



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT ELDORET
MISCELLANEOUS APPLICATION NO. 8 OF 2014
IN THE MATTER OF SHREEJI APARTMENTS LIMITED

AND

IN THE MATTER OF THE COMPANIES ACT (CAP 486 LAWS OF KENYA)

AND

**IN THE MATTER OF AN APPLICATION FOR EXTENSION OF TIME FOR REGISTRATION
OF A CHARGE BY SHREEJI APARTMENTS LIMITED IN FAVOUR OF BANK OF BARODA
(KENYA) LIMITED**

BANK OF BARODA (KENYA) LIMITEDAPPLICANT

*(ex-parte application for extension of time to register a charge in the companies registry; Sections 96
and 102 of the Companies Act; inadvertent delay in having charge registered within 42 days;
application allowed)*

RULING

This is a Miscellaneous Application dated and filed on 23 April 2014 by the Bank of Baroda (K) Limited. When the application came before me on 23 April 2013, I allowed the same and reserved the reasons for 23 July 2014 for the reason that I was proceeding on leave. This is therefore the full text of the ruling.

This is an application brought inter alia pursuant to the provisions of Sections 96, 98 and 102 of the Companies Act (CAP 486) Laws of Kenya. The application seeks the following principal order:-

That time be extended for the registration at the Companies Registry of the Charge dated 7 February 2013.

The main grounds upon which the application is based are :-

(i) That the Charge dated 7 February 2013 in favour of the Applicant/Chargee over the title known as Eldoret Municipality Block 8/120 was registered at the Lands Registry at Eldoret on 8 February, 2013.

(ii) That upon registering the Charge the Advocates for the Applicant/Chargee, inadvertently did not cause the said Charge to be registered at the Companies Registry within 42 days as required by Section 98 (1) of the Companies Act.

The application is supported by the affidavit of Alfred King'oina Nyairo who is an advocate of the High Court of Kenya and a partner in the firm of M/s Nyairo & Company Advocates. He has deponed that his

firm was given instructions to register a Charge of Kshs. 50,000,000/= by the applicant over the land parcel Eldoret Municipality/Block 8/120. He was personally seized of the preparation, execution and registration of the charge. He has deponed that the charge was executed on 7 February 2013 and that it was later duly registered. However, owing to an inadvertence, he overlooked registering the Charge at the Companies Registry within 42 days as required by the Companies Act. This is the reason why the Applicant has filed this application for extension of time to have the Charge registered at the Companies Registry.

Section 96 (1) and (2) of the Companies Act are drawn as follows :-

It will be seen from the above that a Company is supposed to register every charge over immovable property with the Companies Registry within 42 days of creation of the charge to avoid the repercussions set out therein. The court however has power under Section 102 of the Companies Act to extend time for the registration of the Charge at the Companies Registry. The Section is drawn as follows :-

It will be discerned from the supporting affidavit of Mr. Nyairo, that there was inadvertence in having the charge registered at the Companies Registry within the stipulated 42 days. This was a mistake of counsel and the same ought not to be visited upon the client who deserves to have the security perfected. I am of the view that good reason has been given for failure to have the security registered in the Companies Registry as required.

I therefore allow this application and extend time to have the Charge instrument registered at the Companies Registry by a further 90 days from 23 April 2014. I further order that upon such registration, the Charge dated 7 February 2013 over Eldoret Municipality/Block 8/ 120 be deemed to have been properly registered at the Companies Registry.

Given the nature of the application, there are no orders as to costs.

It is so ordered.

DATED AND DELIVERED AT ELDORET THIS 23RD DAY OF JULY 2014

JUSTICE MUNYAO SILA

ENVIRONMENT AND LAND COURT AT ELDORET

Delivered in the presence of:

N/A for M/s Nyairo & Co for applicant