



REPUBLIC OF KENYA



KENYA LAW
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MTC Trust & Corporate Services Limited (Miscellaneous Cause E654 of 2025) [2025] KEHC 9911 (KLR) (Civ) (10 July 2025) (Ruling)

Neutral citation: [2025] KEHC 9911 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

MISCELLANEOUS CAUSE E654 OF 2025

BK NJOROGE, J

JULY 10, 2025

IN THE MATTER OF THE COMPANIES ACT, CAP 486

AND

**IN THE MATTER OF A CHARGE IN FAVOUR OF
MTC TRUST & CORPORATE SERVICES LIMITED**

IN THE MATTER OF

MTC TRUST & CORPORATE SERVICES LIMITED APPLICANT

RULING

1. This Ruling pertains to the Applicant's application dated 2nd July 2025, brought under 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 Applicant has moved this Honourable Court seeking the following orders:
 1. Spent.
 2. The Honourable Court be pleased to grant an order that the time for registration of the Transfer of Charge over title number Nairobi/Block7/387 made between The Standard Bank of South Africa Limited (Acting through its Corporate and Investment Banking Division) (the Transferor), Krystal Investments Limited (as the Chargor) and MTC Trust & Corporation Services Limited (as the Transferee) dated 27th May 2024 be extended by thirty (30) days with effect from the date of the said Order or by such other period as the Court shall deem fit.
 3. There be no order as to costs.



2. The application is supported by the affidavit of Dominic Indokhomi, an Advocate of the High Court of Kenya and a partner at Coulson Harney LLP, the firm responsible for the preparation and perfection of the Transfer of Charge in issue on behalf of MTC Trust & Corporate Services Limited (the Applicant). The affidavit was duly sworn on the same date as the application.
3. In his affidavit, he states that in February 2024, the firm received instructions from the Applicant to prepare a Transfer of Charge dated 27th May 2024 over property known as Nairobi/Block 7/387, registered in the name of Krystal Investments Limited, a private company incorporated under Kenyan law (Registration No. CPR/2013/92191).
4. The deponent confirms that the firm duly prepared the Transfer of Charge involving The Standard Bank of South Africa Limited (acting through its Corporate and Investment Banking Division) as the Transferor, Krystal Investments Limited as the Chargor, and the Applicant as the Transferee. The Transfer of Charge was successfully registered at the Lands Registry on 19th May 2025. However, despite its execution and registration at the Lands Registry, it has not yet been registered at the Companies Registry due to operational and procedural challenges associated with the Ardhisasa system's registration and processing requirements.

Issues For Determination

5. Arising from the foregoing, the Court is of the view that the sole issue for determination is;

a) Whether leave should be granted to the Applicants to register the charge dated 27th May 2024 at the Companies Registry out of time.

Analysis

6. 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.
7. 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.
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.
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 delay in registering the Transfer of Charge at the Companies Registry was caused by operational and procedural delays arising from the Ardhisasa system changes. The evidence indicates that the failure to register was not deliberate, negligent, or within the Applicant's control. The omission



was inadvertently occasioned by systemic challenges in the digitization and processing requirements, constituting a reasonable and justifiable cause.

11. 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 Transfer of Charge is not registered. The extension sought would protect the Applicant's security interest without prejudicing other parties.
12. 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 Transfer of Charge is not protected.
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 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 2nd July 2025 are hereby granted.

Determination

15. The time for the registration of the Transfer of Charge over title number Nairobi/Block7/387 made between The Standard Bank of South Africa Limited (Acting through its Corporate and Investment Banking Division) (the Transferor), Krystal Investments Limited (as the Chargor) and MTC Trust & Corporation Services Limited (as the Transferee) dated 27th May 2024 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 10TH 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

