

THE REPUBLIC OF UGANDA

IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA

CONSTITUTIONAL PETITION NO. _____ OF 2023

[ARISING FROM SUPREME COURT CIVIL APPLICATION NO. 015 OF 2023]

[ALSO ARISING FROM SUPREME COURT CIVIL APPLICATION
NO. 051 OF 2021]

[ALL ARISING FROM SUPREME COURT CIVIL APPEAL NO. 13 OF 2021]

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

VERSUS

1. THE ATTORNEY GENERAL]
2. DIAMOND TRUST BANK (U) LTD]
3. DIAMOND TRUST BANK (K) LTD.....] RESPONDENTS

PETITION

[Petition for Declarations under Article 137 (3), (4) and (7) of the Constitution of the Republic of Uganda 1995 and the Constitutional Court (Petition and Reference) Rules, S.I. 95 of 2005]

The humble Petition of M/s Ham Enterprises Ltd, M/s Kiggs International (U) Ltd and Hamis Kiggundu all of c/o M/s Muwema & Co. Advocates and Solicitors, Plot 50 Windsor Crescent Road, Kololo, P. O. Box 6074 Kampala and Kimara Advocates & Consultants, Plot 67B, Spring Road, Bugolobi, 4th floor Kisakye Complex, P.O. Box 11916, Kampala, showeth as follows;

1. Your 1st and 2nd Petitioners are private limited liability Companies incorporated in and carrying on real estate development business in Uganda, whereas your 3rd Petitioner is a male adult Ugandan businessman.

2. The 1st Respondent is the constitutionally mandated legal representative of the Government of Uganda in all legal proceedings and is joined to this Petition as a proper and necessary party.
3. The 2nd Respondent is a financial institution incorporated as a private limited liability company and licensed to carry on banking business in Uganda.
4. The 3rd Respondent is a banking institution incorporated with limited liability and licensed to carry on banking business in Kenya.
5. Your Petitioners state that they suffered infringement of their constitutional right to a fair hearing pursuant to the manner in which the Supreme Court handled **SCCA No. 13/2021 Ham Enterprises (U) Ltd, Kiggs International (U) Ltd & Hamis Kiggundu vs. Diamond Trust Bank (U) Ltd & Diamond Trust Bank (K) Ltd** where it passed judgment on the 13th June 2023 in complete violation of the Uganda code of judicial conduct and the Petitioners inviolable right to be heard by reason whereof, your Petitioners are aggrieved, interested in and seek the following declarations and orders;
 - (i) The act and/or conduct of the Supreme Court of allowing the 2nd and 3rd Respondents to introduce extrinsic matters on syndicated loans leading to the consideration and judgment upon such matters not being the subject of Civil Appeal No. 13/2021 or any cross-appeal, was an injudicious and biased act done contrary to and in contravention of **Articles 2, 20, 21, 28, 44, 126** and **128** of the Constitution,
 - (ii) The act or conduct of the Supreme Court of scheduling a pre-hearing of Civil Application No. 051/2021 which was an application for judgment on admission and then declining to pre-hear the said application, was an injudicious and biased act which infringed the Petitioners inviolable right to a fair hearing contrary to and in contravention of **Articles 2, 20, 21, 28, 44, 126** and **128** of the Constitution,

- (iii) The act and/or conduct of the Supreme Court of receiving and declining to hear Civil Application No. 15/2023 to *inter alia* adduce additional evidence from the Central Bank of Kenya indicating that the 3rd Respondent had committed illegalities in respect of the credit transaction with Petitioners, was an improper and inappropriate exercise of judicial power and thereby infringed the inviolable right to a fair hearing contrary to **Articles 2, 20, 21, 28, 44, 126 and 128** of the Constitution,
- (iv) The act or conduct of issuing the lead judgment in Civil Appeal No. 13/2021 on the 6th June 2023, whilst claiming that "***the other members of the coram were in full agreement***" whereas they were not at that material time, was an act of willful perjury which tainted and invalidated the judicial process of writing the judgment, renders the impugned judgment suspect, null, void and inconsistent with **Articles 2, 28, 44, 126, 128, 130 and 131** of the Constitution,
- (v) The act or conduct of the supreme court of violating the panel mandate rule to hear and judge upon civil appeal No. 13/2021 at the same time, when it issued the impugned judgement with two commencement dates i.e 6th June 2013 and 13th June 2013, was an absolute failure of exercise of judicial power which invalidated the impugned judgement and is inconsistent with **Articles 2, 28, 44, 126, 131 and 132 of the constitution,**

In the alternative but entirely without prejudice,

- (vi) The act or conduct of the Supreme Court declaring that foreign lending by foreign banks should be free and unregulated in Uganda, usurps the power of Parliament to legislate against illicit money transactions, is an improper and inappropriate exercise of judicial authority and is a crawl back on the public policy of Uganda which is inconsistent with and is in contravention of **Articles 2, 28, 44, 79, 123 and 126** of the Constitution,

- (vii) The act or conduct of issuing a post judgement statement titled **“Reasons why I declined to halt delivery of judgement”** which was signed and delivered by Hon Lady Justice Percy Ntuhaise on the 29th June 2023 amounted to a disclaimer of responsibility casting aspersions on the integrity of the whole judgement making process in civil appeal No 13/2021, rendering the said process a nullity and in contravention of **Articles 2, 28, 44, 126 and 128** of the Constitution,
 - (viii) An order directing the Supreme Court to hear Civil Appeal No. 13/2021 *de novo* before an independent and impartial appellate panel,
 - (ix) An order directing the Supreme Court to expunge the proceedings and judgment in Civil Appeal No. 13/2021 from the public records of Uganda,
 - (x) An order of permanent injunction restraining the Respondents, their officers or agents from acting upon or enforcing the impugned Supreme Court judgment in any manner or form pending hearing and final determination of this Petition,
 - (xi) An order of redress for the payment of general damages occasioned by the material distress and inconvenience to the Petitioners,
 - (xii) Costs of the Petition,
 - (xiii) Any other or further orders as Court may deem fit.
6. Your Petitioners state that the facts giving rise to the Petition are as follows;
- (a) Your humble Petitioners filed Civil Suit No. 043/2019 challenging the legality of credit facilities it had entered into with the second and 3rd Respondents and sought further orders for recovery of UGX 34,295,951,553/= and USD 23,467,670.61 which had been unlawfully debited from their accounts.

- (b) Your Petitioners also filed an application to strike out the 2nd and 3rd Respondents' Written Statement of defence for being a perpetuation of illegalities subsequent to which, the High Court struck out the said defence and ruled that the said credit transactions were illegal for want of regulatory approval under the **Financial Institutions Act (2004)** as amended and further ordered the 2nd and 3rd Respondents to pay the sum claimed in the Plaint.
- (c) The 2nd and 3rd Respondents appealed against the said decision on the grounds *inter alia* that the High Court had erred in law and fact in holding that;
- (i) then **Financial Institutions Act (2004)** as amended applied to the 2nd Respondent's credit facilities issued in Kenya to Ugandan entities,
 - (ii) the 2nd Respondent carried out agency banking on behalf of the 3rd Respondent in contravention of the law,
 - (iii) that the learned trial Judge erred in law and fact in entering judgment upon the claim in the plaint.
- (d) The Court of Appeal made its decision on the 5th of May 2021 and found that the learned trial Judge did not accord the 2nd and 3rd Respondents a hearing in determining the illegality and that he therefore erred in law and fact to strike out the said Respondents' Written Statement of Defence.
- (e) The Court of Appeal however declined to address the substantive issue of the illegality of the impugned credit facilities, set aside the High Court judgment and instead remitted the case back to the High Court for a re-hearing.

- (f) The Petitioners were dissatisfied with the decision of the Court of Appeal and they lodged Civil Appeal No. 13/2021 to the Supreme Court on the 15th of June 2021 where they raised the following grounds of appeal to wit;
- (1) *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.*
 - (2) *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;*
 - (i) *the striking out of the Appellants Amended Plaint in HCCS No. 43 of 2020 and further ordered a retrial on the basis of the original pleadings,*
 - (ii) *the saving of the order for appointment of auditors which order had been vacated and was never resurrected in the suit.*
 - (3) *The learned Justices 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.*
 - (4) *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.***
 - (5) *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.*

- (6) *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.*
- (7) *The learned Justices of Appeal erred in law and in fact in rewarding the Respondents with costs for committing an illegality.*
- (g) The appeal was called for hearing on the 11th of November 2021, at which time Counsel for the 2nd and 3rd Respondents were allowed to seek for orders on syndicated loans by foreign banks without filing a cross-appeal or notice of affirmation of the decision of the Court of Appeal, as is required by **Judicature (Supreme Court Rules) Directions S.1 13 -11.**
- (h) That the Petitioners protested the above irregular conduct of the supreme court which did not foster the conditions of a fair hearing, but in vain.
- (i) That the parties were directed to proceed by filing written submissions during which process, the Petitioners realized that the 2nd and 3rd Respondents had admitted substantial grounds of the appeal, to which they accordingly filed Civil Application No. 051/2021, seeking for judgment on admission.
- (j) The said application was not fixed for hearing despite numerous requests but when the parties were invited for a session for the re-constitution of the panel on the 5th May 2023, the Petitioners wrote another letter requesting for the said Civil Application No. 051/2021 to be fixed for hearing.
- (k) The Registrar of the Supreme Court wrote back to Counsel for the Petitioners on the 2nd May 2023 and advised that the hearing of Civil Application No. 051/2021 would be communicated later.

- (l) That the parties attended the pre-hearing conference on the 8th of May 2023 but **Hon. Lady Justice Elizabeth Musoke JSC** who presided over the session declined to conduct the pre-hearing session which had been called and instead informed the parties that judgment in the appeal would be delivered on the 13th June 2023.
- (m) 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.
- (n) That in a further desperate effort to be heard, the Petitioners filed Civil Application No. 015/2023 on the 10th June 2023 seeking orders that;
- (i) Civil Application No. 051/2021 be heard and finally determined by Court,
 - (ii) the Petitioners be granted leave to adduce additional evidence from the Central Bank of Kenya to elucidate and substantiate the illegality committed by the third Respondent in respect of the impugned credit facilities,
 - (iii) that the Supreme Court be pleased to arrest its judgment pending the hearing and determination of the above applications.
- (o) That on the 13th of June 2023, Petitioners' Counsel made an impassioned plea to **Hon. Lady Justice Percy Tuhaise** who was scheduled to deliver the judgment, to arrest it and allow the pending applications to be fixed for hearing, but she declined.
- (p) Consequently, judgment in Civil Appeal No. 13/2021 was delivered without hearing the aforesaid applications which would have impacted on the decision of the Court with the result that the Petitioners non-derogable right to a fair hearing was blatantly violated.

- (q) In the said judgment, the Supreme Court decided upon the un-pleaded matters which had been irregularly introduced by the 2nd and 3rd Respondents in the appeal and it held *inter alia* that,
- (i) the impugned credit transaction was a syndicated loan, whereas there was evidence on the record to show that DTB Kenya entered into a direct credit transaction with the petitioners.
 - (ii) lending by a foreign bank was not regulated in Uganda and was therefore legal, whereas all financial institutions business carried out in Uganda is governed by the **Financial Institutions Act 2004 (as amended)**.
- (r) That in determining civil appeal No 13/2021, the Supreme Court did not deliver a judgement of fact as it instead set out to distort the constitutional order and existing laws governing the financial control and regulation in Uganda.
- (s) That the said Supreme Court proceedings and judgment are therefore retrogressive and are a crawl back on the public policy of Uganda as they suborn illicit financial transactions which shall induce a regime of unregulated and unrestrained shadow banking system much to the detriment of the Ugandan economy.
- (t) That the proceedings and judgment of the Supreme Court in Civil Appeal No. 13/2021 present a very dangerous precedent in the administration of justice in Uganda and they stand to immolate the trust and confidence of the petitioners and other citizens in the judicial system.
- (u) That consequently, the Supreme Court proceedings and judgment in Civil Appeal No. 13/2021 were abominable to the Uganda judicial code of conduct and the Petitioners inviolable constitutional right to a fair hearing and they ought to be declared null, void and unconstitutional.

- (v) That there is therefore need for this Honourable Court to interpret and declare upon the constitutionality or otherwise of the impugned acts and omissions of the Supreme Court as expressed in the impugned judgment with a view of upholding the principles of judicial independence, judicial accountability and supremacy of the constitution.
7. On the basis of the foregoing facts and the complaint set out in paragraph 6 above, your Petitioners are aggrieved and they seek redress as stated herein.

WHEREFORE, your Petitioners humbly pray that this Honourable Court may be pleased to grant the following orders and declarations;

- (i) The act and/or conduct of the Supreme Court of allowing the 2nd and 3rd Respondents to introduce extrinsic matters on syndicated loans leading to the consideration and judgment upon such matters not being the subject of Civil Appeal No. 13/2021 or any cross-appeal, was an injudicious and biased act done contrary to and in contravention of **Articles 2, 20, 21, 28, 44, 126 and 128** of the Constitution,
- (ii) The act or conduct of the Supreme Court of scheduling a pre-hearing of Civil Application No. 051/2021 which was an application for judgment on admission and then declining to pre-hear the said application, was an injudicious and biased act which infringed the Petitioners inviolable right to a fair hearing contrary to and in contravention of **Articles 2, 20,21, 28, 44, 126 and 128** of the Constitution,
- (iii) The act and/or conduct of the Supreme Court of receiving and declining to hear Civil Application No. 15/2023 to adduce additional evidence from the Central Bank of Kenya indicating that the 3rd Respondent had committed illegalities in respect of the credit transaction with Petitioners, was an improper and inappropriate exercise of judicial power and thereby infringed the inviolable right to a fair hearing contrary to **Articles 2, 20, 21, 28, 44, 126 and 128** of the Constitution,

(iv) The act or conduct of issuing the lead judgment in Civil Appeal No. 13/2021 on the 6th June 2023, whilst claiming that "**the other members of the coram were in full agreement**" whereas they were not at that material time, was an act of willful perjury which tainted and invalidated the judicial process of writing the judgment, renders the impugned judgment suspect, null, void and inconsistent with **Articles 2, 28, 44, 126, 128, 130 and 131** of the Constitution,

(v) The act or conduct of the supreme court of violating the panel mandate rule to hear and judge upon civil appeal No. 13/2021 at the same time, when it issued the impugned judgement with two commencement dates i.e 6th June 2013 and 13th June 2013, was an absolute failure of exercise of judicial power which invalidated the impugned judgement and is inconsistent with **Articles 2, 28, 44, 126, 131 and 132 of the constitution**,

In the alternative but entirely without prejudice,

(vi) The act or conduct of the Supreme Court declaring that foreign lending by foreign banks should be free and unregulated in Uganda, usurps the power of Parliament to legislate against illicit money transactions, is an improper and inappropriate exercise of judicial authority and is a crow back on the public policy of Uganda which is inconsistent with and is in contravention of **Articles 2, 28, 44, 79, 123 and 126** of the Constitution,

- (vii) The act or conduct of issuing a post judgement statement titled **"Reasons why I declined to halt delivery of judgement"** which was signed and delivered by Hon Lady Justice Percy Ntuhaise on the 29th June 2023 amounted to a disclaimer of responsibility casting aspersions on the integrity of the whole judgement making process in civil appeal No 13/2021, rendering the said process a nullity and in contravention of **Articles 2, 28, 44, 126** and **128** of the Constitution,
- (viii) An order directing the Supreme Court to hear Civil Appeal No. 13/2021 *de novo* before an independent and impartial appellate panel,
- (ix) An order directing the Supreme Court to expunge the proceedings and judgment in Civil Appeal No. 13/2021 from the public records of Uganda,
- (x) An order of permanent injunction restraining the Respondents, their officers or agents from acting upon or enforcing the impugned Supreme Court judgment in any manner or form pending hearing and final determination of this Petition,
- (xi) An order of redress for the payment of general damages occasioned by the material distress and inconvenience to the Petitioners,
- (xii) Costs of the Petition,
- (xiii) Any other or further orders as Court may deem fit.

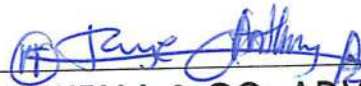
DATED at Kampala the 7th day of July, 2023.



(FIRST AND THIRD PETITIONERS)



(SECOND PETITIONER)



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

LODGED in the Registry this _____ day of _____ 2023.

DEPUTY REGISTRAR

Drawn & filed jointly by:

1. M/s Muwema & Co. Advocates and Solicitors,
Plot 50 Windsor Crescent Road, Kololo,
Opposite Metropole Hotel Main Gate,
P.O. Box 6074, Kampala,
Tel: +256-414-257661.
Email: info@madvocates.com
: madvocates@madvocates.com
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2. M/s Kimara Advocates & Consultants,
Plot 67B, Spring Road, Bugolobi,
4th floor Kisakye Complex,
P.O. Box 11916, Kampala.

THE REPUBLIC OF UGANDA

IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA

CONSTITUTIONAL PETITION NO. _____ OF 2023

[ARISING FROM SUPREME COURT CIVIL APPLICATION NO. 015 OF 2023]

[ALSO ARISING FROM SUPREME COURT CIVIL APPLICATION
NO. 051 OF 2021]

[ALL ARISING FROM SUPREME COURT CIVIL APPEAL NO. 13 OF 2021]

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

VERSUS

- | | | | |
|----|---------------------------------|---|-------------|
| 1. | THE ATTORNEY GENERAL |] | |
| 2. | DIAMOND TRUST BANK (U) LTD |] | |
| 3. | DIAMOND TRUST BANK (K) LTD..... |] | RESPONDENTS |

AFFIDAVIT IN SUPPORT

I **HAMIS KIGGUNDU** of c/o **M/s Muwema & Co. Advocates**, P.O Box 6074, Plot 50 Windsor Crescent Road - Kololo, Kampala and **M/s Kimara Advocates & Consultants**, P.O Box 11916, Plot 67B Spring Road, Bugolobi, 4th Floor Kisakye Complex, Kampala do solemnly make oath and state as follows;

1. THAT I am a male adult Ugandan of sound mind, the 3rd Petitioner herein, and a director of the 1st Petitioner who is also authorized to depone hereto on behalf of the 2nd Petitioner in which capacity I affirm this Affidavit.

(A copy of the 2nd petitioner's Board Resolution and Power of attorney is attached as group annexure "A₁")

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 Petitioners filed Civil Suit No. 043/2019 challenging the legality of credit facilities it had entered into with the second and 3rd Respondents and sought further orders for recovery of UGX 34,295,951,553 and USD 23,467,670.61 which had been unlawfully debited from their accounts.

(A copy of the Amended Complaint is attached hereto as annexure "A").

4. THAT the Petitioners also filed an application to strike out the 2nd and 3rd Respondents' Written Statement of defence for being a perpetuation of illegalities subsequent to which, the High Court struck out the said defence and ruled that the said credit transactions were illegal for want of regulatory approval under the **Financial Institutions Act (2004)** as amended and further ordered the 2nd and 3rd Respondents to pay the sum claimed in the Complaint.

(Copies of the application and ruling of the High Court are attached hereto as annexures "B₁ - B₂" respectively).

5. THAT the 2nd and 3rd Respondents appealed against the said decision on the grounds *inter alia* that the High Court had erred in law and fact in holding that;
 - (i) then **Financial Institutions Act 2004** (as amended) applied to the 2nd Respondent's credit facilities issued in Kenya to Ugandan entities,
 - (ii) the 2nd Respondent carried out agency banking on behalf of the 3rd Respondent in contravention of the law,
 - (iii) that the learned trial Judge erred in law and fact in entering judgment upon the claim in the complaint.

(A copy of the memorandum of appeal is attached hereto as annexure "C").

6. THAT the Court of Appeal made its decision on the 5th of May 2021 and found that the learned trial Judge did not accord the 2nd and 3rd Respondents a hearing in determining the illegality and that he therefore erred in law and fact to strike out the said Respondents' Written Statement of Defence.

(A copy of the judgment is attached hereto as annexure "D").

7. THAT the Court of Appeal however declined to address the substantive issue of the illegality of the impugned credit facilities, set aside the High Court judgment and instead remitted the case back to the High Court for a re-hearing.

8. THAT the Petitioners were dissatisfied with the decision of the Court of Appeal and they lodged Civil Appeal No 13/2021 to the Supreme Court on the 15th of June 2021 where they raised the following grounds of appeal to wit;

(1) *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.*

(2) *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;*

(i) *the striking out of the Appellants Amended Complaint in HCCS No. 43 of 2020 and further ordered a retrial on the basis of the original pleadings,*

(ii) *the saving of the order for appointment of auditors which order had been vacated and was never resurrected in the suit.*

- (3) The learned Justices 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.
- (4) 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**.
- (5) 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.
- (6) 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.
- (7) The learned Justices of Appeal erred in law and in fact in rewarding the Respondents with costs for committing an illegality.

(A copy of the memorandum of appeal is attached as annexure "E").

9. THAT the appeal was called for hearing on the 11th of November 2021, at which time Counsel for the 2nd and 3rd Respondents were allowed to seek for orders on syndicated loans by foreign banks without filing a cross-appeal or notice of affirmation of the decision of the Court of Appeal, as is required by **Judicature (Supreme Court Rules) Directions S.I 13 -11**.

(A copy of the record of proceedings for the day is attached hereto as annexure "F").

10. THAT the Petitioners protested the above irregular conduct of the supreme court which did not foster the conditions of a fair hearing, but in vain.

11. THAT the parties were directed to proceed by filing written submissions during which process, the Petitioners realized that the 2nd and 3rd Respondents had admitted substantial grounds of the appeal, to which they accordingly filed Civil Application No 051/2021, seeking for judgment on admission.

(A copy of the Civil Application No 051/2021 is attached hereto as annexure "G").

12. THAT the said application was not fixed for hearing despite numerous requests but when the parties were invited for a session for the re-constitution of the panel on the 5th May 2023, the Petitioners wrote another letter requesting for the said Civil Application No 051/2021 to be fixed for hearing.

(Copies of the letters and the proceeding for re-constitution of the panel are attached hereto attached as Group annexure "H₁, H₂ " and "H₃" respectively).

13. THAT the Registrar of the Supreme Court wrote back to Counsel for the Petitioners on the 2nd May 2023 and advised that the hearing of Civil Application No 051/2021 would be communicated later.

(A copy of the Registrar's letter is attached as annexure "I").

14. THAT the parties attended the pre-hearing conference on the 8th of May 2023 but **Hon. Lady Justice Elizabeth Musoke JSC** who presided over the session, declined to conduct the pre-hearing session which had been called and instead informed the parties that judgment in the appeal would be delivered on the 13th June 2023.

(A copy of the record of proceedings for the day shall be availed before the hearing of the Petition).

15. 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.
16. THAT in a further desperate effort to be heard, the Petitioners filed Civil Application No. 015/2023 on the 10th June 2023 seeking orders that;
- (i) Civil Application No 051/2021 be heard and finally determined by Court,
 - (ii) the Petitioners be granted leave to adduce additional evidence from the Central Bank of Kenya to elucidate and substantiate the illegality committed by the third Respondent in respect of the impugned credit facilities,
 - (iii) that the Supreme Court be pleased to arrest its judgment pending the hearing and determination of the above applications.

(A copy of MA 015/2023 is attached as annexure "K").

17. THAT on the 13th of June 2023, Petitioners' Counsel made an impassioned plea to **Hon. Lady Justice Percy Tuhaise** who was scheduled to deliver the judgment, to arrest the judgment and allow the pending applications to be fixed for hearing, but she declined and went ahead to read the judgement.

(Copies of the record of proceedings of the day will be adduced before the hearing of the Petition).

18. THAT the lead judgement was written by **Hon. The Chief Justice Alfonse Chigamoy Owiny – Dollo**, and it was signed and dated on the 6th day of June 2023 with the following conclusion, it wit;

"Since the other members of the coram are in full agreement with the judgement and orders I have proposed above, judgement and orders are accordingly hereby given in the terms set out therein"

19. THAT there was no full agreement or at all, to the lead judgement by the other members of the coram by the 6th June 2023.

- (i) the impugned credit transaction was a syndicated loan whereas there was evidence on the record to show that DTB Kenya had entered into a direct credit transaction with the Petitioners,
 - (ii) lending by a foreign bank was not regulated in Uganda and was therefore legal whereas all Financial Institution business carried out in Uganda is governed by the **Financial Institutions Act 2004 (as amended)**.
27. THAT in determining civil appeal No 13/2021, the Supreme Court did not deliver a judgement of fact as it instead set out to distort the constitutional order and existing laws governing the financial control and regulation in Uganda.
28. THAT the said Supreme Court proceedings and judgment are therefore retrogressive and are an affront to the public policy of Uganda as they suborn illicit financial transactions which shall induce a regime of unregulated and unrestrained shadow banking system much to the detriment of the Ugandan economy.
-
29. THAT the general conduct of the supreme court in civil Appeal No 13/2021 seriously negated the legal precept of;
- “Justice must not only be done, but must also be seen to be done”**
30. THAT the general conduct of the supreme court in the said appeal also militates against the equitable principle of *audi alterem partem* which is enshrined in **Article 28 of the constitution** and protects the inviolable right to a fair hearing.
31. THAT the effect of the impugned general conduct of the supreme court ensured that **justice was not done** and **also not seen to be done**, when the court denied the petitioners their constitutional right to be heard in civil application No 51/2021 and No 15/2023 respectively.
32. THAT the petitioners have been served manifest and permanent injustice in the failure of judicial duty to hear them in the above mentioned civil applications which have been left hanging and undetermined since judgement in civil appeal 13/2021 from which they arise, was delivered on the 13th June 2023.

40. THAT there is therefore need for this Honourable Court to interpret and declare upon the constitutionality or otherwise of the impugned acts and omissions of the Supreme Court as expressed in the impugned judgment, with a view of upholding the principles of **judicial independence, judicial accountability** and **supremacy of the constitution**.
41. THAT there is therefore a need for this Honourable Court to be pleased to grant the following additional orders of redress to wit;
- (i) An order directing the Supreme Court to hear Civil Appeal No. 13/2021 *de novo* before an independent and impartial appellate panel.
 - (ii) An order directing the Supreme Court to expunge the proceedings and judgment in Civil Appeal No. 13/2021 from the public records of Uganda.
 - (iii) An order of permanent injunction restraining the Respondents, their officers or agents from acting upon or enforcing the impugned Supreme Court judgment in any manner or form pending hearing and final determination of this Petition.
 - (iv) An order of redress for the payment of general damages occasioned by the material distress and inconvenience to the Petitioners.
42. THAT this petition is of great public importance as it raises serious questions requiring the interpretation of the Constitution in relation to the impugned proceedings and judgment of the Supreme Court in Civil Appeal No 13/2021.
43. THAT I swear this affidavit in support of the Petition of this Honourable Court for declarations and orders sought therein.
44. THAT whatever is stated herein is true and correct to the best of my knowledge and belief save where the source of information is disclosed.

AFFIRMED at Kampala this ____ day of
_____ 2023 by the said
HAMIS KIGGUNDU



AFFIRMANT

BEFORE ME:

A COMMISSIONER FOR OATH
BANKABASDYADI KAMYA Esq.
ADVOCATE GENERAL FOR OATHS
P.O. BOX 11916, KAMPALA
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