

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

**IN THE DISTRICT REGISTRY OF ARUSHA**

**AT ARUSHA**

**LAND CASE NO. 18 OF 2017**

**1. ALFRED REUBEN MSWIA**

**2. HELEN REUBEN MSWIA**

**3. DANIEL REUBEN MSWIA**

**4. MARY KEENAN MHAIKI**

.....**PLAINTIFFS**

*(Suing as administrators/administratrix of the estate of their mother, the late  
Leokadia Reuben Mswia)*

**VERSUS**

**TREM REUBEN MSWIA.....1<sup>ST</sup> DEFENDANT**

**AGNES REUBEN MSWIA.....2<sup>ND</sup> DEFENDANT**

**RULING**

**DR. OPIYO, J.**

On 23/4/2018 when parties appeared before this court, learned counsel for the plaintiffs Mr. Umbula notified this court that in Misc. Land Application No. 109/2017, the court granted injunction that the respondents shall not waste, damage, alienate, sale, mortgage the land in farm No. 3 Block B Certificate of Title No. 14259 measuring 2766 acres together with houses machinery. But recently there have been some developments that are on contravention of the said Court Order granting injunction. He said, there is incidences of changing marks ascribed in livestock. Initial marks were ER-7 they have been changed to ER-9. He further stated that, it is also noted

that there is indiscriminate sale of cattle and calves. There are also cases of slaughtering of goats and sheep in the farm. Also two caterpillars have been moved from the farm, one has actually broken down at a distant from the farm. There is also indiscriminate cutting down trees for the purpose of charcoal making. Recently also there is a younger brother of Applicants/Plaintiffs who has been living in one of the houses in the farm, one Joseph Reuben Mswia who have been ejected from the farm. He further contended that, all these are in contravention of the Court Order that *status quo* be maintained pending finalization of the main suit. He stated that, by doing these acts the respondents or their agents are preempting the gist of the orders. Therefore, he prayed that the respondents or their agents be directed by the Court to stop these acts and younger brother who was evicted be reinstated in one of the farm houses where he was living with his family pending final determination of the main suit.

In reply, the defendant's counsel, Mr. Kinabo learned Advocate stated that there is no any change that have been made in livestock marks, save for the initials in which ER means or stands for Essimigor Ranch and the subsequent No. depends on the months the calves were born, and they are bond to change depending on continued birth of calves. On the issue of slaughtering goats and sheep, he stated that it is not true as in real fact, the goats increased from the original number through reproduction and purchase of new goats. On the issue of two caterpillars, he said none has been sold, they were taken for the purpose of road repair at this time of rain season upon request of Isimigor Village Management who also

contributed to the running costs of those tractors for road repair. In regard to the issue of cutting tree, he said, it is not the respondents or their agents who are doing that. The respondents also have been fighting outsiders who do that to the farm. In regard to Joseph's eviction from a farm house, he said he was not evicted as a result of any order of this Court or the matter under dispute, but he has been removed from the farm for lack of honest, and procedure to return him to the farm is not connected to this matter before this Court, as he is not part of this matter. As such, the respondents have not gone against any Court Order and they will proceed to respect the same.

In rejoinder, Mr. Umbala stated that the marks are set in the original marks not in the new calves, that they are changing the original mark. On the issue of sale of livestock, he said, the fact remains as the counsel have not denied that. On the issue of caterpillar, he submitted that removing it out of the shamba contravenes Court Order. On cutting of trees, he stated that trees are cut by Anold (the son of the second defendant). On the issue of evicting Joseph, he said they have not explained the misbehavior leading to his eviction. He has been living in the shamba all along with his family even before the death of their father. He maintained his prayer to order observing Court Order pending determination of the matter.

I have heard the concern raised by Mr. Umbala and considered the submission of both sides. In regard to the issue of expulsion of Joseph Reuben Mswia (alleged to have been living in one house in the farm), it is my finding that, although this issue was not directly dealt with in the original application or restraint order, but it suffices to say that the restraint

order in essence usually have the effect of maintaining *status quo* of the prevailing situation. That means, all what existed as at the date of the order remains untouched, as it was not a center of contention between the parties. The respondents counsel's argument that, because this matter was not particularly dealt with in the former application, the procedure of dealing with the issue of expulsion of the Joseph Reuben Mswia has to be different is misconceived, in that it was for the respondent to seek court leave to alter the status quo that was maintained by this court and not for the applicant to find a different avenue to deal with respondent's breach of court order. It has to be noted that, the ownership of the land is still under dispute, therefore no party has a right to it to the extent of chasing anyone out of it in violation of court order to maintain *status quo*. The argument that the said Joseph Reuben Mswia was not a party to the application has no merits as the order was in respect of all the beneficiaries of the late Leokadia Reuben Mswia under whose capacity, the applicant's sued as administrators of her estate. For that reason I order the reinstatement of Joseph Reuben Mswia, to the disputed land. He shall remain there until the final determination of the Land Case no. 18 of 2017 or upon this court's order to the contrary.

In regard to the issue of changing original marks in the livestock, slaughtering of goats and sale of properties; I find that, issue requires evidence to prove so and the applicants have not proved the same before this court. If the applicants have proof, I advise them to seek an order for contempt of the court against the respondents. The same applies on the issue of cutting of trees. In regard to the issue of moving tractors, I find the

reason advance by the respondent's counsel that the same was moved for the purposes of road repair has merits. This court granted injunction among other things to restrain the respondents from wasting, damaging or alienating by sale, mortgage or otherwise the Land comprised under Farm No. 3 Block "B" C.T No. 14259 measuring about 2,766 acres together with the houses, machinery including tractors, bulldozers, farm implements and the livestock. The above restraint order did not prohibit continued use of the implements as this will entail unnecessarily leaving them idle for so long. So, the said injunction order did not prohibit working with the tractor or repairing it as long as the use is not intended to dispose, waste or damage the same. In the circumstances this prayer is found to be merits. Application allowed to the extent explained. Each party shall bear its own costs.

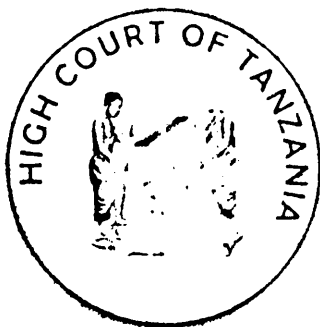
(Sgd)

**DR. M. OPIYO**

**JUDGE**

**2/7/2018**

I hereby certify this to be a true copy of the original.



  
**DEPUTY REGISTRAR**

**ARUSHA**

19/7/2018