



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT BUNGOMA**

**ELC MISCELLANEOUS APPLICATION NO. 8 OF 2021**

**IN THE MATTER OF**

**SECTIONS 13, 17 AND 56 OF THE TRUSTEES ACT CAP 167 LAWS OF KENYA**

**AND**

**IN THE MATTER OF LAND PARCEL NO. NDIVISI/MUCHI/2603**

**AND**

**IN THE MATTER OF JM ..... MINOR**

**AND**

**IN THE MATTER OF LEAVE AND AUTHORITY TO SELL**

**BNALIAKA WEPUKHULU..... EX PARTE APPLICANT**

**RULING**

What calls for my determination is the Ex – parte Applicant’s Notice of Motion dated 16<sup>th</sup> August 2021 brought vide **Order 37 Rule 1(1)** of the **Civil Procedure Rule** and **Sections 1A, 1B, 3 and 3A** of the **Civil Procedure Rules** seeking the following orders: -

- 1. Spent**
- 2. That the Ex – parte Applicant be granted Authority as the proprietor and also the proprietor in trust for JM (a minor) to dispose off the land parcel NO NDIVISI/MUCHI/xxxx.**
- 3. Any other orders that this Court may deem expedient to grant.**
- 4. That costs of this application be in the cause.**

The gist of the application as can be gleaned from the supporting affidavit and the annexures thereto is that the Ex – parte Applicant and the minor **JM** and another minor **GM** (now deceased) are the proprietors of the land parcel **NO NDIVISI/MUCHI/xxxx** as per the annexed copy of the title deed. The Ex – parte Applicant is now widowed her late husband **JOHN WEPULHULU MUKELASIO** having passed away in 2013 leaving her with the following children namely **JMW, EN, YM, EW** and the deceased. That the said children are minors attending various schools and since the Ex – parte Applicant has no steady income, she needs to dispose off the land parcel **NO NDIVISI/MUCHI/xxxx** to enable her meet the needs of the children and also acquire another property hence this application.

I have considered the application, the supporting affidavit and the annexures thereto.

There is no doubt in my mind that the Ex – parte Applicant is a widow and has children to take care of. It is also clear that the land parcel **NO NDIVISI/ MUCHI/xxxx** is registered in the names of the Ex – parte Applicant and her two children **JM** and **GM** (now deceased). I am also satisfied from the annexures herein that **JM, EW** and **EN** are in school and so their fees and other requirements must be met.

What has caused me some disquiet and makes me hesitant to grant the orders sought are the following three (3) concerns.

Firstly, the Ex – parte Applicant’s late husband passed away in 2013 some eight (8) years ago. She has managed to take care of her children

including taking them to school since then. **JM** the only surviving co – proprietor will be attaining the age of majority in the next five (5) months having been born on 5<sup>th</sup> March 2003. I think it is only prudent that the Ex – parte Applicant waits just a little longer.

Secondly, as stated above, **JM** was born on 5<sup>th</sup> March 2003. He will attain the age of majority in the next five (5) months and will be in a position to make his own decision with respect to the land parcel **NO NDIVISI/ MUCHI/XXXX**. No prejudice will be caused to the Ex – parte Applicant if she waits a little longer.

Lastly, I notice from the annexures that the Ex – parte Applicant has already entered into an agreement with one **JEFFERSON M. BARASA** to purchase his land being plot **NO XXXX EAST BUKUSU/NORTH SANG’ALO** using the proceeds to be obtained from the sale of the land parcel **NO NDIVISI/MUCHI/ XXXX**. It is improper for her to be entering into such transactions with respect to the land parcel **NO NDIVISI/MUCHI/XXXX** when she is only a trustee. I caution her about making any such further transactions.

My view of the matter is that the Ex – parte Applicant can wait for a further five (5) months for **JM** to attain the age of majority before a decision can be made on the land parcel **NO NDIVISI/MUCHI/XXXX**.

The up – shot of the above is that the Notice of Motion dated 16<sup>th</sup> August 2021 is dismissed with no orders as to costs.

**BOAZ N. OLAO.**

**J U D G E**

**28<sup>th</sup> October 2021.**

Ruling dated, signed and delivered in Open Court at **BUNGOMA** this 28<sup>th</sup> day of October 2021.

Mr Athung’a present for Applicant

Applicant present

Joy - Court Assistant

**BOAZ N. OLAO.**

**J U D G E**

**28<sup>th</sup> October 2021.**