



**NCBA Bank Kenya Plc v Registrar of Companies (Miscellaneous Civil Application E643 of 2025) [2025] KEHC 9909 (KLR) (Commercial and Tax) (10 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 9909 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
MISCELLANEOUS CIVIL APPLICATION E643 OF 2025**

**BK NJOROGE, J**

**JULY 10, 2025**

**BETWEEN**

**NCBA BANK KENYA PLC ..... APPLICANT**

**AND**

**REGISTRAR OF COMPANIES ..... RESPONDENT**

**RULING**

1. This Ruling relates to the Notice of Motion dated 26th June 2025, brought by the Applicant pursuant to the provisions of Sections 878(1), 885(1)(a), and 888 of the *Companies Act*, Cap. 486, Laws of Kenya; Section 3A of the *Civil Procedure Act*; and Order 51 Rule 1 of the *Civil Procedure Rules*, 2010.
2. The Applicant seeks the following reliefs:
  - a. Spent.
  - b. That this Honourable Court be pleased to extend the time within which to register the Charge dated 16 May 2025 created by Warren Enterprises Limited (the “Company”) in favour of NCBA Bank Kenya PLC with the Registrar of Companies by a further period of thirty (30) days from the date of issue of this order.
  - c. That the costs of this application be in the cause.
3. The Application is supported by the affidavit of Josphat Nthata Kaibiru, an Advocate of the High Court of Kenya, practicing in the firm of Iseme Kamau & Maema Advocates, duly instructed by the Applicant in this matter, and sworn on even date.
4. The deponent averred that by a Charge dated 19th November 2018, Warren Enterprises Limited (the “Borrower”) charged to the Applicant its property known as Land Reference Number 8789/3, which



was later converted to New Title Number Nairobi/Block 181/3253 (the “Property”). Subsequently, the Borrower applied for and obtained approval to subdivide the Property. To complete the subdivision process, the Ministry of Lands required the Borrower to surrender the original title to the Property free of encumbrances to facilitate the issuance of new titles for the resultant subdivisions.

5. Through a letter dated 25th July 2024, the Applicant instructed its Advocates to prepare and register a conditional discharge of the existing charge over the Property and to register a replacement charge over the new titles to be issued following the subdivision. The Applicant’s Advocates duly prepared and registered a conditional discharge over the Property, which was subsequently subdivided into three parcels, namely: Nairobi/Block 181/3252, Nairobi/Block 181/3253, and Nairobi/Block 181/3254.
6. Thereafter, the Applicant’s Advocates prepared and lodged an application for registration of a replacement charge over the three new titles (the “Charge”). The application for registration was made on the Ardhisasa portal, as required for all transactions involving digitized properties. However, after submitting the application, the portal experienced a technical hitch, which significantly delayed the registration of the Charge. The Charge was eventually registered at the Lands Registry and released to the Applicant’s Advocates on 23rd June 2025, by which time the statutory period for registering the Charge at the Companies Registry had already lapsed.
7. The deponent averred that it is not possible to validly register the Charge at the Companies Registry without an extension of time, as now sought. It was further deponed that the delay in registering the Charge was caused by factors entirely beyond the control of the Applicant’s Advocates. The deponent emphasized that Section 888 of the *Companies Act*, Cap. 486, Laws of Kenya, vests this Honourable Court with the jurisdiction to extend the time for registration of the Charge.
8. The deponent further asserted that the failure to register the Charge within the prescribed period was due to reasonable cause and was occasioned by circumstances beyond the control of the Applicant. Moreover, the deponent confirmed that the delay was not of a nature that would prejudice the position of the creditors or members of the company.

### Issues for Determination

9. 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 Applicant to register the charge dated 19 November 2018 at the Companies Registry out of time.

### Analysis

10. 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.
11. 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.
12. 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.

13. 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.
14. Based on the foregoing, the Court is satisfied that the delay in registering the Charge at the Companies Registry was occasioned by technical hitches on the Ardhisasa portal, which was the only lawful platform for the registration of digitized property transactions. It is evident that the Applicant's Advocates lodged the application for registration in good time, but the processing was delayed due to system-related issues beyond their control. The Court is satisfied that the omission to register the Charge within the statutory period was not deliberate or negligent but was caused by reasonable and justifiable procedural constraints. The deponent has clearly averred that the delay in registering the Charge will not occasion any prejudice to the creditors or members of the company. There is no evidence to suggest that the creditors' interests have been compromised by the late registration. This Court also finds that it would be just, equitable, fair, and reasonable to grant the extension sought. Denying the application would unjustly defeat the security rights of the Applicant for reasons beyond its control. On the contrary, granting the extension will protect the legitimate interests of the Applicant without causing harm to any other party. The omission to register the Charge within the prescribed time is clearly rectifiable by granting an extension of time.
15. 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.
16. In light of the foregoing, the prayers sought in the Notice of Motion dated the 26<sup>th</sup> June 2025 are hereby allowed.

#### **Determination**

17. The time for the registration of the Charge dated 16 May 2025 created by Warren Enterprises Limited (the "Company") in favour of NCBA Bank Kenya PLC with the Registrar of Companies be and is hereby extended for a period of thirty (30) days from the date of this Ruling.
18. 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.
19. Given the nature of the application, there shall be no order as to costs.
20. It is so ordered.
21. The file is hereby closed.

**DATED, SIGNED AND DELIVERED AT MILIMANI THIS 10<sup>TH</sup> DAY OF JULY 2025**



**NJOROGE BENJAMIN K.**

**JUDGE**

In the presence of;

N/A for the Applicants

Mr. Luyai – Court Assistant

