

MC/27/21/FM

7th December, 2021

The Honourable,
The Chief Justice,
Supreme Court of Uganda,
P. O. Box 6079,
KAMPALA.



My Lord Chief Justice,

**RE: REPORT OF APPARENT BIAS IN THE REFUSAL TO HEAR
CIVIL APPLICATION NO. 51 OF 2021
(ARISING FROM CIVIL APPEAL NO. 13 OF 2021);
HAM ENTERPRISES LTD AND OTHERS
Versus
DIAMOND TRUST BANK AND ANOTHER**

We together with **M/s Kimara Advocates & Consultants** act for our Clients, the Appellants and Applicants in **Civil Appeal No. 13 of 2021** and **Civil Application No. 51 of 2021** respectively.

My Lord Chief Justice, we have been instructed to write to the Panel hearing the above appeal which you head to communicate our clients' apprehension of apparent bias which has been exhibited by court's refusal to hear and determine the above application.

Our clients have reasonable fear that Court will not bring an impartial mind to bear on the adjudication of this appeal because of the following reasons;

(1) On the 23rd November 2021, we filed the above application seeking judgment on admission against the respondent based on the plain, unambiguous and unequivocal admissions of the grounds of appeal in their written submissions.

A copy of the application is attached hereto for ease of reference as annexure 'A'.

(2) Owing to the urgency of the matter, we wrote to the Registrar of the Supreme Court on the 29th November 2021 requesting for a hearing date of the said Application in order to determine its propriety.

A copy of our letter is attached hereto for ease of reference as annexure 'B'.

- (3) On the 1st December 2021, His worship Didas Muhumuza, the Assistant Registrar of the Supreme Court wrote to us declining to process the hearing of the application by the court.
- (4) The learned Assistant Registrar expressed his views which were to the effect that the application did not raise any new issue and |or that what we were seeking would be taken care of in the final judgment.
- (5) Cognisant of the fact that applications to the court are not determined by views of the Registrars, we requested that our clients application be forwarded to the Justices of the court for the necessary action.

A copy of our letter dated 3/12/2021 which conveyed the above request is attached for ease of reference as annexure 'C'.

- (6) At the time of writing this letter, our clients application remains in limbo with a possibility that its propriety will not be investigated and yet it can be rendered moot by the final decision of the Court which is due any time.
- (7) Our clients believe that except for apparent bias, there is no reason why they are denied a chance to be heard and possibly succeed on the appeal when their application for judgement on admission is considered.
- (8) It is perplexing to our clients and fair minded members of society who are following this case, that the court appears inclined not to perform its cardinal duty of sitting and hearing our clients application which is part of the appeal.
- (9) On the contrary, if our Clients application is successfully heard on the merits, it would quickly expose the Respondents admitted facts which need not otherwise be proved in accordance with **S.58 of the Evidence Act**.
- (10) it is our contention that disposing of our clients appeal upon the Respondents admissions will relieve the courts time and resource constraints engendered by waiting for and writing "another judgement".
- (11) Our clients suspect that they are being told to wait for the final judgement so that court can pronounce its findings on the new grounds which the respondents smuggled in the appeal via the proceedings of the 11th November 2021.
- (12) That it is the benefit of apparent bias in favour of the Respondents which condoned their failure to file a cross appeal or notice affirming the decision of the court of appeal.

- (13) That it is the same apparent bias that enabled the seeking of court findings and declaratory orders as framed by the respondent in their supplementary written submissions, to wit;
- a) **Lending of money to Ugandans from funds, which are not derived from deposits taken and held in Uganda, does not require a license from the BOU;**
 - b) **Syndicated lending between two or more financial institutions is not illegal provided that the financial institution(s) which provides funds from deposits taken and held in Uganda has a license from the BOU;**
 - c) **The Agency Banking Regulations 2017 do not apply to a contractual agency relationship derived between two or more banks on the management of credit facilities.**
- (14) It is unprecedented that the respondents are directing a non-existent appeal to influence the hand of the court to pass judgement on extraneous matters of **Foreign lending, Syndicated lending and Agency banking which are not part of the appeal filed in the supreme court.**
- (15) In the premise, our client considers that Justice is and continues to be irretrievably miscarried by the courts acceptance of the Respondents masquerade as an appellant, without an appeal.
- (16) Having said that, the unintended consequence of wearing the above masquerade demonstrates that the Respondents concede to our clients appeal to the extent *inter alia* that;

"The learned Justices of Appeal erred in law and fact when they avoided adjudicating on the substantial question of illegality which was the basis of the Respondents Appeal before them"

(Reference ground 1 of the Appellants memorandum of appeal)

Whereas our clients have called the courts impartiality into question, they still believe that this Honourable court has the power to redress this complaint of apparent bias by hearing and determining their application for judgement on admission.

Since this is the highest court in the land, our clients shall suffer permanent injustice with no remedy in Uganda if this request to access the court and be heard, is ignored.

We shall oblige your timely action in the matter.



For: ~~MUWEMA & CO. ADVOCATES~~

C.C: Hon Justice Opio Aweri,
Justice of the Supreme Court,
Kampala.

C.C: Hon Justice Faith Mwendha,
Justice of the Supreme Court,
Kampala.

C.C: Hon Justice Percy Tuhaise,
Justice of the Supreme Court,
Kampala.

C.C: Hon Justice John Mike Chibita,
Justice of the Supreme Court,
Kampala.

C.C: The Registrar,
Supreme Court of Uganda,
Kampala.

C.C: M/S Kimara Advocates & Consultants,
Kampala.

C.C: M/S K & K Advocates,
Kampala.

1111

SUPREME COURT OF UGANDA
RECEIVED
TIME: 12:13 PM
23 NOV 2021
P. O. BOX 6074 KAMPALA
SIGN: _____

THE REPUBLIC OF UGANDA
IN THE SUPREME COURT OF UGANDA AT KAMPALA

CIVIL APPLTN NO. 51 OF 2021
[ARISING FROM SCCA NO. 13 OF 2021]
[ARISING FROM CIVIL APPEAL NO. 242 OF 2020]
[ARISING FROM HCMA NO 654 OF 2020]
[ARISING FROM HCCS NO. 43 OF 2020]

A

1. HAM ENTERPRISES LTD]
2. KIGGS INTERNATIONAL (U) LTD]
3. HAMIS KIGGUNDU] APPLICANTS

VERSUS

1. DIAMOND TRUST BANK (U) LTD]
2. DIAMOND TRUST BANK (K) LTD] RESPONDENTS

NOTICE OF MOTION

*[Under Rules 2 (2), 42 (1) and (2) and 43 Judicature (Supreme Court Rules) Directions S. 1 13 – 11)
and Order 13 r. 6 Civil Procedure Rules]*

TAKE NOTICE that this Honorable Court shall be moved on the _____ day of _____ 2021 at _____ O'clock in the forenoon/afternoon or soon thereafter as the Applicants or their Counsel can be heard on an Application for Orders that;

- (a) Judgement on admission be entered against the Respondents upon grounds 1, 2 and 3 of the Applicants Memorandum of Appeal filed in Civil Appeal No. 13/2021.
- (b) Hearing of the appeal on grounds 4,5,6 and 7 in the Memorandum of appeals abides court's decision on the Respondents' admissions.
- (c) Costs of the Application be provided for.

TAKE FURTHER NOTICE that the grounds in support of this Application herein are contained in the supporting affidavit of **HAMIS KIGGUNDU**, the 3rd Applicant, Director and Attorney of the 1st and 2nd Applicants respectively, which shall be relied upon at the hearing of this Application but which briefly are that;



1. The Applicants filed a Memorandum of Appeal in Supreme Court Civil Appeal No. 13/2021 in which they raised 7 grounds of appeal to wit;
 - (i) *The learned Justice of Appeal erred in law and fact when they avoided to adjudicate the substantial question of illegality which was the basis of the Respondents Appeal before them.*
 - (ii) *The learned Justices of Appeal erred in law and fact when they abandoned the grounds of appeal raised by the Respondents and irregularly introduced new grounds of appeal that were not implicitly set out in the memorandum of appeal and thereby erroneously ordered;*
 - (a) *the striking out of the Appellants Amended Pleat in HCCS No. 43 of 2020 and further ordered a retrial on the basis of the original pleadings,*
 - (b) *the saving of the order for appointment of auditors which order had been vacated and was never resurrected in the suit.*
 - (iii) *The learned Justice of Appeal erred in law and fact in finding that the Respondents were never heard on the question of illegality in Misc. Application No. 654 of 2020 before their joint written statement of Defense was struck out and judgment entered for the Appellants.*
 - (iv) *The learned Justices of Appeal erred in law and in fact in failing to evaluate evidence which was before the trial court and setting aside the judgment entered in favour of the Appellants under **Order 6 Rule 30** of the **Civil Procedure Rules S. 171 – 1.***
 - (v) *The learned Justices of Appeal erred in law and in fact in ordering for a retrial of the suit in which the overriding question of illegality had been fully heard and determined inter parties by the trial court.*
 - (vi) *The learned Justices of Appeal erred in law and in fact in condemning the Appellants to costs in an Appeal where the Respondents had not been purged of the illegality adjudged against them by the trial court.*
 - (vii) *The learned Justices of Appeal erred in law and in fact in rewarding the Respondents with costs for committing an illegality.*

2. On the 27th day of October, 2021, the Court directed that the said appeal be heard by way of written submissions filed by the Parties.
3. Pursuant to the Court directions, the Applicants filed their Conferencing Notes and Written Submissions in support of the aforesaid grounds of appeal and served copies thereof on the Respondents Counsel on the 3rd of November 2021.
4. The Respondents filed and served their reply to Applicants Conferencing Notes and Written Submissions on the 5th of November 2021.
5. The Respondents' reply to the Applicants conferencing notes and written submissions conceded and admitted to grounds 1, 2 and 3 of the Memorandum of Appeal in SCCA No. 13/2021.
6. The same admissions are repeated in the Respondents Supplementary submissions which were filed in Court on the 17th November 2021.
7. On the whole, the thrust of the Respondents arguments and submissions in this appeal, amounts to a clear, unequivocal and positive admission to grounds 1,2 and 3 of the memorandum of appeal.
8. Consequently, there is no dispute for this honorable court to determine in respect of the admitted grounds indicated above and the remainder of the Appeal ought to stand settled in favor of the Applicant.
9. In the circumstances, the admissions entitle the Applicants to judgement upon the said admitted grounds and or a settlement of the remainder of the appeal as sought.
10. That it is expedient, just and equitable that this Application be granted as sought.

DATED at Kampala this 22 day of November 2021.



**MUWEMA & CO. ADVOCATES
KIMARA ADVOCATES & CONSULTANTS
(COUNSEL FOR THE APPLICANTS)**

GIVEN under my hand and the seal of this Honorable Court the _____ day of
_____ 2021.

REGISTRAR

Drawn and Filed By:

1. M/s Muwema & Co. Advocates and Solicitors,

Plot 50 Windsor Crescent Road, Kololo,

P.O. Box 6074, Kampala.

Tel: +256-414-257661

Email: info@madvocates.com

madvocates@madvocates.com

Website: www.madvocates.com

2. M/s Kimara Advocates & Consultants,

Plot 67B, Spring Road, Bugolobi,

4th Floor Kisakye Complex,

P. O. Box 11916, Kampala

Tel: +256 200 944412

Email: info@kimara-advocates.com

Website: www.Kimara-advocates.com



THE REPUBLIC OF UGANDA
IN THE SUPREME COURT OF UGANDA AT KAMPALA

CIVIL APPLTN NO. 51... OF 2021
[ARISING FROM SCCA NO. 13 OF 2021]
[ARISING FROM CIVIL APPEAL NO. 242 OF 2020]
[ARISING FROM HCMA NO 654 OF 2020]
[ARISING FROM HCCS NO. 43 OF 2020]

- | | | | |
|----|-----------------------------|---|------------------|
| 1. | HAM ENTERPRISES LTD |] | |
| 2. | KIGGS INTERNATIONAL (U) LTD |] | |
| 3. | HAMIS KIGGUNDU |] | APPLICANTS |

VERSUS

- | | | | |
|----|----------------------------|---|-------------------|
| 1. | DIAMOND TRUST BANK (U) LTD |] | |
| 2. | DIAMOND TRUST BANK (K) LTD |] | RESPONDENTS |

AFFIDAVIT IN SUPPORT OF MOTION

I, Hajji HAMIS KIGGUNDU of C/o M/s Muwema & Co. Advocates & Solicitors, Plot 50 Windsor Crescent Kololo, P.O. Box 6074 Kampala Uganda and M/s Kimara Advocates & Consultants, Plot 67B, Spring Road, Bugolobi, 4th Floor, Kisakye Complex, P. O. Box 11916 Kampala – Uganda, do solemnly Affirm and State as follows;

1. **THAT** I am a male adult Ugandan of sound mind, the 3rd Applicant herein, and a Director and Attorney of the 1st and 2nd Applicants respectively, and I am conversant with the facts of this case, in which capacity I depone / affirm to this Supporting Affidavit;
2. **THAT** I am also a lawyer by training, and I bear a fair understanding of the basic principles of law attendant to this matter before Court;
3. **THAT** the Applicants filed a memorandum of Appeal before this Court in Civil Appeal No. 13 of 2021 in which they raised 7 (Seven) grounds of appeal to wit, THAT;

- (i) The learned Justice of Appeal erred in law and fact when they avoided to adjudicate the substantial question of illegality which was the basis of the Respondents Appeal before them.
- (ii) The learned Justices of Appeal erred in law and fact when they abandoned the grounds of appeal raised by the Respondents and irregularly introduced new grounds of appeal that were not implicitly set out in the memorandum of appeal and thereby erroneously ordered;
 - (a) the striking out of the Appellants Amended Pleat in HCCS No. 43 of 2020 and further ordered a retrial on the basis of the original pleadings,
 - (b) the saving of the order for appointment of auditors which order had been vacated and was never resurrected in the suit.
- (iii) The learned Justice of Appeal erred in law and fact in finding that the Respondents were never heard on the question of illegality in Misc. Application No. 654/2020 before their joint written statement of Defense was struck out and judgment entered for the Appellants.
- (iv) The learned Justices of Appeal erred in law and in fact in failing to evaluate evidence which was before the trial court and setting aside the judgment entered in favor of the Appellants under Order 6 Rule 30 of the Civil Procedure Rules S. 171 – 1.
- (v) The learned Justices of Appeal erred in law and in fact in ordering for a retrial of the suit in which the overriding question of illegality had been fully heard and determined inter parties by the trial court.
- (vi) The learned Justices of Appeal erred in law and fact in condemning the Appellants to costs in an Appeal where the Respondents had not been purged of the illegality adjudged against them by the trial court.

(vii) **The learned Justices of Appeal erred in law and fact in rewarding the Respondents with costs for committing an illegality.**

(A copy of the Applicants memorandum of appeal is attached and marked as "Annexure HK.1");

4. **THAT** there is an apparent interconnectedness between the above grounds of appeal, on the substantial question of illegality.
5. **THAT** on the 27th day of November, 2021, at the pre-hearing session, the Court directed that the appeal be heard by way of written submissions filed by the Parties;
6. **THAT** pursuant to the Court directions, the Applicants filed their Conferencing Notes and Written Submissions in support of the aforesaid grounds of appeal, and served a copy thereof, on the Respondents' Counsel on 3rd November 2021. **(A copy of the Applicant's Conferencing Notes and Written Submissions are attached hereto and marked as "Annexure HK.2");**
7. **THAT** subsequently, the Respondents filed and served their Respondents' Reply to the Appellants' Conferencing Notes and Written Submissions on the 5th day of November 2021. **(A copy of the Respondents' said Reply to the Appellants' Conferencing Notes and Written Submissions are attached hereto and marked as "Annexure HK.3");**
8. **THAT** the Respondents' submissions in reply to the Applicants' Conferencing Notes and Written Submissions conceded to and materially admitted **grounds 1, 2 and 3** of the Appellants' Memorandum of Appeal in SCCA No. 13/2021;
9. **THAT** the issue of the failure by the Learned Justices of Appeal to adjudicate the substantial question of illegality which was the basis of the Respondents appeal in the Court of Appeal, is the anchor of grounds 1, 2 and 3 and the rest of the appeal. **(A copy of the Respondents Memorandum of Appeal in Civil Appeal No. 242/2020 is attached hereto as "Annexure HK.4");**

10. **THAT** in response to the said grounds of appeal (1, 2 and 3), the Respondents clearly conceded that the Learned Justices of Appeal did not adjudicate the substantial question of illegality when they stated at page 5 of their written submissions that;

"The learned Justices were entitled to first deal with the grounds regarding the procedure adopted by the trial Judge in striking out the defendants' pleadings and granting the impugned orders before dealing with the other grounds".

11. **THAT** the Respondents continue to concede at the same page by stating that ***"where the procedural grounds disposed of the appeal, the learned Justices of appeal were not required by law to consider the other grounds raised"***.
12. **THAT** in their Written Submissions, the Respondents conclude their arguments by directly admitting that the substantial question of illegality was not dealt with by stating that;

"Having dealt with procedural grounds which disposed of the appeal, the learned justices of appeal had no duty to delve into the rest of the grounds which were at that point moot".

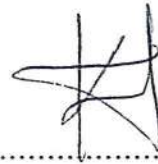
13. **THAT** the above indicated admissions, are wholly repeated in the Respondents Supplementary Submissions which were filed in this Honorable Court on the 17th November 2021. **(A copy of the Respondents Supplementary Submissions are attached hereto and marked as "Annexure HK.5")**;
14. **THAT** as further proof of their glaring admission, that the Justices of Appeal did not adjudicate the substantial question of illegality, the Respondents prayed at page 9 of their Supplementary Submissions that this honorable court,

"finds it appropriate to provide clarity on this matter of utmost importance to the economy of the country".

15. **THAT** the Respondents in their Supplementary Submissions then proceed to seek fresh orders of this Honorable Court in respect of foreign and syndicated lending in addition to orders regarding the conduct of agency banking;

16. **THAT** according to information received from the Applicants lawyers, which information I verily believe to be true;
 - (i) the request for 'clarity' and the seeking of fresh orders in (16) above, is a belatedly irregular and disguised application for a certificate that a question of great public importance arises,
 - (ii) alternatively, it is an improper and disguised cross appeal and or affirmation of the decision of the court of appeal by the Respondents, all without following due process.
17. **THAT** on the whole, the thrust of the Respondents arguments and submissions in the appeal before this Court, amounts to a clear, unequivocal and positive admission to grounds 1, 2 and 3 of the Memorandum of Appeal;
18. **THAT** there is no dispute for this honorable court to determine in respect of the admitted grounds indicated in this application.
19. **THAT** by extension, the admissions to grounds 1, 2 and 3 of the Memorandum of Appeal, settles the remainder of the appeal in favor of the Applicants;
20. **THAT** in the circumstances, the admissions entitle the Applicants to judgement upon the admitted grounds and or settlement of the remainder of the appeal as sought;
21. **THAT** there is no dispute for this Honorable Court to determine in respect of the admitted grounds indicated in this application;
22. **THAT** it is expedient, just and equitable that this Application be granted as sought;
23. **THAT** I affirm this affidavit in support of the Applicants' application for judgment on admission in SCCA No. No. 13/2021, against the Respondents
24. **THAT** whatever is stated hereinabove is true and correct to the best of my knowledge and belief save where the source of information is disclosed;

AFFIRMED at Kampala this
22 day of Nov., 2021 by
the said **HAMIS KIGGUNDU**



.....
AFFIRMANT

BEFORE ME:



.....
A COMMISSIONER FOR OATHS

KENNETH PAUL OMODING
Advocate & Commissioner for Oaths
P.O. Box 4109 Kampala Uganda

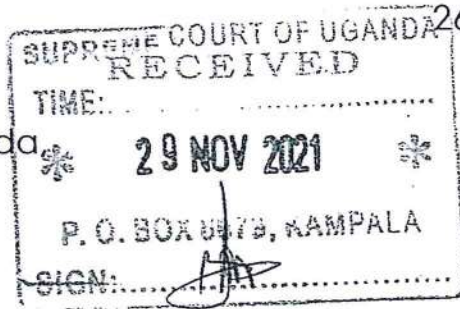
Drawn and Filed By:

1. M/s **Muwema & Co. Advocates and Solicitors**,
Plot 50 Windsor Crescent Road, Kololo,
P.O. Box 6074, Kampala.
Tel: +256-414-257661
Email: info@madvocates.com
madvocates@madvocates.com
Website: www.madvocates.com
2. M/s **Kimara Advocates & Consultants**,
Plot 67B, Spring Road, Bugolobi,
4th Floor Kisakye Complex,
P. O. Box 11916, Kampala
Tel: +256 200 944412
Email: info@kimara-advocates.com
Website: www.Kimara-advocates.com

B

MC/27/21/FM

The Registrar,
Supreme Court of Uganda,
Kampala, Uganda.



26th November 2021

Dear Madam,

**RE: REQUEST FOR A HEARING DATE OF CIVIL APPLICATION NO. 51/2021
(ARISING FROM CIVIL APPEAL NO. 13 OF 2021):
HAM ENTERPRISES LTD & ORS
Versus
DIAMOND TRUST BANK (U) LTD & ANOR:**

We, together with **M/s Kimara Advocates & Consultants** represent the Applicants in the above matter wherein we address you as hereunder;

We filed the above Application seeking an order for judgement on admission of the grounds of appeal by the Respondents.

It is evident that the above application if successful, can dispose of the whole appeal.

Since judgement in the appeal was reserved on notice, it is necessary that this Application be heard earlier so that any further steps in the appeal are guided by the outcome of the application.

In the premise, we humbly request that the said application be fixed for hearing on a date convenient to the honourable court.

We shall oblige your action in the matter

Much obliged,

For: **MUWEMA & CO. ADVOCATES**

c.c.: M/s Kimara Advocates & Consultants

c.c.: M/s K & K Advocates.

c.c.: Clients.

KIMARA ADVOCATES & CONSULTANTS
P.O.Box 11916 Kampala (U)

Date	29/11/2021
Time	10:24AM
File No.	

RECEIVED
Name: Claire
Sign: [Signature]

Without Prejudice

 K&K ADVOCATES	
Date Received	29-11-21
Time	9:40am
File No.	—
Received by:	<u>[Signature]</u>
Action by:	<u>EK</u>

MC/27/21/FM

3rd December, 2021

The Assistant Registrar,
The Supreme Court of Uganda,
P. O. Box 6679,
KAMPALA



Your Honour,

RE: **REQUEST FOR A HEARING DATE OF CIVIL APPLICATION NO.51 OF 2021;**
HAM ENTERPRISES LTD & ANR VS DIAMOND TRUST BANK & ANR


We still act for the Applicants in the above matter and are in receipt of your letter dated 1st **December, 2021** in respect thereof.

We have taken note of the views conveyed in your said letter. However we do not agree that the substance of our Clients' Application does not merit a hearing by this Honourable court.

Such a stance does not foster the administration of justice as it inevitably erodes our Clients' non-derogable right to be heard which is guaranteed by **Article 28** of the **Constitution**.

In the premise therefore, we request that our Application be forwarded to the Justices of the court for the necessary action.

Yours faithfully,


For: **MUWEMA & CO. ADVOCATES**
c.c.: M/s K&K Advocates
c.c.: Clients