



**Tensenses Africa (EPZ) Limited & 2 others v Registrar of  
Companies (Miscellaneous Civil Application E648 of 2025)  
[2025] KEHC 9961 (KLR) (Commercial and Tax) (10 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 9961 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
MISCELLANEOUS CIVIL APPLICATION E648 OF 2025**

**BK NJOROGE, J**

**JULY 10, 2025**

**BETWEEN**

**TENSENSES AFRICA (EPZ) LIMITED ..... 1<sup>ST</sup> APPLICANT  
SENSES AFRICA LIMITED ..... 2<sup>ND</sup> APPLICANT  
COMMON FUND FOR COMMODITIES ..... 3<sup>RD</sup> APPLICANT  
  
AND  
  
REGISTRAR OF COMPANIES ..... RESPONDENT**

**RULING**

1. This Ruling is in respect to the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Applicants' Motion dated the 26<sup>th</sup> June 2025 brought Under Sections 885 and 888 of the [Companies Act](#) (Chapter 486, Laws of Kenya) and Section 3A of the [Civil Procedure Act](#).
2. The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Applicants seek the following reliefs:
  - a. This application is hereby certified urgent and be heard ex parte in the first instance.
  - b. The time for the registration of the Debenture dated 23rd April 2025 made by Tensenses Africa (epz) Limited And Ten Senses Africa Limited In Favour Of Common Fund For Commodities be and is hereby extended for a period of 30 days.
  - c. The Debenture, upon being registered within the extended period, be deemed to have been duly presented and registered within the period prescribed under Section 885 of the [Companies Act](#).
  - d. There be no order as to costs.



3. The Application is supported by the affidavit of Christopher Kiragu, an Advocate of the High Court of Kenya and a Partner in the firm of Muthaura Mugambi Ayugi & Njonjo Advocates, duly instructed by the Applicants in this matter, and sworn on the even date.
4. The deponent avers that the Firm was instructed by the 3rd Applicant herein to, inter alia, register the Debenture by the 1st and 2nd Applicant in favour of the 3rd Applicant to secure an aggregate borrowing in the sum of USD1,875,000. Pursuant to these instructions, the Firm prepared the Debenture dated 23 April 2025. They had it executed by the Applicants and thereafter forwarded it for assessment of Stamp Duty. The Debenture dated 23 April 2025 was forwarded for stamping at the Lands Office and was only returned to the 3rd Applicant's Advocates on or about 11 June 2025. As at this time, the statutory registration period had lapsed.
5. The deponent avers that the registration of the Debenture dated 23 April 2025 was delayed owing to the following genuine, procedural and administrative constraints. Namely, the 1st and 2nd Applicants were required to register on the Ardhisasa platform in order to obtain the necessary IDs for document processing and were only able to complete this on 28 May 2025. The 3rd Applicant's funds for stamp duty and registration costs were received and cleared on 27 May 2025, following internal compliance checks regarding its VAT exemption status. The Debenture was eventually released from the Lands Registry after stamping on or about 11 June 2025.
6. The Applicants further averred that unless the Honourable Court granted the extension sought, the 3rd Applicant would suffer significant prejudice. This is because the Debenture dated 23 April 2025 would become legally void against any liquidator or creditor of the 1st and 2nd Applicants. The deponent further stated that the Debenture remained unregistered solely due to the procedural issues previously outlined, and that no creditor or third party had suffered any prejudice as a result of the delay. It was further averred that the shareholders and creditors of the 1st and 2nd Applicants would not be prejudiced in any way by the late registration of the said Debenture, and that the 3rd Applicant's position would be secured upon the registration of the said Debenture.

### **Issues For Determination**

7. 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 Debenture dated 23 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. In considering whether to grant an extension under Section 888, the Court is required to examine the following parameters:
  - (a) Whether it was accidental or due to inadvertence or some other reasonable cause.
  - (b) Whether non-compliance has prejudiced the creditors or members of the company.
  - (c) If it is just, equitable, fair and reasonable.



- (d) Whether the mistake, or omission and misstatement 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 Debenture was not deliberate, nor due to negligence, but was occasioned by procedural and administrative challenges that constitute reasonable cause within the meaning of Section 888 of the *Companies Act*. The 1st and 2nd Applicants had to register on the Ardhisasa platform to obtain necessary IDs, which was only completed on 28 May 2025. The 3rd Applicant's funds for stamp duty and registration were only cleared on 27 May 2025 after internal compliance checks. The Debenture was only released from the Lands Registry on or about 11 June 2025. Further, the Court is persuaded that no creditor, member, or third party has suffered any prejudice as a result of the delay. Granting the extension would prevent significant prejudice to the 3rd Applicant, whose security would otherwise become void, while no party would be prejudiced by the late registration. It is therefore just, equitable, fair, and reasonable in the circumstances to grant the extension sought. The omission (failure to register within time) is rectifiable by allowing the late registration.
  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 prayers sought in the Notice of Motion dated the June 26, 2025 are hereby allowed.

### **Determination**

15. The time for the registration of the Debenture dated 23rd April 2025 made by Tensenses Africa (epz) Limited And Ten Senses Africa Limited In Favour Of Common Fund For Commodities 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 debenture within the extended period, the debenture 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 10<sup>TH</sup> DAY OF JULY 2025**

**NJOROGE BENJAMIN K.**

**JUDGE**

In the presence of;

Mr. Vincent Oloo for the Applicants.

Mr. Luyai – Court Assistant

