



**Republic v Registrar of Lands, Kiambu & another; Wachira  
(Exparte); Waweru (Interested Party) (Judicial Review Application  
E004 of 2021) [2023] KEELC 145 (KLR) (16 January 2023) (Judgment)**

Neutral citation: [2023] KEELC 145 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT THIKA  
JUDICIAL REVIEW APPLICATION E004 OF 2021  
BM EBOSO, J  
JANUARY 16, 2023**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**REGISTRAR OF LANDS, KIAMBU ..... 1<sup>ST</sup> RESPONDENT**

**KENYATTA NATIONAL HOSPITAL ..... 2<sup>ND</sup> RESPONDENT**

**AND**

**LYDIA WOKI WACHIRA ..... EXPARTE**

**AND**

**IRENE WAMAITHA WAWERU ..... INTERESTED PARTY**

**JUDGMENT**

1. The single issue to be determined in this judicial review application relates to costs of the application. Prayer 1 which is a plea for an order of mandamus compelling the 2nd respondent to remove the charge placed on the parcel register relating to Karai/Karai/819 [the suit property] is no longer necessary because, during the subsistence of the suit, the exparte applicant prepared a discharge of charge which was subsequently executed by the 2nd respondent and returned to the exparte applicant for registration.
2. The *exparte* applicant was at all material times the registered proprietor of the suit property. On 27/8/2001, she charged the suit property to the 2nd respondent, to secure a hospital bill of Kshs 160,000 incurred by the late Daniel Wachira Getao. The *exparte* applicant contended that despite settlement of the hospital bill, the 2nd respondent failed to “remove the charge”. It was the exparte applicant case that on 22/6/2022, she wrote to the 2nd respondent demanding removal of the charge.



- She added that the 2nd respondent responded through a letter dated 5/7/2021, requesting to be furnished with a copy of the charge to enable them deal with the issue. She contended that she could not avail the charge because it was the 2nd respondent who was in possession of the charge.
3. The issue of discharge of the charge having been resolved, parties were requested to try to amicably resolve the issue relating to costs of the suit. Parties having failed to resolve the issue of costs of the suit, the court directed them to canvass the issue through affidavit evidence and brief written submissions. The court subsequently fixed the case for trial on the issue of costs. The *ex-parte* applicant filed written submissions dated 1/9/2022 and further written submissions dated November 11, 2022. The 1st respondent elected not to file any affidavit or written submissions. The 2nd respondent filed written submissions dated 9/11/2022 but elected not to file any affidavit. The interested party did not file any response.
  4. I have considered the evidence presented by the *ex-parte* applicant through the statement of facts together with the verifying affidavit. I have also considered the parties' respective submissions. It is not disputed that the 2nd respondent caused a charge to be registered against the parcel register relating to the suit property to secure a hospital bill that was owed to it in relation to medical expenses incurred by the late Daniel Wachira Getao. Secondly, it is not in dispute that the *ex-parte* applicant wrote to the 2nd respondent, requiring the 2nd respondent to "remove the aforementioned charge by signing a discharge."
  5. The *ex-parte* applicant did not, however, tender evidence to demonstrate that prior to bringing this suit, she tendered to the 2nd respondent a duly drawn discharge of charge, requiring the 2nd respondent to execute the discharge of charge. Similarly, the *ex-parte* applicant did not tender any evidence to demonstrate that she requested the 2nd respondent to furnish her with a copy of the charge to enable her prepare a discharge of charge and that the 2nd respondent declined to accede to that request. In the letter exhibited by the *ex-parte* applicant, dated 5/7/2021, the 2nd respondent expressed surprise that the *ex-parte* applicant cleared the bill and retrieved her title but did nothing about preparation of the discharge of charge. They requested the *ex-parte* applicant to avail a copy of the charge to enable them deal with the issue. Instead of the *ex-parte* applicant engaging the 2nd respondent to amicably resolve the issue, she rushed to court. The issue was ultimately resolved amicably during the subsistence of this suit.
  6. In my view, in the absence of evidence demonstrating that the *ex-parte* applicant presented to the 2nd respondent a duly drawn discharge of charge requiring the 2nd respondent to execute it and that the 2nd respondent unjustifiably failed to do so; and in the absence of evidence demonstrating that the 2nd respondent unjustifiably failed to furnish the *ex-parte* applicant with a copy of the charge to enable her draw a discharge of charge, I do not think the *ex-parte* applicant has proved her case on the issue of costs of this suit to justify an award in her favour.
  7. Taking the foregoing into account, and further taking into account the fact that the 1st respondent and the interested party did not file responses on the issue under consideration, the appropriate disposal order to be made in relation to the issue of costs of this suit is that parties shall bear their respective costs of the suit. That is the disposal order I hereby make in this Judgment.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 16TH DAY OF JANUARY 2023**

**B M EBOSO**

**JUDGE**

Mr Wangai for the Ex-parte Applicant



Mr Lumumba for the 2nd Respondent

**Court Assistant: Ms Osodo**

