

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(IN THE DISTRICT REGISTRY OF KIGOMA)**

**AT KIGOMA**

**(APPELLATE JURISDICTION)**

**MISC. CIVIL APPLICATION NO. 16 OF 2021**

**ABDALLAH S/O RAMADHANI KINDEGE..... APPLICANT**

**VERSUS**

**EXECUTIVE DIRECTOR KIGOMA UJIJI MUNICIPAL .....1<sup>st</sup> RESPONDENT**

**THE HON. SOLICITOR GENERAL.....2<sup>nd</sup> RESPONDENT**

**THE HON. ATTORNEY GENERAL .....3<sup>RD</sup> RESPONDENT**

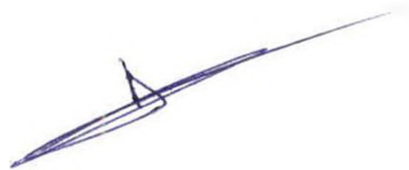
**R U L I N G**

27<sup>th</sup> & 27<sup>th</sup> July, 2021

**A. MATUMA, J.**

The applicant is seeking mareva injunction against the respondents pending maturity of his 90 days' notice of an intension to sue.

The applicant claims to have a rental contract with the 1<sup>st</sup> Respondent in which he rented the 1<sup>st</sup> Respondent's godown as a fish processing center for his business. He is further alleging some breaches of the contract on the party of the 1<sup>st</sup> respondent both on agreed rental charges and the period to start, and re-allocation of the rental building to another person contrary to their contract.



When this application came for hearing the applicant was present in person while the respondents were represented by Allan Shija learned State Attorney and Betrice Mongi learned Solicitor of the 1<sup>st</sup> respondent.

The applicant submitted that he rented the godown of the 1<sup>st</sup> respondent for his business, renovated it and installed his machines but the 1<sup>st</sup> respondent has trespassed into such building, removed the locks thereat and re-allocated the same to a third party known as Nyambita One Industry. That the said Nyambita has started to restructure the building while he still has a valid contract renting such building. He therefore seek temporary injunction to restrain the respondents and their agents from using the said building pending maturity of his notice so that he can sue the respondents for breach of contract.

Mr. Allan Shija responding on the arguments of the applicant was of the view that in the circumstances of the applicant's submission this application is not maintainable for having been overtaken by event and failure to join Nyambita One Industry as a necessary party. I agree with the learned State Attorney Mr. Allan Shija that so long as what is sought before me is a temporary injunction order restraining the respondents and their agents to use the building and re-allocate it to another person pending the intended suit, while in fact the building is already in use by

another person who is not party to this application, this application is unmaintainable both for having been overtaken by event and for having not included the necessary party who is likely to be affected by the order of this court. The dispute godown building is already in the hands and use by Nyambita One Industry. I can not therefore grant the orders sought in the absence of the said Nyambita One Industry to defend his interest in the property. Again, the temporary orders sought are uncalled for as they have already been overtaken by event since the re-allocation has already been effected and a third party is already in use of the building. With the herein above observations, this application is hereby dismissed without costs. It is so ordered.



  
**A. Matuma**

**Judge**

**27/07/2021**

**Court:** Ruling delivered in the presence of the Applicant in person and in the presence of Allan Shija learned State Attorney and Betrice Mongi learned for Solicitor for the 2<sup>nd</sup> Respondent.

Right of appeal explained.

**Sgd: A. Matuma**

**Judge**

**27/07/2021**