

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(DODOMA DISTRICT REGISTRY)  
AT DODOMA**

**MISC CRIMINAL APPLICATION NO. 107 OF 2020**

**DIRECTOR OF PUBLIC PROSECUTIONS ..... APPLICANT**

**VERSUS**

- 1. SAMO ALLY ISAACK**
- 2. MWINYI RAMADHANI MAGWIRA**
- 3. PETER ODONGO KITIWA**
- 4. REGIONAL LOGISTICS LTD.**
- 5. ILLOVO SUGAR KIGALI LTD.**

**..... RESPONDENTS**

*9/2/2021 & 10/2/2021*

**RULING**

**MASAJU, J**

The Applicant, the Director of Public Prosecutions, by way of Chamber Summons Application made under Sections 38 (1) (2) and 43 (1) of the Proceeds of Crime Act, [Cap 256] seeks Restraint orders in respect of the properties named in the Application against the Respondents, Samo Ally Issack, Mwinyi Ramadhani Magwira, Peter Odongo Kitiwa, Regional Logistics Limited and Illovo Sugar Kigali Limited, (the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, and 5<sup>th</sup> Respondents) respectively. The

evidence in support of the Application has been deponed by Benjamin Robert Mwalugeni, Assistant Inspector of Police, in the office of the Officer Commanding Criminal Investigation Department (OC-CID), Dodoma District. The said Affidavit along with the Annexures thereof gives the background and the reasons for the Application accordingly.

The Respondents, contest the Application and there is a Counter Affidavit sworn by their learned counsel, Deus Nyabiri to that effect along with the preliminary objection on points of law, thus;

- "1. THAT in view of the fact that 3<sup>d</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents are not charged with any offence in any Court, there cannot be made any order against them allegedly pending determination of an inexistent case against them.*
- 2. THAT the motor vehicles involved in the application are in the custody/control of the Police Force there cannot be made any restraining order against the Respondents relating to properties not in their custody.*
- 3. THAT, as there is no application for forfeiture regarding the seized sugar the application for sale of the same is legally incompetent"*

The alleged preliminary points of law were heard in the Court on the 9<sup>th</sup> day of February, 2021. The learned counsel, Deus Nyabiri appeared for the Respondents and the learned Principal State Attorney, Lilian Itemba, and the learned State Attorney, Harry Mbogoro, jointly and together appeared for the Applicant. The parties argued for, and against the preliminary points of law accordingly.

The Court is of the considered position that the way the alleged preliminary points of law, have been framed, do not qualify for points of law but legal arguments premised upon the facts, which facts as deponed by the parties in their pleadings (Affidavit and counter Affidavit) have not yet been considered by the Court, for Application has not yet been heard. That is to say the legal arguments fronted by the parties merit consideration and decision of the court when the Application will have been heard.

That said, the alleged preliminary points of law are hereby overruled accordingly.



GEORGE M. MASAJU

**JUDGE**

10/2/2021