



**REPUBLIC OF KENYA**

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

**CIVIL & COMMERCIAL DIVISION**

**ELC. MISC. APPLICATION NO. 10 OF 2018**

**BANK OF BARODA KENYA LIMITED.....1<sup>ST</sup> APPLICANT**

**VERSUS**

**NAYAN LIMITED.....2<sup>ND</sup> APPLICANT**

**R U L I N G**

1. The application before court is the Notice of Motion dated 25<sup>th</sup> April, 2018 seeking a declaratory order to the effect that the charge issued by Nayan Limited and dated 31.10.2016 over the title Number Kakamega/Municipality Block1/163 (henceforth “the property”) in favour of BANK OF BARODA KENYA LIMITED duly registered on the 1.12.2016 with the Registrar of Companies was validly lodged and/or registered in full compliance with the Companies Act 2015. The applicants also pray that costs of the application be provided for.

2. The grounds in support of the application are set out thereon. The application is also premised on the affidavits of PAUL MUNYUA KAIRU and NIRUBEN DITEN CHAVDA and other grounds. In the main the applicant’s state that though the date of the charge is 31.10.2016 while the lease in respect of the property was issued on 23.11.2016 to the 2<sup>nd</sup> applicant herein and the certificate of registration of charge to facilitate compliance with the Companies Act 2015 was issued on 1.12.2016, nonetheless, the charge is authentic and enforceable, hence this application. The charge is for Kshs. 34,000,000/=.

3. I have seen and carefully read the supporting affidavit of Paul Munyua Kairu to which are annexed the following documents

- Charge document dated 31.10.2016 – PMK/
- Original title deed in the Bank’s possession issued to Nayan Limited on the 23<sup>rd</sup> November, 2016 – PMK2.
- Duly registered charge which was registered on 28.11.2016 – PMK3.
- Copy of certificate of registration of Mortgage – PMK4
- Debenture dated 16<sup>th</sup> November, 2016 duly registered at the Companies Registry on 1.12.2016 – PMK 5

4. The deponent prays that in the interest of justice and equity this application be allowed as prayed to ensure the validity of the charge document. Mr. Paul Munyua Kairu is the Kakamega Branch Manager of Bank of Baroda Kenya Limited and he confirms he is duly authorized to swear the affidavit on behalf of the Bank and is well versed with the facts of the application.

5. The second affidavit is sworn by Niruben Diten Chavda, a director to Nayan Limited. He says he is duly authorized to swear the affidavit on its behalf and is conversant with the facts of the application. The deponent says that despite the execution of the charge document on 31.10.2016, the 2<sup>nd</sup> applicant was yet to be registered proprietor due to the process of transfer being incomplete. He explains that the delay in the execution of the transfer was caused by the fact that there was an exchange of documents between the transferor and the 2<sup>nd</sup> applicant. The deponent prays that in the interest of justice and equity this application be allowed for the validation of the charge.

6. This application was initially filed before the Environment and land Court but following recent developments and pronouncements on matters concerning mortgages and charges, the application was transferred from the Environment and Land Court to this Court for hearing and final determination, hence this ruling.

7. Having considered all the above facts and the fact that both applicants coming from the opposite side of the divide are in agreement that the order sought be granted, and being satisfied with the explanation given by the applicants in the respective affidavits, I allow the

application and make the following orders.

1) The Notice of Motion dated 25<sup>th</sup> April, 2018 and filed in Court on 25<sup>th</sup> April, 2018 be and is hereby allowed in terms of prayer 2 thereof.

2) I make no order as to costs

It is so ordered

**Ruling delivered, dated and signed in open court at Kakamega this 29<sup>th</sup> day of May 2018**

**RUTH N. SITATI**

**JUDGE**

In the presence of:

.....Miss Oduor for Abok.....for Applicants

.....Polycap.....Court Assistants