

SUPREME COURT OF UGANDA
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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 Plaintiff 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;

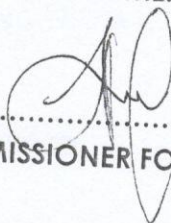
16. **THAT** according to information received from the Applicants lawyers, which information I verily believe to be true;
- (i) the request for 'clarity' and the seeking of fresh orders in (16) above, is a belatedly irregular and disguised application for a certificate that a question of great public 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 4100, Kampala - Uganda

Drawn and Filed By:

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