

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

**AT KIGOMA**

**MISC. LAND APPLICATION NO. 22 OF 2022**

**BUYOMBO GROUP .....APPLICANT**

**VERSUS**

**KAGONGO VILLAGE COUNCIL .....1<sup>ST</sup> RESPONDENT**

**KIGOMA DISTRICT COUNCIL .....2<sup>ND</sup> RESPONDENT**

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

**RULING**

26/7/2022 & 27/7/2022

**L.M. Mlacha, J**

The applicant, BUYOMBO GROUP filed an application against the respondents, KAGONGO VILLAGE COUNCIL, KIGOMA DISTRICT COUNCIL and THE ATTORNEY GENERAL under section 2(3) of the Judicature and Application of Laws Act cap 358 R.E 2019 and section 95 of the Civil Procedure Code Act cap 33 R.E 2019 seeking for injunctive orders. The application is supported by the affidavit of Mr. Silvester Damas Sogomba stating the grounds upon which it is made. The respondents were dully served and filled a counter affidavit in opposition. Mr. Allan Shija and Gorge Onyango state attorneys appeared for the respondents. Hearing was done by oral submissions through our virtual services.

It was the submission of Mr. Sogomba that the applicant owns a mining site for stores, gravel and sand at Kagongo village and they have been there since 2004. They had the first mining licence insured in 2004 which had been renewed successful since then. Recently, that is on 11/4/2022 they received three Mining licences Nos. PML 00250 KGM, PML 00251 KGM and PML 00249KGM over the suit land. Counsel submitted that in 2021 the first and second respondents allowed people to invade the land and conduct mining activities. They have now evicted the applicants who are unable to operate their mining licences. Counsel submitted that they have served the respondents with a 90 days' notice as required by the law. They are now seeking a mareva injunction to evict the people who occupying the land unlawfully pending the expiry of the 90 days' notice and final determination of the dispute between them. He stressed that an injunction order is necessary to maintain the status quo.

Submitting in reply, Mr. Allan Shija state attorney said that they don't have a dispute on the possession of the Mining Licences. They have other problems. He submitted that the applicants started to exist on 7/8/2019 and not earlier. He went on to say that they have filed the case as a land case while in reality this is an issue under the Mining Act. He said that

owning a Mining Licence does not give a person an automatic ownership of the land which is subject to compensation of prior occupiers. Counsel proceeded to submit that the applicant bought land from Mr. Mapinduzi but he has now extended to cover other people's lands hence the dispute.

Counsel for the respondents went on to say that the applicant did not say that they will suffer irreparable loss if the injunction is not granted. Neither did they say that they will suffer more than the respondents. He also spoke of the balance of convenience saying the applicant did not say who will suffer more. These three conditions must be established before the grant of mareva injunction, he said. He referred the court to **Attilio v. Mbowe [1969] HCD 284, Mareva Compania S.A v. International Bulk Carries SA [1980] ALL ER 213, Dinga Zakayo v. Kigoma Ujiji Municipal Council**, Misc. Land Application No. 9/2022 and **Trustees of the Anglican Church Diocese of Western Tanganyika v. Bulimanyi Village and 2 others**, Misc. Land Application No. 8/2022 and argued the court to dismiss the application.

Mr. Silvester Damas Sogomba made a rejoinder and argued the court to issue orders of status quo and restore the applicants in the suit land.



I had time to study the pleadings and consider the submissions. I have also read the cited cases. The applicants are seeking for an injunction, to maintain the status quo pending the expiry of the notice period and the filing and final determination of the suit. They however agree that they are not in the suit premises. They were invaded in 2021 and evicted from the suit premises by people who have the sanction of the first and second respondents. Those other people are now in occupation of the suit land. The applicants have lost customers and are getting losses. They want to go back to the suit land to control the land pending the expiry of the 90 days' notice, the filing and final determination of the intended suit. The issue now is whether the application is properly before the court and whether the court has power to issue the orders.

Mareva injunctions are now common in our courts. In **Hotel Sand Lodges Tanzania Limited vs Conservation Commissioner, (HC), Misc. Commercial Application No.136 of 2021 (Magoiga J)**, this court had this to say at page 6:

*" ... Mareva injunction in reality is similar to interlocutory and anticipatory injunctions because it is granted pending the determination of the anticipatory dispute between the parties."*

In **Uduru Makoa Agricultural & Marketing Cooperative Society Limited (Uduru Makoa Amcos) v. Makoa Farm Limited and 2 Others.** (HC Moshi Mwenempazi J), Miscellaneous Civil Application No. 1 of 2022 at page 20 this court had a similar observation:

*"... Essentially the remedy under mareva injunction is intended to protect the applicant before obtaining legal standing to sue."*

Like my brothers, I don't have problem with meaning of Mareva Injunction and the jurisdiction of this court to grant Mareva Injunctions. That is also the message behind all the cited cases. The court has jurisdiction, in a suitable situation, to grant an injunction to preserve the status quo pending the taking up of legal steps to file the suit. My problem is on the order of status quo which is sought. With respect, I think Mr. Sogomba is mixing issues.

Speaking of status quo, this court had this to say in **Kaboya Pastory Henry (As Administrator Of Estate Of The Late Hadda Kondo) v. Tharcis Alois Sambua,** (HC Land Division Dar es Salaam- Msafiri J. Misc. Land Case Application No. 734 of 2020 page 3.

*"...I understand that this Application was for restraining the respondent from disposing of the suit properties and on the other*

*hand, is for maintenance of the maintenance of the **status quo**, meaning that **it seeks to let matters stand as they now are, at whatever stage they might have reached as of now, pending determination of the Appeal.**"*

Orders of status quo put matters at a stand still as they now are, at whatever stage they might have reached as of now, pending determination of the case or in case of Mareva, pending the taking of the necessary steps to file the suit. They preserve the current status. If the act complained of has already been done, the order cannot be issued for if it is issued, it will not assist the applicant. It will benefit the other side.

In our case the applicants are out of the suit premises. They have already been evicted. They say so. They are outside the suit premises. That being the case, the orders of status quo cannot assist them. If it will be issued, it cannot benefit the applicant but their adversaries. Neither can it be converted to an eviction order and go to evict the people. Eviction orders have another procedure. It is thus obvious that the application is misconceived and improperly before the court. It cannot be left to stand.

With this finding, I find it of no use to discuss the other points. I leave them for the future.



That said, with respondent to Mr. Damas Sogomba the application is struck out. Costs to follow the event.



**L.M. Mlacha**

**Judge**

**27/7/2022**

**Court.** Ruling delivered through virtual court services.



**L.M. Mlacha**

**Judge**

**27/7/2022**