



**In re Kenya Auto Electrical Limited & another (Miscellaneous Cause E673 of 2025)
[2025] KEHC 10455 (KLR) (Commercial and Tax) (17 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10455 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS CAUSE E673 OF 2025**

BK NJOROGE, J

JULY 17, 2025

IN THE MATTER OF KENYA AUTO ELECTRICAL LIMITED

AND

IN THE MATTER OF HORSEBRIDGE NETWORK SYSTEMS

(EAST AFRICA) LIMITED

AND

IN THE MATTER OF THE COMPANIES ACT, CAP 486

AND

IN THE MATTER OF A CHARGE IN FAVOUR OF VICTORIA

COMMERCIAL BANK PUBLIC LIMITED COMPANY

AND

IN THE MATTER OF AN APPLICATION FOR EXTENSION OF

TIME FOR REGISTRATION OF A CHARGE UNDER SECTION

888 OF THE COMPANIES ACT, CAP 486

**IN THE MATTER OF
VICTORIA COMMERCIAL BANK PUBLIC LIMITED
COMPANY APPLICANT**

RULING

1. This Ruling relates to the Notice of Motion dated 10th July 2025, brought by the Applicant pursuant to Sections 885 and 888 of the *Companies Act*, 2015, Sections 1A and 1B of the *Civil Procedure Act*,



and Order 51 Rule 1 of the Civil Procedure Rules. The Application seeks the following reliefs from this Honourable Court:

- a. Spent.
 - b. The Honourable Court be pleased to grant an order that the time for registration of the Charge dated 3rd March 2025 over Nairobi/Block 34/320 [formerly Land Reference Number 209/70/8 made between Kenya Auto Electrical Limited, Horsebridge Network Systems [East Africa] Limited and Victoria Commercial Bank Public Limited Company be extended by thirty [30] days with effect from the date of the said Order or such other period as the court shall deem fit.
 - c. There be no order as to costs.
2. The Application is supported by the Affidavit of Cornelius Kimamo Kigera, an Advocate of the High Court of Kenya and a Partner at the firm of Coulson Harney LLP. He was directly involved in the preparation and perfection of the Charge dated 3rd March 2025 [hereinafter “the Charge”]. This was on behalf of Victoria Commercial Bank Public Limited Company [the Applicant]. The said Affidavit was duly sworn on 10th July 2025.

Issue For Determination

3. Upon consideration of the Application, the Affidavit in support thereof, and the annexures attached, the sole issue that arises for determination is;
- a. Whether the Applicant should be granted leave to register the Charge dated 31st March 2025—subsequently registered at the Lands Registry on 29th May 2025—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. 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 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.
7. 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.



8. The delay between the execution of the Charge and its subsequent registration at the Lands Registry, and its intended registration at the Companies Registry, has been attributed to operational and procedural changes at the Nairobi Lands Registry arising from the implementation of the Ardhisasa registration system. The materials before the Court demonstrate that the failure to register the Charge within the prescribed time was neither deliberate nor negligent, nor attributable to any fault on the part of the Applicant. Rather, the omission was occasioned by systemic challenges associated with the digitization and evolving procedural requirements, thereby constituting a reasonable and justifiable cause for the delay.
9. 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. The extension sought would protect the Applicant's security interest without prejudicing other parties.
10. It would be just, fair, and equitable to grant the extension since the delay was occasioned by circumstances beyond the Applicant's control, including the operational transitions associated with Ardhisasa. The omission should not be visited upon the Applicant, who stands to suffer substantial prejudice if the Charge is not protected.
11. 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.
12. In view of the foregoing, the omission is one that is capable of being remedied through the grant of an extension of time 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 10th July 2025 are hereby granted.

Determination

13. The time for registration of the Charge dated 3rd March 2025 over Nairobi/Block 34/320 [formerly Land Reference Number 209/70/8 made between Kenya Auto Electrical Limited, Horsebridge Network Systems [East Africa] Limited and Victoria Commercial Bank Public Limited Company be extended by 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 17TH DAY OF JULY 2025

NJOROGE BENJAMIN K



JUDGE

In the presence of;

Mr. Simon holding brief for Mr. Kuyo for the Applicant.

Mr. Luyai – Court Assistant

