IN THE COMPANIES TRIBUNAL OF SOUTH AFRICA

Case no.: **CT02334ADJ2025**

In the matter between:

HANNES HOFFMEISTER	**Applicant**
and	
ASHLEY KHOLOFELO RAPHALA	**First Respondent**
and	
JARRAD EVAN TREGGER	**Second Respondent**
and	
COMPANIES AND INTELLECTUAL PROPERTY COMMISSION	**Third Respondent**

Presiding member: Nomagcisa Cawe

Date of decision: 20 August 2026

DECISION (Reasons and Order)

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1. This matter concerns an application brought before the Companies Tribunal in terms of section 71(8) of the Companies Act 71 of 2008 ("**the Act**"), in which the Applicant, Mr. Hannes Hoffmeister ("Hoffmeister"), seeks the removal of Mr. Ashley Kholofelo Raphala ("Raphala") and Mr. Jarrad Evan Treger ("Treger") as directors of KUNYE RECORDS (Pty) Ltd ("Kunye") (registration number 2021/976377/07). Applicant further requests that the matter be proceeded with in terms of regulation 153 of the 2011 Regulations (GN R351 in GG 34239).

2. The application is rooted in allegations of misconduct and dereliction of fiduciary duty by Phala and Treger, jointly and severally. It is brought in terms of section 71(8)(*b*) read with section 71(3) of the Act, which provide for the removal of a director where there are less than three directors on the board of a company. In such circumstances, an application to the Tribunal is necessitated by the fact that a majority vote would typically be impossible, unless the director whose removal is sought essentially resigns voluntarily.

3. Hoffmeister, for the company, alleges that Phala and Treger have committed a series of breaches of their fiduciary duty to the company. The application is supported by a substantial body of documentation, including email correspondence and financial records.

BACKGROUND

4. Kunye was incorporated on 4 November 2021. It's registration address is: 803 Pleasant Ways, 275 Beach Road, Sea Point, Cape Town, Western Cape. Upon incorporation Raphala and Treger were appointed its two directors.

5. On 4 November 2021 Raphala and Treger concluded a Memorandum of Incorporation in respect of Kunye, and in January 2022, Raphala, Treger and the Applicant concluded a written Shareholders Agreement.

6. It is Applicant’s version that since Raphala and Treger were appointed in 2021, they have been required to adhere to the duties and obligations toward the company as its directors, as outlined in the Act as well as the Shareholders Agreement.

7. Applicant submits that notwithstanding the aforegoing, Raphala and Treger have breached the provisions of the Act and the Shareholders Agreement, and have thus breached their directors’ fiduciary duties. It is for this reason Applicant seeks an order for their removal as directors of Kunye.

LEGAL FRAMEWORK

9. Section 71(3) of the Act permits the removal of a director by the board or by shareholders if that director either:

    9.1. has become ineligible or disqualified in terms of section 69, other than on the grounds contemplated in section 69 (8) (a);

    9.2. has become incapacitated to the extent that the director is unable to perform the functions of a director, and is unlikely to regain that capacity within a reasonable time; or

    9.3. has neglected, or been derelict in the performance of, the functions of director (this being the relevant ground for the Applicant to establish in the present case).

10. Where, as here, the company has only two directors, section 71(8) permits application to the Tribunal for relief. The Tribunal must be satisfied that the evidence establishes conduct falling within section 71(3), warranting removal.

11. It is required – in terms of section 71(8)(*b*) read with 71(4)(*b*) – that the director facing removal be given a reasonable opportunity to make a presentation before the decision is made. In the present matter an opportunity was given to the two directors but they chose not to respond to Applicant's allegations, in the form of an appearance to defend. The matter is thus proceeding on a default basis in terms of Regulation 153.

DISCUSSION / ANALYSIS

Evidence before the Tribunal

12. In the absence of competing evidence, it falls to the Tribunal to scrutinize the evidence that is before it with particular care. The fact that the allegations are uncontradicted does not relieve the Tribunal of its obligation to assess them objectively and to consider whether they are sufficiently probative. That said, the evidence presented by the Applicant, including emails between the parties and financial records, is extensive and detailed.

13. The conduct complained of is set out under two main headings in the founding affidavit. Before turning to the merits of each allegation, it is necessary to mention the evidentiary standard applicable to the present proceedings. The Applicant bears the onus of establishing his case on a balance of probabilities, which means that he must satisfy the Tribunal that it is more likely than not that the grounds for removal under section 71 of the Companies Act are met, and that the two Respondents' conduct justifies their removal.

14. It must now be determined whether there is evidence to support the Applicant's case for the Respondents' removal. This requires a consideration of each allegation levelled against the Respondents, and in each case, a determination as to whether the conduct as alleged occurred and, if so, whether it amounted to a breach of duty on the evidence presented.

Allegation of Conflict of Interest

18. The Applicant has chosen to enumerate the conflicts of interest separately for each director.

<u>18.1 **Raphala**</u>

The first complaint levelled against the First Respondent serves as the central thread running through the remainder of the allegations – both constituting the principal grievance and subsuming aspects of the others, including those against the Second Respondent.

18.1.1 During 2024 Raphala completed a Shareholders Confirmation, in which he failed to disclose that he is a director of Just Exists, into whose account he had paid R 752 000 from Kunye's account.

18.1.2 Raphala registered two new brands (U'R and Shimza) with similar concepts to the brands/businesses of Kunye between 2021 and 2023. These brands hosted events in Durban with the same promoters as Kunye.

In both instances there was a conflict of interest on Raphala's part, as a director of Kunye. In the one instance he appropriated funds from Kunye and deposited them into the account of a competitor.

In the other instance he hosted events using Kunye's promoters. This was very disloyal of him and, in the absence of an explanation, cannot be condoned.

18.2 **TREGER**

18.2.1 On 13 December 2022 Treger made payment to one Ms. Sarah Opperman, his then alleged girlfriend, without authorization from Kunye.

18.2.2 Treger paid in excess of R6000 to certain entities without the approval of Kunye's shareholders, as set out in the Shareholders Agreement.

18.2.3 Treger invoiced Kunye for his private expenses at different hotels overseas, and once for fuel at an Engen garage in South Africa.

18.2.4 Treger was paid R185 000 for an event in Durban without approval or authorization by the board.

18,2.5 Treger misrepresented that he was the only beneficial owner of Kunye on the beneficial certificate which was filed with the Companies and Intellectual Property Commission (CIPC) in that he failed to reflect Raphala and the Applicant as 33% shareholders each.

18.2.6 In May 2024 Treger registered a company by the name "Kunye Events (Pty) Ltd".

These actions by Treger, cumulatively go against the essence of a director's duty of loyalty to the company. The Second Respondent's divided loyalties appear from the evidence set out herein and are not merely speculative and do not only exhibit dereliction of duty but also inexcusable dishonesty.

19. Another significant complaint raised by the Applicant is directed at both Respondents' alleged refusal to involve the Applicant in the financial affairs of the company. Major financial decisions, which constitute a change in the financial and accounting policies of the company, are made by the Respondents

to Applicant's exclusion. These actions by the Respondents constitute serious bad faith towards the financial affairs of the company.

FINDINGS

On a conspectus of all the evidence, as discussed at length above, it appears that there are a number of bases on which one might find the Respondents to have neglected, or been derelict in the performance of the functions of directors. Considering the number of instances in which this has been shown to have taken place, there can be little room for doubt that the Respondents have in fact grossly neglected and/or been derelict in the performance of the functions as directors.

42. The Applicant's allegations are substantiated by documents that speak for themselves. In many cases, the documentary evidence would require persuasive rebuttal if a different interpretation were to be sustained. In the absence of such rebuttal, and given that the Respondents had fair notice of the allegations, the Tribunal must consider the case on the evidence presented, which, viewed holistically, is both credible and compelling.

ORDER

44. Accordingly, it is ordered that:

a) Mr. Ashley Kholofelo Raphala and Mr. Jarrad Evan Treger are removed as directors of KUNYE RECORDS (Pty) Ltd with immediate effect.

b) The Companies and Intellectual Property Commission is directed to update the company's records to reflect the removal.

Nomagcisa Cawe
Member of the Companies Tribunal