



Stima DT Sacco Society Limited v Registrar of Companies (Miscellaneous Civil Application E587 of 2025) [2025] KEHC 8657 (KLR) (Commercial and Tax) (19 June 2025) (Ruling)

Neutral citation: [2025] KEHC 8657 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS CIVIL APPLICATION E587 OF 2025**

BK NJOROGE, J

JUNE 19, 2025

BETWEEN

STIMA DT SACCO SOCIETY LIMITED APPLICANT

AND

REGISTRAR OF COMPANIES RESPONDENT

RULING

1. This Ruling relates to the Applicant’s Notice of Motion dated the 11th June 2025, brought under Section 14, 34 of the *Civil Procedure Act*. Order 51 Rule 1 of the *Civil Procedure Rules*, Sections 884, 885 (1), 888 (1) and 889 of the *Companies Act*, No. 17 of 2015.

Background facts

2. The Applicant has moved this Court seeking the following reliefs:
 - a. Spent.
 - b. That this Honourable Court be pleased to extend time for the registration of the Charge dated 24th April, 2025 by Messrs. Josmart Properties Limited over Property Title Number: Apartment No.701 on 7 Floor Block A, erected on LR No.1/602(Original No.1/321/2) in favour of Stima DT Sacco Limited be registered out of time at the Companies Registry.
 - c. That this Honourable Court be pleased to issue Orders that the Charge dated 24th April, 2025 by Messrs. Josmart Properties Limited (“the chargor”) over Property Title Number: Apartment No.701 on 7 Floor Block A, erected on LR No.1/602(Original No.1/321/2) in favour of Stima DT Sacco Limited (“the Applicant”) be registered out of time at the Companies Registry.



- d. That this Honourable Court be pleased to issue Orders to the effect that the Charge dated 24th April, 2025 by Messrs. Josmart Properties Limited over Property Title Number: Apartment No.701 on 7 Floor Block A, erected on LR No.1/602(Original No.1/321/2) in favour of Stima DT Sacco Limited be deemed as registered pursuant to the requirements of the *Companies Act*, No. 17 of 2015 and more particularly Sections 878, 884, 885 and 889 of the said *Companies Act*, 2015.
 - e. That the said Charge be presented for registration at the Companies Registry within Thirty (30) days from the date of the order giving the extension sought herein.
 - f. That this Honourable Court be pleased to give such further orders or relief that it may deem just and expedient in the circumstances.
3. This Application is supported by the affidavit of Hannah Wangui Gathuku, an Advocate of the High Court of Kenya, practicing in the firm of Githuku & Githuku Advocates LLP, which has the conduct of this matter on behalf of Stima DT Sacco Society Limited (hereinafter referred to as “the Applicant”).
 4. The Applicant depones that Josmart Properties Limited (hereinafter “the Chargor”) is a limited liability company duly incorporated in Kenya under the provisions of the repealed *Companies Act*, Cap 486. Pursuant to a Letter of Offer dated 22nd February 2023, the Applicant advanced a term loan facility in the sum of Kenya Shillings Six Million Five Hundred Thousand (Kshs. 6,500,000.00) to Martin Arum Okumu (hereinafter “the Borrower”). The loan facility was to be secured by a legal charge over Apartment No. 701 on the 7th Floor, Block A, erected on L.R. No. 1/602 (Original No. 1/321/2). The Chargor duly consented to the creation and registration of the said charge in favour of the Applicant as security for the loan advanced to the Borrower.
 5. Upon receipt of the requisite completion documents, the deponent applied to the Registrar of Lands for registration of the charge, which was successfully registered on 25th April 2025. However, due to persistent difficulties in tracing the property file at the Lands Registry, the Applicant was unable to register the charge at the Companies Registry within the statutory thirty (30) day period from the date of its creation.
 6. The deponent avers that the delay in registration was caused solely by administrative challenges at the Lands Office in Nairobi and was not attributable to any omission or negligence on the part of the Applicant. The Applicant now seeks leave of the Court to extend the time for registration of the charge at the Companies Registry, and states that no party will suffer prejudice should the Court grant the orders sought.

Issues for determination

7. From the foregoing, this Court has determined that the sole issue for determination is as follows;
 - a. Whether the Court should grant leave to the Applicant to register the Charge dated 24th April 2025 at the Companies Registry out of time.

Analysis

8. 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.



- a) Whether the Court should grant leave to the Applicant to register the Charge dated 24th April 2025 at the Companies Registry out of time.
9. 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.
10. 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.
11. The Court is satisfied that the delay in registration was neither inordinate nor deliberate.
12. For the foregoing reasons, the prayers sought in the application dated 11th June 2025 are hereby granted.

Determination

13. The time within which to register the Charge dated 24th April 2025 created by Messrs. Josmart Properties Limited (“the Chargor”) over Apartment No. 701 on the 7th Floor, Block A, erected on L.R. No. 1/602 (Original No. 1/321/2) in favour of Stima DT Sacco Society Limited (“the Applicant”) be and is hereby extended by a further thirty (30) days from the date of this Ruling.
14. 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.
15. Given the nature of the application, there shall be no order as to costs.
16. It is so ordered.
17. 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;

Mr Paul Isaac for the Applicant.

N/A..... for the Respondent.

Mr. Luyai – Court Assistant

