

THE REPUBLIC OF UGANDA
IN THE SUPREME COURT OF UGANDA AT KAMPALA
CIVIL APPLICATION NO _____ OF 2023
(ARISING FROM CIVIL APPEAL NO 13 of 2021)
(ALSO ARISING FROM CIVIL APPEAL NO 242 OF 2020)
(ALSO ARISING FROM HCMA NO 064 OF 2020)
(ALSO ARISING FROM HCCS NO 43 OF 2020)

1. HAM ENTERPRISES (U) 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

(Brought under Articles 28 (1), 44 (c), 126 (1), (2) (a), (b) & (e) of the Constitution, Section 98 of the Civil Procedure Act Cap 71, Rules 2 (2), 42 (1) & (2) and 43 of the Judicature (Supreme Court Rules) Directions S.I 13-1)

TAKE NOTICE that this Honourable Court shall be moved on the ___ day of _____ 2023 at _____ O'clock in the fore/afternoon or soon thereafter as Counsel for the Applicants can be heard in an application for orders that;

- a) **Civil Application No 051/2021 Ham Enterprises Ltd & 2 Ors vs Diamond Trust Bank (U) Ltd & Diamond Trust Bank (K) Ltd** which was filed by the Applicants seeking orders for judgment on admission, be heard and finally determined by the court.

- b) The Applicants be granted leave to adduce additional evidence from the Central Bank of Kenya to elucidate and substantiate the illegality committed by the 2nd Respondent in respect of the disputed credit transactions between the Applicant and the 2nd Respondent, the subject of this Appeal.
- c) This Honourable Court be pleased to arrest it's Judgment in **Supreme Court Civil Appeal No 13/2021** which is scheduled to be delivered on the **13th of June 2023 at 10:30 a.m** pending the hearing and determination of Civil Application No 051/2021 and the application for leave to adduce additional evidence.
- d) This Honourable Court be pleased to issue further and better orders as shall meet the ends of justice.
- e) 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 and a director of the 1st and 2nd Applicants respectively and a further affidavit of **Edwin Lubanga**, which shall be read and relied upon at hearing but briefly are that;

1. The Applicants filed a memorandum of appeal in Supreme Court Civil Appeal No13/2021 in which they raised 7 grounds of appeal to wit;
 - i. *The learned Justices 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 Plaint in HCCS No 43/2020 and further ordered a retrial on the basis of the original pleadings,
 - b) the saving of the order for appointment of auditors which order has been vacated and was never resurrected in the suit.
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- iii. The learned Justices of Appeal erred in law and fact in finding that the Respondents were never heard on the question of illegality in MA 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 favour of the Appellant under **Order 6 Rule 30** of the **Civil Procedure Rules S.I 71-1**.
 - v. The learned Justices of Appeal erred in law and 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.
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- 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 in fact in rewarding the Respondents with costs for committing an illegality.*
2. The Appeal was heard on the 11th day of November 2021 and the parties were directed to file written submissions and judgment was reserved on notice.
 3. On realizing that the Respondents had admitted the grounds of appeal, the Applicants filed **Civil Application No 051/2021 Ham Enterprises Ltd & 2 Ors vs Diamond Trust Bank (U) Ltd & Diamond Trust Bank (K) Ltd** on the 23rd of November 2021 seeking orders for Judgment on admission.
 4. Despite numerous requests to be heard, this Honourable Court did not list the application for hearing until the **28th of April 2023** when the Court invited the Applicants to attend a session for re-constitution of the panel on the **5th of May 2023**.
 5. Upon receipt of the above invitation, the Applicant through it's lawyers wrote a letter on the 2nd of May 2023 requesting for the fixing and hearing of the **Civil Application No 051/2021** but the court advised that the hearing of the said Civil Application will be communicated at a later date.
 6. The Court went ahead to introduce a new panel to sit in the judgement of Civil Appeal No 13/2021 after the demise of Hon. Justice Apio Aweri JSC (RIP) and it's now constituted as follows;
 - i. **Hon. Alfonse C Owiny Dollo CJ-(Head of panel),**
 - ii. **Hon. Lady Faith Mwendha JSC,**
 - iii. **Hon. Lady Percy Tuhaise JSC,**
 - iv. **Hon. John Mike Chibita JSC,**
 - v. **Hon. Stephen Musofa JSC.**

7. That on the 29th of May 2023, the court invited the Applicant for a pre-hearing conference of **Civil Application No 051/2021** to be held on the **8th of June 2023** at **9:30 a.m.**
8. That on the 8th June 2023, the Applicants together with the Respondents attended the scheduled pre-hearing conference which was presided over by **Hon. Lady Justice Elizabeth Musoke JSC** who declined to conduct the pre-hearing session which had been called.
9. The **Hon. Lady Justice Elizabeth Musoke JSC** informed the parties that she had been directed by the head of the panel to inform them that Judgement in Civil Appeal No 13/2021 was ready and that it would be delivered on the **13th of June 2023.**
10. That by reason of the above developments, **Civil Application No 051/2021** was not heard by the above mentioned re-constituted panel with the result that the said Civil Application neither stands heard, allowed or dismissed.
11. That consequently, the Applicants have been denied access to the Supreme Court to seek adjudication of the dispute upon the aforesaid Civil Application which has occasioned a gross violation of the Applicants' non-derogable right to be heard as protected under **Article 28** of the Constitution.
12. That it is a grave injustice for the Supreme Court which is the highest court in Uganda to permanently lock the Applicants out of an opportunity to be heard on such a novel and complex commercial dispute well knowing that it's decisions are final, binding and not appealable.
13. That in the meantime, the Applicants recently discovered through Edwin Lubanga, that the Central Bank of Kenya did not grant the requisite approval under the law to the 2nd Respondent

to enter into the disputed credit transaction which is the subject of this appeal.

14. That the above information or evidence was not known or available to the Applicants by the time of the filing and hearing of Civil Appeal No 13/2021.
15. That the above information/evidence is very relevant to the substantial question of the illegal conduct of cross border financial institution business by the Respondents which is the subject of this appeal.
16. That the said information/evidence is not only credible but it is also capable of having an influence on the decision or result of the Appeal.
17. That it is therefore crucial that this Honourable Court be pleased to admit the abovementioned additional information or evidence as it may deem fit.
18. That there is no inordinate delay in filing this application which is very urgent in light of the impending judgement to be delivered in Civil Appeal No 13/2021.
19. That it is in the interests of substantive justice, fairness and equity that this application be granted as sought.

Dated at Kampala this 9th day of June 2023.



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

GIVEN under my hand and seal of this Honourable Court this ___ day
of _____ 2023.

DEPUTY REGISTRAR

Drawn & Filed by:

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