

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

MISCELLANEOUS CIVIL APPLICATION 370 OF 2012

WAMEER WHOLESALERS AND DISTRIBUTORS (1994) APPLICANT

VERSUS

MORTGAGE COMPANY RESPONDENT

RULING

By a notice of motion dated 18th September 2012 made pursuant to **Section 102** of the **Companies Act**, **Rule 8** of the **Companies Rules**, **Order 51** of the **Civil Procedure Act**, the applicant prays to this court for extension of time for registration of a certificate of registration of mortgage over **Title No.Nakuru Municipality Block 9/20** registered in the names of **WAMEER WHOLESALERS AND DISTRIBUTORS (1994) LTD.**

The application is premised on grounds that:

1. The Companies Registrar returned the certificate of registration of mortgage, unregistered despite the same having been lodged for registration on 17th August 2012.
2. The registration of the certificate of mortgage is necessary so as to grant its validity as is prescribed by section 96 of the Companies Act.
3. The applicant is bound to suffer irreparably if the certificate is not registered.

In the supporting affidavit sworn by the applicants counsel, HAROLD ANDREW MBATI, he deposes that Oriental Commercial Bank instructed him to prepare and register a charge over **Title No.Nakuru Municipality Block 9/20** to secure a sum of **Kshs.16,325,000/=**. The charge was registered on 25th July 2012 and on 17th August 2012, the bank requested for a certificate of Registration of mortgage and he immediately proceeded to the Lands registry and lodged the certificate of registration of mortgage over the said Title but the document was not lodged within the recommended 42 days as required by law; that is why he seeks extension of time.

The applicants are unable to access funds from the bank because of the unregistered certificate.

Section 102 of the **Companies Act** requires that the applicant satisfies this court as regards the omission to register a charge within the time required by the Act or that the omission was accidental or due to inadvertence or to some other sufficient cause, or is not of a nature as to prejudice creditors or shareholders of the company, or on grounds which make it just and equitable to grant relief. **Section 96** requires that a registration be done within **42 days** from the date of creation of the charge.

The applicant's counsel has demonstrated the steps he took, and within what period, towards realising the requirements of section 96 of the Companies Act. He has shown from the date stamp that the charge was lodged at the registry on **30/05/2012** but registered on **25th July 2012**, so that by the date it was presented to the Lands registry for registration on **17th August 2012**, the 42 days had long lapsed. I think that explanation is reasonable and the delay in registration was not as a result of indolence on the applicant's part – in my view sufficient cause has been demonstrated.

Secondly without this certificate, it becomes impossible for the applicant to access grounds needed for the business, so I find it just and equitable to allow extension of time so as not to expose the applicant to great prejudice. I therefore allow for extension the period of registration by extending the time to a further 14 (fourteen) days, from today's date.

Delivered and dated this 21st day of September, 2012.

**H.A. OMONDI
JUDGE**

Mr. Mbatia present for Applicant