

**IN THE HIGH COURT OF TANZANIA  
IN THE DISTRICT REGISTRY  
AT MWANZA**

**MISC CIVIL APPLICATION NO. 115 OF 2020**

(Originating from High Court, Civil Appeal No. 25 of 2020)

**PAGI BUJIKU ..... APPLICANT**

**VERSUS**

**MSAGALA PAGI ZILIHONA ..... RESPONDENT**

**EXPARTE RULING**

**8<sup>th</sup> & 22<sup>nd</sup> Apr. 2021**

**RUMANYIKA, J.:**

With respect to judgment and decree of this court dated 09/09/2020, the application by Msagala Pagi Zilihona (the applicant) is for leave for one to lodge an appeal to the Court of Appeal of Tanzania.

Essentially the grounds upon which leave is sought are: **(a)** whether, with regard to the appeal giving raise to the instant application the applicant was fairly heard. **(b)** whether the High court evaluated the evidence on record properly. The application is supported by affidavit of Erick Katemi whose contents essentially the applicant adopted hearing.

Mr. Erick Katemi learned counsel appeared for the applicant. Irrespective of several attempts inclusive of, pursuant to my order of

17/02/2021, Msagala Pagi Zilihoma (the respondent) wasn't traced therefore he never appeared. Eventually, following my order of 08/04/2021 his appearance was dispensed with hence the exparte ruling.

Mr. Erick Katemi learned counsel submitted: **(a)** when the 1<sup>st</sup> appeal was, by way of audio teleconferencing called on 24/08/2020 for hearing, but the applicant's counsel was temporally off line and for that reason the applicant prayed for a short adjournment, erroneously the court refused the prayer hence one was denied of right of legal representation **(b)** with the respondent's promise cum agreement to pay the applicant (Exhibit "P1") duly executed by the parties and witnesses, the issue of undue inference it should not have been raised and the respondent did not prove the allegations. That is all.

The bottom line, therefore the issue is whether the two points are that of general importance by way of appeal worth to be determined by the highest fountain of justice. Without running risks of rehearing the appeal or on that one usurp powers of the Court of Appeal of Tanzania, the answer is no much as also, this court only had powers with regard to applications for leave to save as a strainer not as conduct pipe.



Whereas it was, between the parties not clearly disputed that purely they had oral security contract then, if at all it was breached, with all intents and purposes of Sections 100 and 101 of the Evidence Act Cap 6 R.E. 2019, the respondent's promise to compensate the applicant for the loss it constituted no agreement much as it was signed by the respondent but unilaterally initiated under the circumstances the later having had complained that he signed it under compulsion/undue influence. Whether or not the allegations were not beyond reasonable doubts proved it is immaterial in my considered opinion suffices the point to dispose of the application.

The issue of denial of legal representation it needs not to detain me much as the learned counsel knew beforehand that through a digital platform the matter would come for hearing and, if at all he was shortly thereafter back online and he communicated it to the bench clerk, if proved, that one should have constituted a sufficient ground for review not for leave to appeal to the Court of Appeal of Tanzania. After all, when the appeal was called on the fateful 24/08/2020 the applicant is on record on having had been ready for hearing but upon the appellant's closure of the submissions the former changed the mind. It is very unfortunate that Mr.

E. Katemi learned counsel did not convince me why should the court depart from the long established legal principle that court records are serious documents that could not be casually impeached because they tell what actually had transpired in court.

I would increasingly hold that whenever through a digital plat form the case comes for hearing, in case of audio teleconferencing each party is duty bound to have his hand set sufficiently charged and, in terms of network one obliged to be in a pleasant and free of noise place short of which the party shall be considered being absent without notice therefore if appellant/applicant his matter liable to be dismissed and if a respondent texparte determined as the case may be.

The devoid of merits application is dismissed with costs. It is so ordered.



**S. M. RUMANYIKA**  
**JUDGE**  
**18/04/2021**

The ruling delivered under my hand and seal of the court in chambers this 22/04/2021 in the absence of the parties.



**S. M. RUMANYIKA**

**JUDGE**

**22/04/2021**