

**IN THE HIGH COURT OF TANZANIA**

**IN THE DISTRICT REGISTRY**

**AT MWANZA**

**MISC LAND APPLICATION NO. 09 OF 2021**

**JOHN SANYA MAKARANGA .....APPLICANT**

**VERSUS**

**RITTA P. LYAMBA & 2 OTHERS .....RESPONDENT**

**EXPARTE RULING**

**12 & 22/04/2021**

**RUMANYIKA, J.:**

The application for leave, with respect to decision of this court dated 18/12/2020 for John Sanya Makaranga (the applicant) to appeal to the Court of Appeal of Tanzania it is brought under Section 5(1) (c ) of The appellate Jurisdiction Act Cap 141 RE. 2019 and Rule 45 (a) of the Court of Appeal Rules 2009 (the Rules) it is supported by affidavit of John Sanya Makaranga whose contents essentially the applicant adopted during the hearing.

When the application was called on 22/02/2021 for hearing, though duly through served through mobile numbers 0755984791, 0759712249

and 0754520022 but for reasons known to them Ritta Lyamba, Y-Financing and Wassa Royal Court Brokers (the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents) respectively they did not appear, I dispensed with their appearance hence the exparte ruling.

As I heard the application by way of Audio teleconferencing through mobile numbers 0754043839, unusually briefly the applicant only urged the court to consider contents of the supporting affidavit. That is it.

A summary of the contents of the supporting affidavit would read that having had the Misc. Application No. 363 B of 2015 been dismissed by Mwanza District Land and Housing Tribunal (the DLHT) on 20/12/2018 for nonappearance, and the applicant applied for restoration of the same but he lost the battle, he appealed but this court (Tiganga, J) dismissed it on 18/12/2020 that as he was not happy he lodged a notice of appeal on 6/1/2020. That should the instant application be granted, the point now sought to be considered by the court is quoted as under **"whether it was correct for the 1<sup>st</sup> appellate judge to decide that there were no sufficient reasons to grant the application irrespective of the medical documents showing that I was sick being treated in hospital"**(paragraph 5 (a) of the affidavit refers).



The issue is whether the point raised for consideration by the highest fountain of justice raises any general importance. The applicant may, or he may have had not been duly served but due to the fact of being away at Muhimbili National Hospital indisposed and hospitalized yes, but for one main point of illegality namely though it was not raised the applicant and 1<sup>st</sup> respondent were spouses hence probably the matrimonial house the respective collateral but it wasn't from the record evidently clear whether as wife the defaulting 1<sup>st</sup> respondent had sought and obtained the spousal applicant's consent suffices the point of illegality to disposed of the application. In the alternative, with respect to the loan agreement between them the applicant and 1<sup>st</sup> respondent may have had executed the contract there fore by way of the principle of sanctity of contract the parties bound by the terms and conditions yes, but with the common knowledge that a loan agreement presupposed contract between an economically stronger party on one side and a weaker party on the other side it would not 100% be said that with only shs.3.0m attracting a monthly exorbitant interest of shs. 900,000/= on her side, in this case the 1<sup>st</sup> respondent she had registered her free consent. Without running risks of rehearing the said appeal or determining the instant application on the

basis of how would I have determined the intended appeal if I were to sit in the highest fountain of justice.

In the up short, the application for leave is granted. As the respondents neither appeared or lodged any documents, each party shall bear their costs.



**S. M. RUMANYIKA**

**JUDGE**

**17/04/2021**

The ruling is delivered under my hand and seal of the court in chambers this 22/4/2021 in the absence of the parties.



**S. M. RUMANYIKA**

**JUDGE**

**22/04/2021**