed on 24 March 2026 formalised these arrangements and listed the remaining issues, including the alternative section 71(8) removal claims and the procedural validity of the counter-application.

C. FACTUAL BACKGROUND

15. The Applicant and the First Respondent are sisters and the only two directors of the Companies. Together with their late mother, Jenny Wood ("the late Wood") (deceased 19 December 2023), they were also the shareholders in all three Companies. The late Wood's shares in the Companies are now held by her estate during the winding-up process.
16. The Applicant and the First Respondent are in dispute regarding the allocation of their shareholding interests and their respective responsibilities in the operational management of the Companies.
17. Following their mother's death, the sisters' relationship deteriorated — initially over an amount the late Wood advanced to the First Respondent's partner which the Applicant maintains should form **part of** the late Wood's estate as it was a loan, and the First Respondent **maintains** the late Wood wrote off, and then across all business matters. The professional relationship has irreparably deteriorated, a fact mutually acknowledged by both parties, resulting in adverse effects on the Companies.
18. On 28 January 2025, the First Respondent sent the Applicant a WhatsApp message stating: "I resign. I can't do this anymore. We need lawyers. I'm not interested in dealing with you!" ("**I resign…**"). The Applicant views this as the First Respondent's resignation from company directorships, while the First Respondent claims it was merely an impulsive, emotional reaction — not an official resignation.
19. After Ulko conducted an internal investigation, the First Respondent's employment was terminated on 21 July 2025.

20. On 15 August 2025, the shareholders' meetings of BT Games and Digital Kidz resolved to remove the First Respondent from the position of director. The legitimacy of both the dismissal and the resolutions remains contested.

D. THE APPLICANT'S CASE

21. The Applicant's case rests on the contention that the "I resign…" WhatsApp message of 28 January 2025 constituted a clear, unconditional, and legally effective written resignation under section 70(1)(b) of the Act read with the Electronic Communications and Transactions Act 25 of 2002 ("ECTA") — a unilateral act requiring no acceptance. She relies on *Monareng v Dr JS Moroka Municipality* (J718/21) [2022] ZALCJHB 66; [2022] 8 BLLR 756 (LC); (2022) 43 ILJ 1855 (LC) and the Labour Appeal Court judgment in the same matter (3 July 2024) for the proposition that resignation is effective upon communication and cannot be withdrawn without the recipient's consent.
22. The Applicant submits that the First Respondent thereafter abandoned all directorial functions, obstructed governance, and engaged in conduct incompatible with her fiduciary obligations under section 76 of the Act.
23. For BT Games and Digital Kidz, the Applicant seeks confirmation of the August 2025 removal resolutions, or alternatively removal under section 71(8), on grounds including: refusal to supply the CIPC one-time PIN; conflict of interest involving the Wood Estate executor; valid passage of resolutions at the 15 August 2025 meeting; improper CoR168 filings; and misrepresentations to Standard Bank.

Ulko Active Wear — Grounds for Removal Under Section 71(8)

24. For Ulko, the Applicant seeks removal of the First Respondent under section 71(8) on grounds including:
    24.1 **Abdication of directorial duties.** The First Respondent is alleged to have ceased meaningful participation in the governance and operational management of Ulko, abandoning the responsibilities that attach to her office as director and leaving the Applicant to bear the full burden of directorial oversight unilaterally.
    24.2 **Refusal to cooperate with the resignation process.** Following what the Applicant characterises as the First Respondent's resignation, the

First Respondent declined to take the steps necessary to give effect to that resignation, including her refusal to provide the CIPC one-time PIN required to update the company's directorship records. The Applicant submits this refusal obstructed the orderly administration of the company's statutory obligations.

24.3 **Obstruction of governance and disciplinary proceedings.** The First Respondent is alleged to have actively impeded internal governance processes, including disciplinary proceedings initiated against her in her capacity as an employee of Ulko, thereby undermining the Applicant's ability to manage the company's affairs and workforce in accordance with its governance framework.

24.4 **Dismissal for gross misconduct as an employee.** The First Respondent was dismissed from her employment with Ulko following a disciplinary process in which she was found guilty of gross misconduct. The Applicant submits that this finding is directly relevant to her fitness to continue as a director, as the conduct that warranted dismissal is incompatible with the standards of integrity and accountability required of a person in a position of fiduciary responsibility.

24.5 **Unauthorised retention of company property and misuse of bank accounts.** The First Respondent is alleged to have retained company property without authorisation following her dismissal and to have misused company bank accounts, including conducting or authorising transactions outside the scope of her authority and in a manner prejudicial to the company's interests.

24.6 **Destruction of the trust relationship.** The Applicant submits that the cumulative effect of the First Respondent's conduct has irreparably destroyed the trust relationship that must subsist between co-directors. Relying on *Visser Sitrus (Pty) Ltd v Goede Hoop Sitrus (Pty) Ltd* 2014 (5) SA 179 (WCC), she argues that where mutual trust has broken down beyond repair, continued co-directorship is untenable regardless of whether any single act of misconduct would independently justify removal.

24.7 **Threats of winding-up proceedings.** The First Respondent is alleged to have threatened to bring winding-up proceedings against Ulko, which the Applicant characterises as an act of bad faith designed to coerce rather than to advance any legitimate governance or shareholder interest. The Applicant submits that deploying the threat of winding-up as a pressure tactic constitutes conduct inimical to the company's survival and to the interests of its stakeholders.

24.8 **Bad faith CCMA litigation.** The First Respondent instituted proceedings before the Commission for Conciliation, Mediation and Arbitration following her dismissal. The Applicant characterises this litigation as pursued in bad faith and as forming part of a broader campaign of harassment and obstruction directed at the company and its management, rather than as a genuine attempt to vindicate employment rights.

24.9 **Group governance risk.** The Applicant submits that the First Respondent's conduct does not affect Ulko in isolation but poses a systemic risk to the governance of the broader group of companies, which includes BT Games and Digital Kidz. Her continued presence as a director of any entity within the group is said to compromise the integrity of group-level decision-making, create regulatory exposure, and undermine the confidence of third parties — including financial institutions — in the group's leadership and accountability structures.

25. In her replying affidavit, the Applicant contends that the First Respondent's own admission that she wrote and sent "I resign…" is fatal to her defence; that the First Respondent gave contradictory accounts of the shareholding structure; that her statements acknowledging non-participation in management constitute abdication of duty under section 76(3) of the Act; and that the counter-application is retaliatory, jurisdictionally defective, and should be dismissed.

26. In her heads of argument, the Applicant relies on *Spineco Medical International (Pty) Ltd v Webb* COMPTRI CT021NOV2014 (11 August 2015) and *Sikhumbuso Goodman Mtshali v Tshepo Lefutso* COMPTRI CT00482ADJ2020 at [9] for the definitions of neglect and dereliction; on *Pretorius v PB Meat (Pty) Ltd* 2013 (5) SA 30 (SCA) for the proposition that neglect, dishonesty, and breach of trust justify removal; and on *Visser Sitrus (Pty) Ltd v Goede Hoop Sitrus (Pty) Ltd* 2014 (5) SA 179 (WCC) for the

proposition that an irretrievable breakdown of mutual trust between directors can render a director unfit. She submits the First Respondent's bare denials do not raise genuine disputes of fact under the *Plascon-Evans* principle.

E. THE FIRST RESPONDENT'S CASE

No valid resignation occurred

27. The First Respondent denies that any resignation occurred on 28 January 2025 and advances her defence on several fronts.

27.1 On the facts, she contends that the WhatsApp message was sent late at night during an emotionally charged dispute, formed part of an ongoing discourse about a potential future separation of business interests, and was apologised for within hours. It was not a deliberate or considered act of resignation but an emotional outburst expressing a desire to part ways with the Applicant personally, not to vacate her directorship.

27.2 On interpretation, she relies on *Endumeni* to argue that the message must be read in context — as one exchange in a prolonged and deteriorating relationship — and that a sensible and businesslike reading cannot sustain the conclusion that a single late-night WhatsApp to a sibling simultaneously resigned her from three separate directorships without reference to the companies or the CIPC.

27.3 On the Applicant's own conduct, she submits that the Applicant's behaviour in the months that followed is decisive and irreconcilable with any genuine belief that a resignation had occurred. The Applicant asked her to sign off on financial statements the very next morning, described the message as a "threat" to resign in February 2025, repeatedly demanded a formal resignation in March 2025, accused her of directorial dereliction as late as April 2025, and ultimately convened a formal shareholders meeting in July 2025 to effect her removal — all of which presuppose a continuing directorship.

27.4 On the BT Games MOI specifically, she relies on *Harding* and Table B paragraph 65(c) of the Companies Act 61 of 1973, which requires written notice of resignation to both the company and the Registrar. A private WhatsApp to a co-director satisfies neither requirement and is ineffective as a resignation from BT Games regardless of its subjective content or intent.

The 15 August 2025 shareholders meeting was a nullity

28. The First Respondent advances three independent grounds on which she contends that the shareholders meeting of 15 August 2025, and the resolutions purportedly passed at it, are a nullity.

28.1 First, the notices convening the meeting were void *ab initio*. Section 61(1) of the Act permits a shareholders meeting to be called only by the board or by a person designated in the MOI or rules. Neither BT Games nor Digital Kidz had such a designation and no board resolution authorising the meetings was ever passed. The Applicant acted unilaterally and without authority.

28.2 Second, the removal mechanism was fundamentally misconceived. Section 71(1) — removal by shareholder resolution — is available only where a company has three or more directors. Both companies have fewer than three. Section 71(8) expressly vests removal jurisdiction exclusively in the Companies Tribunal in those circumstances. The shareholder resolution route was simply not available to the Applicant, rendering the purported resolutions invalid independently of any procedural defect.

28.3 Third, the meetings were inquorate and could not lawfully have commenced. Section 64(3) requires at least three shareholders representing 25% of voting rights to be present before a meeting of a company with more than two shareholders may begin. Each company has three shareholders. Only the Applicant attended. Quorum requirements are peremptory and cannot be waived by those present. The resolutions are accordingly a nullity on this ground alone.

28.4 As a consequence, the First Respondent filed CoR168 notices under regulation 168(6) of the Companies Regulations, 2011 challenging the CIPC updates of 19 and 20 August 2025. The CIPC accepted those challenges and restored her as a continuing director of both companies, which she submits reflects the correct legal position throughout.

The alternative section 71(8) grounds are without merit

29. The First Respondent contends that none of the statutory grounds advanced under section 71(8) is established on the papers:

29.1 On abdication of directorial duties, she submits that the Applicant pleads a bare conclusion without identifying any specific duties neglected, meetings missed, or resolutions ignored. Her reduced participation in governance was a direct and foreseeable consequence of the Applicant's own unlawful conduct in excluding her from management and denying her access to company records — conduct she was entitled to resist.

29.2 On refusal to cooperate with the resignation process, she submits that this ground is entirely derivative of the resignation allegation which she denies. Having never resigned, she could not be compelled to facilitate a CIPC update or sign a CoR39 predicated on a resignation that never occurred.

29.3 On obstruction of governance and disciplinary proceedings, she contends that the disciplinary process was itself unlawful — initiated unilaterally by the Applicant without board authority in circumstances where the Applicant had already unlawfully excluded her from management. Her refusal to participate was a legitimate defensive response to a compromised process. Non-attendance at the shareholders meeting was equally lawful as attendance is a right and not an obligation.

29.4 On dismissal for gross misconduct as employee of Ulko, she submits that the dismissal was procedurally and substantively unfair and is being challenged before the CCMA. More fundamentally, she contends that the Applicant entirely fails to explain how misconduct in an employment capacity translates into neglect or dereliction in a directorial capacity — two legally distinct relationships governed by distinct legal frameworks.

29.5 On retention of company property and misuse of bank accounts, she submits that the Applicant fails to particularise what property was retained, fails to annex any demand correspondence, and cannot expect the Tribunal to trawl through voluminous annexures to construct a case that the founding affidavit does not plead.

29.6 On loss of trust, she acknowledges the breakdown of the relationship but attributes it entirely to the Applicant's own unlawful conduct — her unilateral arrogation of sole decision-making authority, denial of access to financial records, reduction of salary, and initiation of unlawful disciplinary proceedings.

29.7 On threats of winding-up proceedings, she submits the threat was entirely reasonable in the circumstances and was a legitimate legal response to being unlawfully excluded from the governance and affairs of the companies.

29.8 On CCMA litigation, she submits that recourse to the CCMA was the proper and lawful exercise of her rights as an employee and cannot constitute bad faith conduct in her capacity as director.

29.9 On group governance risk, she denies the allegation and submits that any governance dysfunction in the group is attributable solely to the Applicant's unilateral and unlawful conduct.

29.10 The First Respondent contends that her communications with Standard Bank, in which she asserted her continuing directorship, were legally correct. She had never resigned and had never been validly removed. Asserting the truth of her legal position to the companies' bankers was not a misrepresentation and did not constitute bad faith conduct.

The First Respondent's Counter-application

30. In her counter-application, the First Respondent seeks the Applicant's removal on three grounds:

30.1 Unlawful exclusion from management and denial of access to financial records, preventing finalisation of annual financial statements, in breach of section 66(1) of the Act;

30.2 Failure to disclose a personal financial interest in Golfers Cut Trading CC, whose sole member is the Applicant's domestic partner, in breach of section 75(5) of the Act; and

30.3 Causing company funds totalling R245,770.26 to be applied toward her personal legal costs without board authority.

31. In her replying affidavit and heads of argument, the First Respondent produces emails from the Applicant dated 5 February, 6 February, and 4

March 2025 in which the Applicant refers to the WhatsApp as a "threat" to resign and asks the First Respondent to "submit your resignation" — confirming that both parties understood no resignation had occurred.

32. She relies further on:

32.1 *Molusi v Voges NO* 2016 (3) SA 370 (CC) ("*Molusi*") and *Minister of Land Affairs v D&F Wevell Trust* 2008 (2) SA 184 (SCA) ("*Wevell Trust*") for the requirement that an applicant must make out its case on the founding affidavit;

32.2 *Grancy Property Ltd v Gihwala* (ZAWCHC 2014) and *Gihwala v Grancy Property Ltd* 2017 (2) SA 337 (SCA) ("*Gihwala*") and *Smuts v Kromelboog Conservation Services* [2024] JOL 67686 (SCA) ("*Smuts*") for the impermissibility of paying personal legal costs from company funds;

32.3 *Msimang NO v Katuliiba* [2013] JOL 30522 (GSJ) ("*Msimang*") for the proposition that preventing preparation of annual financial statements constitutes gross negligence;

32.4 *Wightman t/a JW Construction v Headfour (Pty) Ltd* [2008] ZASCA 152; 2009 (3) SA 600 (SCA) ("*Wightman*") for the principle that bare denials of facts within a respondent's exclusive knowledge do not raise genuine disputes of fact; and

32.5 *Langeni v SAWIMA* [2023] ZAGPJHC 1309 for the threshold applicable to removal under section 71(8)(b), and on Cassim et al, *Contemporary Company Law* for the scope of a director's duty not to exceed authority.

F. EVALUATION AND ASSESSMENT

INTRODUCTION

33. The Tribunal considered the parties' extensive affidavits, submissions, arguments, and representations when reaching its decision in this matter.

34. The Tribunal can remove directors under sections 71(8) and 71(3) of the Act when a company has fewer than three directors. Any director or shareholder may apply for removal based on grounds in section 71(3) of the Act: ineligibility or disqualification (section 69), incapacity, or neglect of duty.

35. Section 76(3) of the Act prescribes the standards of directors' conduct. A director must exercise powers and perform functions in good faith and for a

proper purpose; in the best interests of the company; and with the degree of care, skill and diligence reasonably expected of a person carrying out the same functions and having the director's general knowledge, skill and experience. Conduct contrary to section 76 can constitute the factual basis for an allegation of neglect or dereliction under section 71(3)(b) of the Act.

36. Section 75(5) of the Act obliges a director who has a personal financial interest in a matter to be considered at a board meeting — or who knows that a related person has such an interest — to disclose the interest and its general nature before the matter is considered, and not to execute any document on behalf of the company in relation to the matter unless specifically directed to do so by the board.

37. The Tribunal applies the balance of probabilities standard. As confirmed in *Novukuza v Thusi*(CT00999ADJ2022) [2022] COMPTRI 33 (27 July 2022) at [39], the burden rests on the party asserting each ground and does not shift to the respondent. An applicant must make out its case on the founding affidavit (*Molusi v Voges NO* 2016 (3) SA 370 (CC) at para [27-28]).

38. The Tribunal rejects the Applicant's attempt to inversely apply the *Plascon-Evans* rule (*Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A)) against the First Respondent. The onus remained on the Applicant throughout and was not discharged by the First Respondent's alleged non-engagement; each ground still required independent evidential foundation in the founding papers. The Tribunal further notes that the complementary *Wightman* principle (*Wightman t/a JW Construction v Headfour (Pty) Ltd*[2008] ZASCA 152; 2009 (3) SA 600 (SCA)) — that a bare denial is inadequate where the relevant facts lie peculiarly within the denying party's knowledge — operates in opposite directions across the two sets of proceedings: it assists the First Respondent where the Applicant's founding evidence is conclusory on matters within her own knowledge, and it operates against the Applicant in the counter-application where her bare denials of the Golfers Cut and legal fees allegations are inadequate responses to matters exclusively within her knowledge.

Procedural Objections

39. The Tribunal dismisses all three procedural objections raised by the Applicant.

39.1 **Intermingling of answer and counter-application:** The counter-application was sufficiently pleaded in the answering affidavit, the Applicant responded to it fully, and no prejudice was demonstrated. The parties agreed the document would form part of the hearing record. As confirmed in *Smith NO v Malan NO* 2024 (4) SA 624 (FB) at [26]: "It is trite that counter-applications are subject to the general principles applicable to applications… [T]he evidence pleaded in the answering affidavit also serves to support the relief claimed in the counter-application."

39.2 **Jurisdiction:** The First Respondent does not seek relief on employment, shareholding, or estate matters. Her grounds for removal — exclusion from management, non-disclosure of a personal financial interest, and misuse of company funds — fall squarely within the Tribunal's jurisdiction under section 71(8) of the Act.

39.3 **Unclean hands:** The shareholding dispute is not determinative of the removal grounds, which stand independently on the conduct alleged.

THE MAIN APPLICATION

The First Respondent's Resignation — BT Games, Digital Kidz and Ulko

40. All three removal cases are connected by the WhatsApp message of 28 January 2025. The Tribunal finds that no valid resignation was effected, for five reasons.

40.1 Read contextually in accordance with the approach in *Endumeni*, the message was sent late at night during a heated exchange about the breakdown of the parties' relationship. It formed part of an ongoing discourse about a potential future exit, not a deliberate and considered act of resignation.

40.2 The Applicant's own contemporaneous conduct is decisive. On 29 January 2025 she asked the First Respondent to sign off on financial statements. Her email of 5 February 2025 described the message as a "threat" to resign. Further emails of 6 February and 4 March 2025 — in one of which the Applicant expressly asked the First Respondent to "submit your resignation" — confirm that both parties understood no resignation had yet occurred.

40.3 The convening of a shareholders' meeting on 31 July 2025 to formally remove the First Respondent is irreconcilable with the claim that she had already resigned six months earlier. One cannot seek to remove a director who has already left office.

40.4 BT Games' MOI incorporates Table B paragraph 65(c) of the Companies Act 61 of 1973, which requires written notice of resignation to both the company and the Registrar. By virtue of section 15(2)(a)(iii) of the 2008 Companies Act, this more onerous provision prevails. A private WhatsApp message to a sibling, not directed to the company and never communicated to the CIPC, satisfies neither requirement.

40.5 The First Respondent has maintained throughout that the message was not intended as a resignation. The Applicant's attempt to expose an internal contradiction in this position is unpersuasive.

41. **Finding:** The First Respondent did not resign as director of the Companies on 28 January 2025.

Removal under Section 71(1) of the Act — BT Games and Digital Kidz

42. The Applicant seeks confirmation of the resolutions of 15 August 2025 removing the First Respondent as a director of BT Games and Digital Kidz.

43. The Tribunal refuses to confirm the resolutions of 15 August 2025, on jurisdictional grounds and on two independent procedural grounds for the reasons set out below.

44. The Tribunal's powers under section 71 are strictly remedial and circumscribed. The authority to order a director's removal vests exclusively in section 71(8) read with section 71(3). The Tribunal has no jurisdiction over shareholder resolutions passed under section 71(1) or (2), which remain the exclusive domain of shareholders. The Tribunal cannot validate or set aside these resolutions; only the High Court has authority to declare them invalid.

45. The Tribunal's assessment is restricted to whether the First Respondent remains a director, thus empowering the Tribunal to engage section 71(8) read with section 71(3) of the Act.

46. The Tribunal has determined that section 71(3) of the Act applies in this case, allowing the Tribunal to decide if the First Respondent should be removed as director of BT Games and Digital Kidz. The mechanism under sections 71(1)

and (2) of the Act that the Applicant used to attempt the removal of the First Respondent was not available to the Applicant for the following reasons:

46.1 Section 71(1) of the Act was not available to the Applicant since all three companies have fewer than three directors. This means director removal falls exclusively under section 71(8), rather than the shareholder-meeting approach in section 71(1) of the Act.

46.2 Arguments based on conflict-of-interest exclusions are unfounded. Section 75(5) deals with conflicts among directors at the board level and does not affect shareholders' voting rights. There is no equivalent rule that stops a shareholder from voting at a general meeting due to personal interest. A resolution passed with only one shareholder present (representing approximately 33% of the voting rights) after excluding other shareholders is invalid and considered a nullity — not because of any general Tribunal power, but because it lacked proper legal authority (the meeting was inquorate and the convening process was unauthorised).

Applicant's Alternative Case — Removal under Section 71(8): BT Games and Digital Kidz

47. Each of the five alternative grounds fails.

47.1 **CIPC one-time PIN:** This ground is entirely premised on a valid resignation having occurred. The Tribunal has found that it did not. A director who has not resigned bears no obligation to facilitate a process predicated on a resignation that never took place. The First Respondent's refusal to provide the PIN was a lawful assertion of her continuing directorship, not obstruction. This ground fails.

47.2 **Wood Estate executor conflict:** Section 75(3) disqualifies a conflicted person from voting; it does not render them absent for quorum purposes. Section 64(3) requires shareholders *present*at the meeting, not shareholders entitled to vote. A conflicted shareholder may still be counted toward the quorum requirement. The Applicant's interpretation — that a conflicted shareholder is treated as absent for both voting and presence — finds no support in the plain language of the Act. The executor's voluntary non-attendance compounds rather than cures the quorum defect. This ground fails.

47.3 **15 August 2025 meeting:** The meeting was inquorate and the resolutions are a nullity. Section 64(3) is unambiguous: where a company has more than two shareholders, a meeting may not commence unless at least three shareholders are present representing at least 25% of voting rights. The Applicant alone attended. Quorum requirements are strict and cannot be waived by attending shareholders. This ground fails entirely.

47.4 **CoR168 filings:** This ground is entirely derivative of the validity of the 15 August meeting. The First Respondent, having never been validly removed, retained full standing as a director. Her CoR168 filings were a legitimate exercise of that standing. This ground adds nothing independent and falls away.

47.5 **Misrepresentations to Standard Bank:** The First Respondent's underlying position — that she remained a director — was legally correct given the invalidity of the removal resolution. Imprecision of expression is not equivalent to bad faith. To succeed on this ground the Applicant would need to establish that the First Respondent knowingly made a false statement with intent to harm the Companies — a threshold the papers do not meet. The governance uncertainty that prompted the bank's reaction was a foreseeable consequence of the Applicant's own unilateral conduct. This ground fails.

Removal under Section 71(8) — Ulko Active Wear

48. The Applicant seeks the First Respondent's removal as director of Ulko under section 71(8) read with section 71(3).

49. Three structural weaknesses pervade the case. The resignation premise underpinning several grounds is rejected, and as noted at paragraph 41 above, its rejection exposes a fundamental internal contradiction in the Applicant's alternative case. The founding affidavit repeatedly pleads conclusions without the primary facts required in motion proceedings, in breach of the principles in *Molusi v Voges NO* 2016 (3) SA 370 (CC) and *Minister of Land Affairs v D&F Wevell Trust* 2008 (2) SA 184 (SCA). And the First Respondent's credible counter-allegations collectively undermine the Applicant's standing to seek equitable relief.

50. **Abdication of duties:** Pleaded as a bare conclusion. The founding affidavit identifies no specific duties neglected, no meetings missed, no resolutions ignored, and no lawful notices unanswered. That is fatal under *Molusi*. The Tribunal further notes that the particulars of the First Respondent's alleged failure to perform specific directorial functions — the duties said to have been neglected, the occasions on which they were required, and the manner of the alleged failure — would necessarily be within the Applicant's knowledge as the director who managed the companies on a day-to-day basis and who convened or failed to convene the relevant governance processes. Her decision to plead a conclusion rather than primary facts on this ground is not merely a *Molusi* deficiency; it is an evidential choice that, under *Wightman*, the Tribunal is entitled to treat as a failure to lay an adequate foundation on matters peculiarly within her knowledge. The First Respondent's reduced participation is plausibly explained by the Applicant's own prior unilateral exclusion of her from management. This ground fails.

51. **Refusal to cooperate with the resignation process:** Premised entirely on a valid resignation having occurred. None occurred. The First Respondent could not be compelled to sign the CoR39 or otherwise give effect to a resignation that never took place. The Applicant's own contemporaneous emails, and the *Endumeni* and *Harding* principles, fatally undermine this ground. It fails.

52. **Obstruction of governance processes:** The disciplinary proceedings were initiated after the Applicant had already unlawfully excluded the First Respondent from management. Her refusal to participate in a process she was entitled to regard as compromised was a legitimate defensive response, not bad faith. As to the 15 August 2025 meeting, a shareholder's attendance at a general meeting is a right, not an obligation. The Act imposes no duty to attend and non-attendance cannot constitute obstruction. The meeting was in any event a nullity. On the papers the First Respondent's conduct is defensive, not obstructive. This ground fails.

53. **Dismissal for gross misconduct:** Employment misconduct and directorial misconduct are legally distinct. Section 71(3)(b) of the Act requires neglect or dereliction in the performance of *directorial functions*. No nexus between the employment findings and the First Respondent's directorial conduct has been established. The Applicant, as the director who initiated and controlled the

disciplinary process, was best placed to identify and plead that nexus if one existed. Her failure to do so is not merely a gap in the founding papers; it is an unexplained omission on a matter within her peculiar knowledge, which the Tribunal treats accordingly. Without that link, employment misconduct cannot ground a removal order under section 71(8). This is the weakest ground advanced. It fails.

54. **Unauthorised retention of property and misuse of bank accounts:** No bank statements, demand correspondence, or itemised list of retained property appears in the founding affidavit. The criticism that the Applicant invites the Tribunal to trawl through voluminous annexures in place of pleaded facts is well-founded, consistent with the principles in *Molusi*and *Wevell Trust*. The details of the bank account transactions, the identity and value of retained property, and any demand or recovery steps taken are matters that lie exclusively within the Applicant's knowledge and control as the director who managed the companies' financial affairs. Her substitution of voluminous annexures for pleaded primary facts is, on the *Wightman* principle, an inadequate response to the obligation to lay a proper evidential foundation on matters within her own peculiar knowledge. The debit order dispute arose during a period when the First Respondent was both director and employee, rendering it more properly a contractual or employment matter. This ground fails for want of pleaded particularity.

55. **Loss of trust** is not a separate statutory basis under section 71(3)(b); it serves only as context. The Applicant refers to *Visser Sitrus v Goede Hoop Sitrus* 2014 (5) SA 179 (WCC), arguing that irretrievable breakdowns of mutual trust can justify removing a director. While the Tribunal agrees with this legal principle, it does not apply here. The cited authority addresses trust breakdowns caused by the conduct of the director facing removal, not situations where the applicant has contributed to the breakdown. In this case, the Applicant's actions — excluding the First Respondent from management, denying access to financial records, and using company funds for personal legal expenses — are the main causes of the governance crisis. Therefore, the Applicant cannot rely on a trust breakdown she created as grounds for removal. The First Respondent's counterclaims are plausible and unrefuted, so this argument fails.

56. **Threats of winding-up proceedings:** The threat was a plausible legal response to the Applicant's unilateral exclusion of the First Respondent from management. A director confronted with governance deadlock is entitled to consider all available legal remedies, including winding up. The Applicant has not established bad faith or absence of reasonable foundation. This ground fails.
57. **Bad faith CCMA litigation:** Recourse to the CCMA is the exercise of legal rights, not bad faith. The alleged inconsistencies across proceedings are sufficiently explained by the differing legal relationships engaged — employee of Ulko, shareholder of BT Games — in each forum. The threshold of vexatiousness or abuse of process established in *Pretorius v PB Meat (Pty) Ltd* 2013 (5) SA 30 (SCA) has not been met. This ground fails.
58. **Group governance risk:** This argument is circular. It relies on the validity of the purported removals from BT Games and Digital Kidz, which the Tribunal has found to be legally ineffective. A finding unsustainable as to those Companies cannot bootstrap removal from Ulko. This ground fails.
59. **Finding:** None of the grounds advanced satisfies the threshold for removal under section 71(3). The application for the First Respondent's removal as director of Ulko Active Wear is dismissed. Consequently, the First Respondent remains a director of Ulko Active Wear (Pty) Ltd.

THE COUNTER-APPLICATION

60. The First Respondent's counter-application succeeds on all three grounds.
61. **Ground 1 — Unlawful exclusion and denial of access to records:** The Applicant excluded the First Respondent from management, denied access to financial records, and made unilateral decisions without board authority, in breach of section 66(1) of the Act which vests management of a company in its board. Her refusal to grant access prevented finalisation of annual financial statements. As confirmed in *Msimang NO v Katuliiba* [2013] JOL 30522 (GSJ), failure to cause preparation of annual financial statements amounts to gross negligence and wilful misconduct under section 162(5)(c)(iv)(aa) of the Act. This ground is established.
62. **Ground 2 — Failure to disclose personal financial interest (Golfers Cut):** The Applicant caused BT Games to contract with Golfers Cut Trading

CC, whose sole member is her domestic partner and therefore a "related person" under section 2(1)(a)(i) read with section 75(1)(b) of the Act, without disclosing her personal financial interest or the contractual terms to the board and without recusing herself, in breach of section 75(5). The First Respondent's general awareness of the Golfers Cut arrangement did not discharge the Applicant's mandatory disclosure obligation. The Applicant's bare denials — characterising the First Respondent's allegations as false, misleading, misconceived and speculative without identifying which allegations are false or providing any substantive answer — do not raise a genuine dispute of fact. The true nature and terms of the Golfers Cut arrangement, the commission structure, the identity of the contracting parties, and the financial flows between Golfers Cut and BT Games lie exclusively within the Applicant's knowledge. She is the director who caused the contracts to be concluded, who controlled access to the relevant records, and who refused to disclose the commission terms. Her failure to produce any of the relevant agreements, commission records, or financial data in response to the First Respondent's detailed and particularised allegations is precisely the conduct condemned in *Wightman t/a JW Construction v Headfour (Pty) Ltd* [2008] ZASCA 152; 2009 (3) SA 600 (SCA): where facts averred lie purely within the knowledge of the averring party, a bare denial does not raise a genuine dispute of fact, and the Tribunal will take a robust view of that inadequate response. The Tribunal does so here. Every agreement concluded without board authorisation is void under section 75(7)(a). This ground is established.

63. **Ground 3 — Unauthorised payment of personal legal fees:** The Applicant caused BT Games and Ulko to pay R245,770.26 to her personal attorneys without board authority. The attorneys' own correspondence confirmed they acted for the Applicant personally. The payment reference predates the disciplinary proceedings against the First Respondent, contradicting the Applicant's characterisation of the payments as corporate expenditure. The true nature of the payments, the mandate under which the attorneys acted, the underlying invoices and statements of account, and the relationship between the payment references and the work performed are all matters exclusively within the knowledge of the Applicant and her attorneys. The

Applicant's response — a bare denial supported by a confirmatory affidavit from Mr Puglia that does not address the letter of 14 May 2025 which predates the disciplinary proceedings — does not raise a genuine dispute of fact on the *Wightman* principle. The Applicant's failure to attach her attorneys' invoices, statements of account, or a confirmatory affidavit from her attorney explaining who they acted for and in respect of what work, is an unexplained omission on matters peculiarly within her knowledge that the Tribunal treats robustly. This constitutes a gross abuse of directorial position, condemned in *Grancy Property Ltd v Gihwala* (ZAWCHC 2014), endorsed by the Supreme Court of Appeal in *Gihwala v Grancy Property Ltd* 2017 (2) SA 337 (SCA), and confirmed in *Smuts v Kromelboog Conservation Services* [2024] JOL 67686 (SCA), which holds that a director cannot justify such payments by claiming they benefited the company. This ground is established.

64. **Finding:** All three grounds are established. The counter-application is granted and the Applicant is removed as director of all three Companies.

G. COSTS

65. The Applicant prays that Rogotzki's case is dismissed, with costs.
66. The First Respondent requested that the main application be dismissed with costs and that she be entitled to the relief in the counter-application with costs, in both cases inclusive of the costs of senior counsel.
67. Regulation 156 of the Companies Regulations, 2011 vests the Tribunal with a discretion to award costs on a party-and-party scale, including the costs of a second legal representative capped at one half of those of the first.
68. The governing principle is that a successful litigant is ordinarily entitled to a costs award. It would be manifestly unjust to require a party to bear the costs of proceedings that ought never to have been brought, and this principle applies with equal force before this Tribunal. This principle was put in the following terms by Innes CJ in *Texas Co. (S.A.) Ltd. v Cape Town Municipality* 1926 AD 467 at 488: "Now costs are awarded to a successful party in order to indemnify him for the expense to which he has been put through having been unjustly compelled either to initiate or to defend litigation." and was affirmed in *President of the Republic of South Africa v*

Gauteng Lions Rugby Union 2002 (2) SA 64 (CC) at [15] and *Ferreira v Levin NO* 1996 (2) SA 621 (CC) at [3].

69. In exercising its discretion, the Tribunal takes the following factors into account.

69.1 The Applicant advanced a removal application premised on a resignation that her own contemporaneous conduct contradicted. She unilaterally excluded the First Respondent from the governance of the companies, failed to disclose a material personal financial interest as required, and caused company funds to be applied toward her personal legal expenses. These are not mere procedural irregularities — they reflect a pattern of conduct that undermined the integrity of the proceedings from the outset.

69.2 Compounding this, the First Respondent made repeated requests to resolve the dispute through mediation. The Applicant consistently rebuffed those overtures and persisted with litigation that was both factually unsound and procedurally defective. A party who spurns reasonable offers of mediation and elects instead to press forward with untenable proceedings cannot escape the costs consequences of that choice. The persistence with litigation premised on a resignation the Applicant's own conduct contradicted, in the face of repeated mediation proposals, is an independent aggravating factor in the costs assessment. The First Respondent was compelled to defend an application that should never have been brought and to pursue a counter-application to vindicate rights that ought never to have been placed in dispute.

70. In all the circumstances, the Applicant is directed to pay the costs of both the main application and the counter-application on the party-and-party scale, including the costs of senior counsel where employed, subject to the cap in Regulation 156 (second counsel limited to one half of the fees of senior counsel).

H. FINDINGS

71. The First Respondent did not resign as director of BT Games (Pty) Ltd, Digital Kidz (Pty) Ltd, or Ulko Active Wear (Pty) Ltd on 28 January 2025 or at any

time thereafter. The WhatsApp message of that date did not constitute valid written notice of resignation and was incapable of effecting a resignation in law.

72. The shareholders' resolutions purportedly passed at the meeting of 15 August 2025 are a nullity. The meeting was inquorate in terms of section 64(3) of the Act. The Tribunal has no jurisdiction to confirm or set aside those resolutions, which fall within the exclusive domain of the High Court.

73. None of the grounds advanced by the Applicant for the removal of the First Respondent as director of BT Games (Pty) Ltd, Digital Kidz (Pty) Ltd, and Ulko Active Wear (Pty) Ltd satisfies the threshold for removal under section 71(3) of the Act. The main application is dismissed in its entirety.

74. The Applicant, Launa Joanna Ray Bagnall, has neglected and been derelict in the performance of her functions as director of BT Games (Pty) Ltd, Digital Kidz (Pty) Ltd, and Ulko Active Wear (Pty) Ltd in the following respects:

    74.1 She unilaterally excluded the First Respondent from the management and governance of the companies in breach of section 66(1) of the Act, denied the First Respondent access to the companies' financial and other records, and thereby caused the companies' annual financial statements to remain unprepared — constituting neglect within the meaning of section 71(3)(b), being a sustained omission to discharge mandatory directorial functions to which wholly insufficient attention was given.

    74.2 She caused BT Games (Pty) Ltd to contract with Golfers Cut Trading CC, whose sole member is her domestic partner and therefore a related person within the meaning of section 2(1)(a)(i) read with section 75(1)(b) of the Act, without disclosing her personal financial interest, without enabling independent board assessment of the benefit accruing to herself and her related person, and without recusing herself from the relevant decisions, in deliberate breach of section 75(5) — constituting dereliction within the meaning of section 71(3)(b), being intentional and purposeful conduct amounting to an abdication of fiduciary responsibility.

    74.3 She caused BT Games (Pty) Ltd and Ulko Active Wear (Pty) Ltd to pay a total of R245,770.26 to her personal attorneys without board authority and without the knowledge or consent of the First Respondent as co-director, in deliberate breach of her fiduciary duties — constituting dereliction within the meaning of section 71(3)(b), being intentional misappropriation of company funds for personal benefit and a gross abuse of her position as director.

75. The counter-application succeeds on all three grounds. The Applicant is removed as director of all three companies.

I. ORDER

76. **Main application:**

76.1 The Applicant's application for the removal of the First Respondent as director of BT Games (Pty) Ltd, Digital Kidz (Pty) Ltd, and Ulko Active Wear (Pty) Ltd is dismissed.

76.2 The Applicant's application to confirm the validity of the shareholders' resolutions passed on 15 August 2025 is dismissed.

77. **Counter-application:**

77.1 The counter-application is granted.

77.2 The Applicant, Launa Joanna Ray Bagnall, is removed as director of:

77.2.1 BT Games (Pty) Ltd;

77.2.2 Digital Kidz (Pty) Ltd; and

77.2.3 Ulko Active Wear (Pty) Ltd.

77.3 The CIPC is directed to update its records to reflect the removal of the Applicant as director of BT Games (Pty) Ltd, Digital Kidz (Pty) Ltd, and Ulko Active Wear (Pty) Ltd within ten (10) business days of the date of this order.

77.4 The CIPC is directed to restore the First Respondent, Shannon Ray Rogotzki, as director of BT Games (Pty) Ltd and Digital Kidz (Pty) Ltd on its records within ten (10) business days of the date of this order. This direction effects a correction of an invalid administrative act and does not constitute a new appointment. For the avoidance of doubt, the First Respondent remains a director of Ulko Active Wear (Pty) Ltd, and no restoration order is required in respect of that company.

77.5 The Applicant is directed to provide the First Respondent with immediate and unfettered access to all records of BT Games (Pty) Ltd, Digital Kidz

(Pty) Ltd, and Ulko Active Wear (Pty) Ltd to which she is entitled as a continuing director in terms of section 26 of the Act, within five (5) business days of the date of this order. This includes, without limitation:

77.5.1 all financial records, including management accounts, annual financial statements, bank statements, general ledgers, trial balances, creditor and debtor schedules, payroll records, and tax returns;

77.5.2 all contracts and agreements to which any of the three companies is a party, including supplier agreements, lease agreements, employment contracts, and service level agreements;

77.5.3 all statutory and regulatory records, including memoranda of incorporation, share registers, minutes of directors' and shareholders' meetings, resolutions, and all CIPC filings;

77.5.4 all correspondence and communications conducted on behalf of or in the name of any of the three companies, including electronic communications, to the extent that these constitute company records;

77.5.5 all records relating to company assets, including fixed asset registers, inventory records, and records evidencing ownership or custody of property;

77.5.6 all insurance records, including current policies, claims history, and premium payment records; and

77.5.7 all records held by any third party — including accountants, auditors, attorneys, or financial institutions — on behalf of any of the three companies, in respect of which the Applicant is directed to take all reasonable steps to procure access for the First Respondent within the same five (5) business day period and to provide the First Respondent with written confirmation of the steps taken.

77.6 The Applicant may not impose any conditions, delays, or intermediaries that would limit or defer the First Respondent's access to the records referred to in paragraph 77.5.

78. **Costs:**

78.1 The Applicant is directed to pay the costs of both the main application and the counter-application on the party-and-party scale, including the costs of senior counsel where employed, subject to the cap set out in Regulation 156 (costs of a second legal representative limited to one half of the fees of the first).

[redacted]

D TERBLANCHE
MEMBER OF THE COMPANIES TRIBUNAL