



I & M Bank Limited & another v Registrar of Companies (Miscellaneous Application E700 of 2025) [2025] KEHC 10911 (KLR) (Commercial and Tax) (24 July 2025) (Ruling)

Neutral citation: [2025] KEHC 10911 (KLR)

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

MISCELLANEOUS APPLICATION E700 OF 2025

BK NJOROGE, J

JULY 24, 2025

IN THE MATTER OF THE COMPANIES ACT (CAP 486) LAWS OF KENYA

AND

**IN THE MATTER OF AN APPLICATION FOR EXTENSION OF
TIME FOR THE REGISTRATION OF A CHARGE OVER
TITLE NUMBER NAIROBI/BLOCK125/1855 BY SYNER-
MEDICA(KENYA) LIMITED IN FAVOUR OF 1&M BANK LIMITED**

BETWEEN

I & M BANK LIMITED 1ST APPLICANT

SYNER-MEDICA (KENYA) LIMITED 2ND APPLICANT

AND

THE REGISTRAR OF COMPANIES RESPONDENT

RULING

1. This Ruling is in respect to the Applicant’s exparte Notice of Motion dated 16th July 2025, brought under Sections 878, 885, 888, and 890 of the *Companies Act*, No. 17 of 2015 (Cap. 486), Rule 8(b) of the *Companies (High Court) Rules*, and Section 3A of the *Civil Procedure Act*. The Motion seeks the following orders:
 - a. Spent.
 - b. This Honourable Court be pleased to grant and Order that the time for registration, in the manner required by section 885 of the said Act, of the Charge dated 30th May, 2025 over Title Number Nairobi/block125/1855 created in favour of the 1st Applicant by the 2nd Applicant



be extended by thirty (30) days from the date of the Order herein or such other period as the Court shall deem fit.

- c. Upon such registration, the Charge dated 30th May, 2025 be deemed as duly and properly registered at the Companies Registry.
 - d. There be no orders as to costs.
2. The Application is supported by the affidavit of Mercy Chelangat Kirui, an Advocate of the High Court of Kenya practicing with the firm of CM Advocates LLP ('the firm'), who is duly authorised by both the 1st and 2nd Applicants to swear the affidavit in support of the Motion. The said affidavit was sworn contemporaneously with the Motion.

Issues for Determination

3. Upon consideration of the Application, the supporting affidavit, and the legal provisions relied upon, the sole issue that arises for determination is:
 - a) Whether leave should be granted to register the Charge dated 30th May 2025 over Title Number Nairobi/Block125/1855 at the Companies Registry out of time.

Analysis

4. 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.
5. Further, 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
6. This requirement that such a charge must be registered with the Registrar of Companies within thirty (30) days from the date of its creation 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.
7. Counsel for the Applicant has explained that delays were occasioned by challenges on the Ardhisasa platform, including but not limited to repeated miscalculations of the stamp duty payable and the resultant appeals thereof. As a result, the Applicant's Advocates experienced difficulties in finalizing the registration of the Charge over the subject property at the Lands Registry. The Charge was eventually registered on 27 June 2025, and the duly registered documents were released to the Applicant's Advocates on 14 July 2025—well beyond the statutory thirty (30) days from the date of execution.
8. There is no evidence to suggest that the delay has prejudiced the creditors, members, or any third parties. The Applicant's concern is, in fact, the potential risk of third parties acquiring adverse interests in the property if the Charge is not registered.
9. The purpose of registering a charge is to safeguard the chargee's and creditors' interests. While failure to register can undermine the chargee's rights, inadvertent procedural delays should not invalidate



an otherwise valid charge, in line with Article 159 of the Constitution and the Companies Act, which promote substantive justice over technicalities.

10. In view of the foregoing, it would be just, fair, and equitable that the omission should not be visited upon the Applicants. They stand to suffer substantial prejudice if the Charge is not protected. This is more so seeing it is one that is capable of being remedied through the grant of an extension of time. This is to enable the registration at the Companies Registry in accordance with the provisions of the Companies Act. Accordingly, the prayers sought in the Notice of Motion dated 16th July 2025 are hereby granted.

Determination

11. The time within which to register the Charge dated 30th May 2025, created over Title Number Nairobi/Block 125/1855 in favour of the 1st Applicant by the 2nd Applicant, with the Registrar of Companies, is hereby extended by a period of thirty (30) days from the date of this Ruling.
12. 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.
13. Given the nature of the application, there shall be no order as to costs.
14. It is so ordered.
15. The file is hereby closed.

DATED, SIGNED AND DELIVERED AT MILIMANI THIS 24TH DAY OF JULY 2025.

NJOROGE BENJAMIN K.

JUDGE

In the presence of;

Miss Mercury for the Applicants

Mr. Luyai – Court Assistant

