



**REPUBLIC OF KENYA**

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

**(MILIMANI COMMERCIAL & TAX DIVISION)**

**MISC. APPLICATION NO. 328 OF 2010**

**IN THE MATTER OF EQUITY BANK LIMITED**

**IN THE MATTER OF AN APPLICATION FOR AN ORDER TO REGISTER A  
CHARGE/MORTGAGE OUT OF TIME**

**UNDER THE PROVISIONS OF SECTION 96 AND 102 OF THE COMPANIES ACT (CAP 486)  
LAWS OF KENYA**

**AND**

**IN THE MATTER OF:**

**EQUITY BANK**

**LIMITED.....APPLICANT**

**VERSUS**

**A-PLUS MOTORS**

**LIMITED.....RESPONDENT**

**R U L I N G**

This ruling relates to a notice of motion application brought under section 102 of the Companies Act and Rules, 3, 4 and 8(b) of the Companies (High Court) Rules and Section 3A of the Civil Procedure Act, Cap 21 Laws of Kenya. The said application seeks the following orders:

1. THAT the period for registering the charge dated 13<sup>th</sup> November, 2009 and made between A-plus motors Limited as the Chargor and Equity Bank Limited as the Chargee over Title No. Nairobi/Block 119/384 be extended and the same be filed with the Registrar of Companies within Forty Five (45) days from the date of this order or on such terms and conditions as seem to the court just and expedient.
2. THAT the cost of this application be in the cause.

During the hearing of the application, the applicant’s counsel, Mr. Karuga sought leave to register a charge out of time at the company’s registry. Further to the above, he submitted that the delay in registering the charge was caused by the misplacement of the file in the Lands office. Besides the above, he also submitted that the consent was only obtained on the 20<sup>th</sup> of March, 2010. It was his view that the delay was not within the control of the applicant. Apart from the above, he also explained that the application has been supported by the affidavit of Hiram Thimba together with the annextures. In addition

to the above, he also submitted that the bank has always been willing to release the money after the charge has been registered. Unfortunately, the statutory period of 42 days has already expired. It was his contention that the respondent will suffer irreparable damage if the orders are not granted. After carefully considering the application, I hereby grant the prayers sought. Specifically, I hereby direct that the period for registering the charge dated 13<sup>th</sup> November, 2009 and made between A-Plus Motors limited as the Chargor and Equity Bank Limited as the Chargee over Title Number Nairobi/ Block 119/384 be extended and the same be filed with the Registrar of Companies within 45 days from today's date. Costs in the cause. Those are the orders of this court.

**MUGA APONDI**  
**JUDGE**

***Ruling read, signed and delivered in open court in the presence of:***

Ms Ithondeka for Oyatsi - Applicant's Counsel

**MUGA APONDI**  
**JUDGE**  
**30<sup>TH</sup> APRIL, 2010**