



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**  
**AT NAKURU**

**Civil Case 288 of 2000**

**MAU DEVELOPMENT CO. LTD ..... PLAINTIFF**

**VERSUS**

**GEOFFREY NJENGA KAHURA ..... 1<sup>ST</sup> DEFENDANT**

**MARY NYAMBURA ..... 2<sup>ND</sup> DEFENDANT**

**GITHIMBA ONDIEK ..... 3<sup>RD</sup> DEFENDANT**

**MUTHONI KIPRONO ..... 4<sup>TH</sup> DEFENDANT**

**NAFTALY KIMANGA MASESE ..... 5<sup>TH</sup> DEFENDANT**

**JUDGMENT**

The plaintiff, **Mau Development Co. Ltd** instituted this suit against the 1<sup>st</sup> to 5<sup>th</sup> Defendants seeking for injunction orders against the defendants as well as general and special damages for a claim of trespass on land.

The 1<sup>st</sup> to 5<sup>th</sup> defendants filed a statement of defence, they denied the allegations of trespass of land but during the hearing of this matter the defendants did not attend court to defend this suit.

The plaintiff was represented by **Evanson Karanja Njuguna (PW 1)** who told the court that he was the secretary of the plaintiff company and thus he was familiar with the affairs of the plaintiff.

According to **PW 1**, the plaintiff company was incorporated in 1991 with the sole purpose of buying land and sharing it among its shareholders depending on the shareholders contributions, and as per the plaintiff's Memorandum and Articles of Association.

Pursuant thereto, the plaintiff acquired **Parcel No. 8660/8 Mau Narok** for purposes of allocating it to their shareholders according to the paid up shares of the members. The subdivision and allocation of the land is the sole prerogative of the directors. The plaintiff complained that in the month of May 2000, the defendants without any lawful or good cause entered into, and purported to subdivide and erect structures on the plaintiff's land which they have allocated to themselves a total of ten (10) acres of the fourteen (14) acres.

According to this witness, shareholders who had paid Kshs.30,000/- were entitled to a plot measuring 60ft by 50ft and that is after the issuance of a certificate of completion, a balloting exercise and the sub-

division whereby the shareholder would ballot and be shown the plot. **PW 1** produced the Memorandum and Articles of Association of the plaintiff, and the minutes of the company. This witness was cross-examined at length by Counsel for the defendants and he contended that the defendants purported to allocate themselves a total of ten (10) acres without any authority from the company. He said that there are about one hundred and twenty (120) shareholders who are entitled to the parcel of land known as **LR Number 8660/6 Mau Narok** and due to interferences by the defendants the other shareholders have not been able to get their respective shares.

As I stated earlier, the defendants did not offer any evidence to controvert the evidence on record by the plaintiff. The plaintiff however did not present any evidence to support the claim for general and special damages. As regards the claim for restraining orders against the defendants, I am satisfied that the plaintiff has been able to prove its case to the required standard that the 1<sup>st</sup> to 5<sup>th</sup> defendants have moved and taken possession of the parcel of land belonging to plaintiff and allocated to themselves ten (10) acres. Although the defendants are shareholders of the Plaintiff Company they should be patient until the land is allocated to them alongside other shareholders by the duly constituted Board of Directors of the plaintiff's company.

Accordingly, I grant the plaintiff the 1<sup>st</sup> prayer in the plaint that is on a perpetual injunction restraining the defendants jointly and/or severally either by themselves and their servants and agents from entering, occupying, trespassing, erecting structures, using or in any way interfering with the plaintiff's parcel of land.

The plaintiff shall also be entitled to the costs of this suit.

It is so ordered.

**Judgment read and signed on 24<sup>th</sup> November 2006.**

**MARTHA KOOME**

**JUDGE**