



REPUBLIC OF KENYA



Simba Enterprises Limited & another v Registrar of Companies (Miscellaneous Application E5282025 of 2025) [2025] KEHC 8611 (KLR) (Commercial and Tax) (19 June 2025) (Ruling)

Neutral citation: [2025] KEHC 8611 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS APPLICATION E5282025 OF 2025**

BK NJOROGE, J

JUNE 19, 2025

BETWEEN

SIMBA ENTERPRISES LIMITED 1ST APPLICANT

VICTORIA COMMERCIAL BANK PLC 2ND APPLICANT

AND

REGISTRAR OF COMPANIES RESPONDENT

RULING

1. This Ruling relates to the Applicant's Notice of Motion dated the 26th May, 2025 brought under (Under Section 2 and 3 of the Judicature Act, Cap 8 Laws of Kenya, 96 and 888(1)(a) of the Companies Act, 2015 and Rule 8(b) of the Companies (High Court) Rules 1964.

Background facts

2. The Applicant has moved this Court seeking the following reliefs:
 - a. Spent.
 - b. That there has been an inadvertent delay by the Registry personnel in registering the First Legal Charge dated the 9th April, 2025 (the Charge) over the Property known as Title Number: Nairobi/Block165/609 (the Property) on Ardhisasa Portal made by Simba Enterprises Limited In Favour Of Victoria Commercial Bank Plc Granting The Bank's Facilities To Simba Enterprises Limited.
 - c. That this Honourable Court do extend the time to register the said First Legal Charge dated 9th April, 2025 for a further period of Thirty (30) days from the date of this order as provided under Section 888(2) (b) of the Companies Act, 2015, Laws of Kenya.



3. This Application is supported by the Affidavit of Everlyne Mwachinda, an Advocate of the High Court of Kenya, who has the conduct of this matter on behalf of the Applicants. The Affidavit was sworn on 26th May 2025.
4. Therein, the Applicant depones that she was responsible for the preparation of the First Legal Charge dated 9th April 2025 (hereinafter “the Charge”) over the property known as Title Number Nairobi/Block 165/609 (hereinafter “the Property”), created by Simba Enterprises Limited (the Chargor) in favour of Victoria Commercial Bank PLC as security for financial facilities extended to the Chargor.
5. Although the requisite stamp duty on the Charge was paid within the prescribed time, the registration of the Charge on the Ardhisa Portal was inadvertently delayed due to administrative lapses on the part of the Lands Registry personnel. As a result, the statutory period of thirty (30) days provided under Section 885(1)(a) of the *Companies Act* No. 17 of 2015, for registering the particulars of the charge at the Companies Registry, lapsed before the registration could be completed.
6. The deponent affirms that there was no fraudulent intent in the delay and attributes the lapse solely to the unforeseen delays at the Registry. She states that the registration of the Charge on the Ardhisa Portal has now been successfully completed, and the Applicant is ready to proceed with lodgment at the Companies Registry.
7. It is further deponed that no prejudice will be suffered by the Chargor or its shareholders as a result of the delayed registration. On the contrary, Victoria Commercial Bank PLC stands to secure its legal interest in the Property through registration of the Charge. The deponent emphasizes that the shareholders of Simba Enterprises Limited have expressly consented to the borrowing secured by the Charge.

Issues for Determination

8. From the foregoing, this Court has determined that the sole issue for determination is;
 - a) Whether the Court should grant leave to the Applicant to register the Charge dated 9th April 2025 at the Companies Registry out of time.

Analysis

9. This Court, in *In re HFC Limited & Another* (Miscellaneous Civil Application No. 32 of 2023) [2023] KEHC 2166 (KLR) (Ruling delivered on 22nd March 2023), recognized that it is vested with the discretion under Section 888 of the *Companies Act*, No. 17 of 2015, to extend the time within which a charge may be registered where the statutory period has lapsed.

Whether the Court should grant leave to the Applicant to register the Charge dated 9th April 2025 at the Companies Registry out of time.

10. The Court is satisfied that the delay in registration was neither inordinate nor deliberate.
11. In the present case, the law mandates that such a charge must be registered with the Registrar of Companies within thirty (30) days from the date of its creation. This requirement is statutory and not discretionary. It is evident that the parties have complied with all the necessary legal requirements in the creation of the charge, save for the registration, which was delayed due to reasons sufficiently explained and which were beyond their control.
12. The purpose of registering a charge with the Registrar of Companies is to protect the interests of the chargee—in this case, the Applicant—as well as the general body of creditors, in accordance with



the established principles governing a company's assets and liabilities. Failure to register a charge may result in serious consequences, particularly affecting the chargee's right of recourse against the charged property. Nonetheless, inadvertent mistakes or procedural delays should not operate to deprive a chargee of the benefit of an otherwise validly created charge. To do so would be contrary to the spirit and intent of Article 159 of *the Constitution* of Kenya and the provisions of the *Companies Act*, 2015, which emphasize the need to administer justice without undue regard to procedural technicalities.

13. For the foregoing reasons, the prayers sought in the application dated 11th June 2025 are hereby granted.

Determination

14. The time within which to register the First Legal Charge dated 24th April 2025 created by created by Simba Enterprises Limited (the Chargor) over the property known as Title Number: Nairobi/Block 165/609 in favour of Victoria Commercial Bank PLC as security for financial facilities extended to the Chargor be and is hereby extended by a further thirty (30) days from the date of this Ruling.

15. It is further ordered that upon registration of the said charge within the extended period, the charge shall be deemed to have been duly filed with the Registrar of Companies in full compliance with the *Companies Act*, 2015.

16. Given the nature of the application, there shall be no order as to costs.

17. It is so ordered.

18. The file is hereby closed.

DATED, SIGNED AND DELIVERED AT MILIMANI THIS 19TH DAY OF JUNE 2025

NJOROGE BENJAMIN K

JUDGE

In the presence of;

N/A for the Applicants

N/A for the Respondent.

Mr. Luyai – Court Assistant

