



Equity Bank (Kenya) Limited v Registrar of Companies (Miscellaneous Civil Application E640 of 2025) [2025] KEHC 9498 (KLR) (Commercial and Tax) (3 July 2025) (Ruling)

Neutral citation: [2025] KEHC 9498 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS CIVIL APPLICATION E640 OF 2025**

BK NJOROGE, J

JULY 3, 2025

BETWEEN

EQUITY BANK (KENYA) LIMITED APPLICANT

AND

REGISTRAR OF COMPANIES RESPONDENT

RULING

1. This Ruling relates to the Applicant’s Notice of Motion dated the 26th June 2025 brought under Order 51 (1) of the *Civil Procedure Rules*, Sections 878 & 888(1) and (2) of the *Companies Act* (No 17 of 2015), Rules 3 & 8(b) of the Companies (High Court) Rules, Section 3A of the *Civil Procedure Act*.
2. The Applicant seeks the following reliefs from this Honourable Court:
 - a. Spent.
 - b. That this Honourable Court be pleased to issue Orders that the Charge dated 14th April, 2025 created by Kilifi Plantations (coast) Limited (“the Chargor/Borrower) in favor of Equity Bank (kenya) Limited over Property Sub Lease of Unit No 35 on the development erected on Land Reference Number. 12889/265, (C.R. 46850)-Kilifi (the “Property”) registered in the name of Kilifi Plantations (Coast) Limited (“the Chargor”) be registered out of time at the Companies Registry.
 - c. That this Honourable Court be pleased to EXTEND time for the registration of the Charge dated 14th April, 2025 created by Kilifi Plantations (coast) Limited (“the Chargor) in favour of Equity Bank (kenya) Limited with the Registrar of Companies by a further thirty (30) days from the date of issue of the order of this Honourable court or by such other period as this Honourable Court shall deem fit.



- d. That upon registration within the extended period, the said instrument of charge be deemed as having been filed in full compliance with the *Companies Act*.
 - e. That the costs of this application be in the cause.
3. The Application is supported by the affidavit of Vincent Mukiri Mwangi, an Advocate of the High Court of Kenya. He practices with the firm of Messrs. Mukiri Global Advocates LLP, who are duly instructed and have conduct of this matter on behalf of the Applicant.
 4. The deponent avers that on 2nd March 2024, the firm received instructions from Equity Bank (Kenya) Limited (the “Bank”). This was to create a charge over Property Sub-Lease of Unit No 35 on the development erected on Land Reference Number 12889/265, (C.R. 46850) – Kilifi (the “Property”). It is registered in the name of Kilifi Plantations (Coast) Limited (the “Chargor”), as security for the facility. On or about 14th April 2025, the charge instrument was duly prepared and dated. On the same day it was lodged for franking at the Mombasa Lands Registry.
 5. Upon payment of stamp duty and before submission for registration, the Chargor advised that the original Sub-Lease was being traced. This is because the Advocates had initially been issued only with a coloured copy. The original lease was subsequently traced and availed on 19th June 2025. At this time the statutory 30-day period for registration had already lapsed. The Charge, dated 14th April 2025, was lodged for registration on 20th June 2025, and was finalized and released for collection from the Mombasa Lands Registry on the same day. The Applicant’s Advocates received the registered Charge documents on 20th June 2025. This was after the expiry of the 30 days prescribed for registration of the Charge at the Companies Registry.
 6. The deponent averred that the delay in registration was inadvertent and caused by circumstances beyond the control of the Applicant, particularly the delay in tracing the original Sub-Lease. It was further averred that the failure to register the Charge within time would prejudice the Applicant’s security interests in the Property and unjustly deprive the Applicant of its rights under the Charge. Unless the orders sought are granted, the Charge will be rendered void pursuant to Section 889 of the *Companies Act*, and the monies secured thereunder will become immediately payable, thereby denying the Borrower the benefit of the loan facility granted by the Applicant.

Issues For Determination

7. Arising from the foregoing, the Court is of the view that the sole issue for determination is whether leave should be granted to the Applicant to register the charge dated 14th April, 2025 at the Companies Registry out of time.

Analysis

8. Pursuant to Section 884 of the *Companies Act*, the Registrar of Companies is mandated to maintain a register of charges, register such charges, issue certificates of registration thereof, and authenticate the same with the Registrar’s Official Seal. Under Section 885 of the Act, the statutory timeline for registration of a charge is thirty (30) days from the date of its creation. In the event of non-compliance, Section 888(1) of the *Companies Act* empowers any interested party or the company itself to apply to the Court for an extension of the prescribed period for registration.
9. When considering an extension under Section 888, the Court examines whether the delay was accidental or reasonably explained, whether it prejudiced creditors or members, whether granting the extension is just and fair, and whether the omission is rectifiable.



10. 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.
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. Based on the foregoing, the Court is satisfied that the delay in registering the Charge at the Companies Registry was clearly explained and supported by the evidence. It was caused by the unavailability of the original Sub-Lease, which was necessary for the registration process. The Chargor initially provided only a coloured copy and advised that the original was being traced. The original document was eventually recovered on 19th June 2025, by which time the statutory period for registration had lapsed. This delay was neither deliberate nor due to negligence, but rather the result of a reasonable and unavoidable cause. There is no evidence that the non-compliance prejudiced the rights of any creditor, member, or third party. On the contrary, the Applicant has demonstrated that failure to register the Charge would prejudice its own security interest and deprive it of the rights conferred under the Charge. Given that the delay was procedural, well-explained, and not attributable to fault on the part of the Applicant, it would be just, fair, and reasonable to grant the extension. Refusal would result in the Charge being rendered void under Section 889 of the *Companies Act*, causing undue hardship to the Applicant and undermining the purpose of the security.
13. The purpose of registering a charge with the Registrar of Companies is to protect the interests of the chargee—in this case, the Applicants—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.
14. In light of the foregoing, the omission is clearly rectifiable by granting an extension of time for registration, as provided for under Section 888. Consequently, the prayers sought in the Notice of Motion dated the 26th June 2025 are hereby allowed.

Determination

15. The time for the registration of the Charge dated 14th April, 2025 created by Kilifi Plantations (Coast) Limited (“the Chargor/Borrower”) in favor of Equity Bank (Kenya) Limited over Property Sub Lease of Unit No 35 on the development erected on Land Reference Number. 12889/265, (C.R. 46850)-Kilifi (the “Property”) registered in the name of Kilifi Plantations (Coast) Limited (“the Chargor”) with the Registrar of Companies be and is hereby extended for a period of thirty (30) days from the date of this Ruling.
16. 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.



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

18. It is so ordered.

19. The file is hereby closed.

DATED, SIGNED AND DELIVERED AT MILIMANI THIS 3RD DAY OF JULY 2025

NJOROGE BENJAMIN K.

JUDGE

In the presence of;

Miss Wangechi holding brief for Mr. Mukiri for the Applicant

N/A for the Respondent.

Mr. Luyai – Court Assistant

