

**THE REPUBLIC OF UGANDA**

**IN THE COURT OF APPEAL OF UGANDA AT KAMPALA**

**CIVIL APPLICATION NO 16 OF 2021**

**{ARISING FROM CIVIL APPEAL NO 242 OF 2020}**

**{ARISING FROM HIGH COURT MISCELLANEOUS APPLICATION NO 654  
OF 2020} AND**

**{ARISING FROM HIGH COURT CIVIL SUIT NO 43 OF 2020}**

*In the matter of an Application to intervene and/or be admitted as Amicus  
Curiae of*

**THE BANK OF UGANDA} .....APPLICANT**

**In the Court of Appeal; Civil Appeal No 242 of 2020**

- 1. DIAMOND TRUST BANK (U) LTD}**
- 2. DIAMOND TRUST BANK (K) LTD} .....APPELLANTS**

**VERSUS**

- 1. HAM ENTERPRISES LTD}**
- 2. KIGGS INTERNATIONAL (U) LTD}**
- 3. HAMIS KIGGUNDU} .....RESPONDENTS**

**RULING**

The Applicant filed this application under section 98 of the Civil Procedure Act, Articles 161 & 162 of the Constitution of the Republic of Uganda, section 4 (1), (2) (J) and 5 of the Bank of Uganda Act, Rule 2 (2), 43, 44, 46 of the Judicature (Court of Appeal Rules) Directions for the following orders:

1. The Applicant be granted leave to be admitted as *Amicus Curiae* in Civil Appeal to 42 of 2020 before this Honourable Court.

2. The Applicant further seeks leave to be granted leave to lodge written arguments in Civil Appeal No 242 of 2020 and secondly to present oral arguments at the hearing of the Civil Appeal No 242 of 2020.
3. In the alternative but without prejudice, the Applicant seeks leave to be granted to intervene in Civil Appeal No 242 of 2020 before this Honourable Court.

The grounds of the application are that:

1. The Applicant is the Central Bank of Uganda established under Article 161 of the Constitution of Uganda, with the constitutional mandate to encourage and promote economic development and the efficient utilisation of the resources of Uganda through effective and efficient operation of a banking and credit system.
2. The Applicant is the banking regulator in Uganda and has the statutory responsibility to supervise, regulate, control and discipline all financial institutions. It is the custodian of the laws relating to banking regulation and has sufficient interest in how the laws are interpreted and implemented.
3. Given the above stated legal responsibilities, the Applicant has a vested and sufficient interest in Civil Appeal No 242 of 2020 (hereinafter referred to as the appeal) as the legal dispute and the decisions therein have significant implications on the performance of the Applicant of its statutory duties above. The details are set out in the statement of the Amicus Curiae's interest. These implications are not fully canvassed by the parties thereto, and the Applicant believes, it will present technical and practical information from its experience as regulator which is

helpful to the court in the consideration and determination of the issues presented in the appeal.

4. The Applicant was not afforded a hearing when the court made orders against the Applicant. The said orders have adverse effects on the Applicant in the performance of its statutory duties.
5. That it is in the wider public interest, and in the interest of promoting and protecting an empowered an independent Central Bank that is charged with supervising the banking sector, overseeing monetary policy, and safeguarding the overall soundness of the financial system, that the Applicant should be granted leave to intervene and make submissions as Amicus Curiae.

The application is supported by the affidavit of Margaret Kaggwa Kasule an advocate of the High Court of Uganda employed by the Applicant as the legal Counsel of the Applicant stated to be well versed with the matters and facts.

### **Resolution of Application**

We have carefully considered the application and have made a preliminary decision about the interest of the Applicant in this application. The Appellant's appeal is coming for hearing today and exercising the powers of this court under Rule 2 (2) of the Rules of this Court to make such orders in the interests of justice and inter alia to avoid delay, we had initially prepared this ruling on the basis of the Applicant's pleading in court without prior address by the parties. We note that the interest of the Applicant in the application is not that of a friend of the court but rather that of an interested party. At the hearing of the application learned Counsel Mr. David Mpanga appearing together with learned Counsel Mr. Kasozi William represented the Applicants while learned Counsel Mr. Fred Muwema appearing with learned

Counsel Mr. Arnold Gimara represented the respondents. Learned Counsel Mr. Kiryowa Kiwanuka appearing with learned Counsel Mr. Usaama Ssebuwufu represented the Appellants. Learned Counsel responded to questions from court on the competence of the application.

According to **Osborn's Concise Law Dictionary, Eleventh Edition**; Amicus Curiae [friend of court] means:

One who calls the attention of the court to some point of law or fact which would appear to have been overlooked; usually a member of the Bar. On occasion the law officers are requested or permitted to argue a case in which they are not instructed to appear.

Further According to **the Oxford Dictionary of Law 5<sup>th</sup> Edition**; *amicus curiae* means:

[Latin; friend of the court] Counsel who assists the court by putting arguments in support of an interest that might not be adequately represented by the parties to the proceedings (such as the public interest) or by arguing on behalf of a party who is otherwise unrepresented. In modern practice, when a court requires the assistance of an *amicus curiae* it is customary to invite the Attorney General to attend, either in person or by Counsel instructed on his behalf, to represent the public interest, but Counsel have been permitted to act as *amicus curiae* on behalf of professional bodies (e.g. the Law Society).

From the facts and circumstances of this application, the Applicant is clearly a party who claims to be an interested party and in paragraph 4 of the grounds of the application clearly indicates that the orders have an adverse effect on the Applicant in the performance of its statutory duties. Further it is clearly averred in paragraph 3 of the grounds of the application that the Applicant has a vested sufficient interest in Civil Appeal No 242 of 2020. In those circumstances, the Applicant clearly can only be heard as an interested party and not as an *Amicus Curiae* or friend of the court. A friend of the court is a neutral party and not a party who claims to be adversely affected by the orders being challenged in the appeal. This was held by the Supreme Court

of Uganda in **Re an application for leave to intervene as Amicus Curiae by Professor Oloka Onyango & 8 Others (Civil Application No. 02 Of 2016) [2016] UGSC 2 (14 March 2016)**; where the court cited with approval the definition of an *Amicus Curiae* in **Black's Law Dictionary 9<sup>th</sup> Edition** that it means:

"[Latin "friend of the Court"] A person who is not a party to a law suit but who petitions the Court or is requested by the Court to file a brief in the action because that person has a strong interest in the subject matter"

Secondly the court set out the modern principles for admitting an *Amicus Curiae* to address the court. The Supreme Court set out these principles as:

1. Participation of amici is purely at the discretion of the court.
2. Amicus curiae can be important and relevant in matters where Court is of the opinion that the matter before it requires some kind of expertise which is in the possession of a specific individual
3. The ultimate control over what the amicus can do lies exclusively with the Court.
4. The amicus must be neutral and impartial.
5. The submissions must be intended to give assistance to the court it would not otherwise enjoy.
6. Limited to engagement with matters of the law.
7. Submissions draw attention to relevant matters of law- useful, focused and principled legal submissions not favouring any of the parties.
8. The amici must have valuable expertise in the relevant area of law and general expertise in law does not suffice.
9. The points of law to be canvassed should be novel to aid development of jurisprudence

10. The participation must be in the wider interest of public justice.
11. The interest of the amicus is its 'fidelity' to the law.
12. An amicus should address court on points of law not raised by the parties but is of concern to the court.
13. Remind the court of legal matters which have escaped the court that may cause a wrong interpretation of law.
14. An amicus shall not introduce new/ fresh evidence.
15. Where in adversarial proceedings, parties allege that a proposed amicus is biased or hostile towards one or more of the parties, or where the Applicant through previous conduct, appears to be partisan on an issue before the court the court will consider such an objection by allowing the respective part to be heard on the issue.
16. The court will regulate the extent of amicus participation in the proceeding to forestall the degeneration of amicus role to partisan role.
17. Whereas consent of the parties to the proposed amicus role is a factor to be taken into consideration, it is not the determining factor. Furthermore, objections raised by the parties is a factor to be taken into consideration but is not the determining factor.

It is clear that the Applicant does not fulfil the requirement of neutrality and impartiality in relation to the decision of the High Court because the Applicant clearly avers that it is adversely affected by the court orders in the performance of its statutory duties.

Secondly, the Applicant averred that it has a vested and sufficient interest in Civil Appeal No 242 of 2020 because the decisions of the High Court have

significant implications on the performance, by the Applicant, of its statutory duties.

Thirdly, the Applicant's application is a contradiction in interest in that the Applicant seeks without prejudice leave to be granted to intervene in the matter. On the other hand, the Applicant wants to appear and address the court as a friend of the court. Either the Applicant is a neutral and impartial person or an intervener with sufficient interest in the matters so as to be joined as a party in its own right.

From the application, it is our determination that the Applicants interest can only be served as a party and not as *amicus curiae*. We further state that the Applicant is free to apply to join the proceedings as a party with sufficient interest and at the discretion of court, file submissions as a regulator on matters in the suit and judgment relating to its statutory duties only. We note that rule 2 (2) of the Rules of this Court gives this court discretion to make such orders as are necessary in the interest of justice. For illustration, in **Court of Appeal Civil Application No 12 of 2001; East African General Insurance Company Ltd v Manubhai Madvani, Himatlal Gandesha and Vivek Araujo**, the Court of Appeal allowed non-parties in the High Court to be joined on appeal on the ground that their interests were adversely affected. Engwau J.A cited with approval the decision of the Court of Appeal of England in **Gillooly v Gillooly [1950] 2 All ER 1118**. In that appeal, the facts were that a husband's petition for divorce which was not defended by his wife was dismissed. On Appeal the issue was whether the wife had a right to be heard since she was not a party in the lower court. BUCKNILL LJ at page 1119 stated that:

The wife in this case was served with the petition and with the notice of appeal. Is she directly affected? She is still the husband's wife and does not cease to be so until the decree absolute is made. The result of this appeal, if successful, will be that a decree nisi may be made

against her followed by a decree absolute and she will cease to be a wife and to have the rights which she has as a wife. It is quite impossible to argue that she is not a party directly affected by the appeal. I think, therefore, that we were right in allowing counsel for the wife to address us on the merits

In this application the applicant avers that it is a party adversely affected by the Orders of the High Court. The Applicant as a consequence and according to its application, is aggrieved by the decision of the High Court. We accordingly find no merit in the Applicant's application for leave to address this Court as *amicus curiae* in Court of Appeal Civil Appeal No 242 of 2020 and hereby disallow the application with no order as to costs.

The Applicant may file an application to be joined as a party together with authorities and submissions and have it served on the parties to the Civil Appeal No 242 of 2020 by 3<sup>rd</sup> February 2021. The Parties to Civil Appeal No 242 of 2020 may file their pleadings, authorities and submissions in reply by 10<sup>th</sup> February 2021. The date of 17<sup>th</sup> February 2021 is tentatively fixed for hearing of the application if the Applicant files it as stated above.

Dated at Kampala the 17 day of January, 2021

  
**Richard Buteera**

**Deputy Chief Justice**

  
**Kenneth Kakuru,**

**Justice of Appeal**

  
**Christopher Madrama**

**Justice of Appeal**