



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**MILIMANI LAW COURTS**

**ELC NO. CASE NO.666 OF 2012**

**MARY WANJIRU NDEGWA.....PLAINTIFF**

**=VERSUS=**

**WANDEMI DEVELOPERS LIMITED....DEFENDANT**

**RULING**

1. The Decree Holder/Applicant filed a Notice of Motion dated 18/4/2019 in which she sought the following orders:-

**1. Spent**

**2. That this Honourable Court be pleased to order the Directors of the Defendant to sign all relevant papers to give effect to the decree issued on 28<sup>th</sup> February, 2019 and transfer the land known as LR.No.27981/12 to the Plaintiff.**

**3. That in default of complying with the above prayer, the Executive Officer or Deputy Registrar of this Honourable Court be authorized to sign all documents and instruments of transfer of land parcel number LR No.27981/12 necessary for effecting the transfer in favour of Mary Wanjiru Ndegwa.**

**4. That arising from the above, this Honourable Court be pleased to order and direct that the Chief Land Registrar do dispense with the production of the original Certificate of Lease, Pin Certificate, Passport size photographs of Directors, national Identity cards of the Directors and any other documents by Wandemi Developers Limited and therefore rectify the register and issue a certificate of Lease in respect of LR No.27981/12 in favour of Mary Wanjiru Ndegwa.**

**5. That cost of this application be provided for.**

2. The Applicant contends that she has a Judgement in her favour which Judgement has not been stayed. She therefore prays that the application be allowed so that the suit property can be registered in her name.

3. The Judgement Debtor/Respondent opposed the Applicant's application based on a replying affidavit sworn on 21<sup>st</sup> August 2019. The Respondent contends that it had filed an appeal against the judgement and an application for stay of execution which was to come up for hearing on 6<sup>th</sup> June 2019, but was not listed. The Respondent therefore contends that the Applicant's allegation that no appeal has been filed is without merit.

4. I have considered the application by the Applicant and the opposition to the same by the Respondent. This application basically seeks execution of the decree herein. I have looked at the court record and notice that on 8<sup>th</sup> October 2019, the Advocates for the parties herein agreed by consent that as notice of motion dated 11<sup>th</sup> July 2018 which was seeking stay of execution was not opposed, the same should be allowed. The Court proceeded to allow the application dated 11<sup>th</sup> July 2018 as prayed. This effectively granted stay of execution pending appeal. It will therefore not be in order to allow the current application in the face of execution which has already been stayed. I therefore find that the application dated 18<sup>th</sup> April 2019 has no merits. The same is dismissed with costs to the Respondent.

It is so ordered.

**Dated, Signed and delivered at Nairobi on this 12<sup>th</sup> day of March 2020.**

**E.O.OBAGA**

**JUDGE**

In the Presence of :-

Mr Mwangi for M/s Matu for Plaintiff/Applicant and

M/s Munyingi for Mbigi for Defendant

Court Assistant: Hilda

**E.O. OBAGA**

**JUDGE**