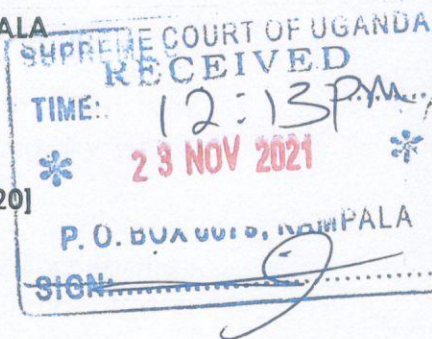




THE REPUBLIC OF UGANDA
IN THE SUPREME COURT OF UGANDA AT KAMPALA



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

VERSUS

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

NOTICE OF MOTION

[Under Rules 2 (2), 42 (1) and (2) and 43 Judicature (Supreme Court Rules) Directions S. 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.

K&K ADVOCATES	
Date Received	23/11/21
Time	15:14
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TAKE FURTHER NOTICE that the grounds in support of this Application herein are contained in the supporting affidavit of **HAMIS KIGGUNDU**, the 3rd Applicant, filed 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;

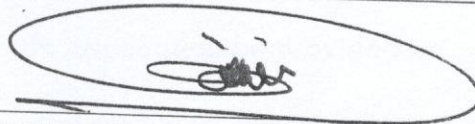
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1. The Applicants filed a Memorandum of Appeal in Supreme Court Civil Appeal No. 13/2021 in which they raised 7 grounds of appeal to wit;

- (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 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 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)**