



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

MISC APPLICATION NO. E033 OF 2021

IN THE MATTER OF THE COMPANIES ACT 2015 LAWS OF KENYA

AND

IN THE MATTER OF AN APPLICATION FOR EXTENSION OF TIME FOR REGISTRATION OF A CHARGE BY SILVERSPREAD HARDWARES LIMITED IN FAVOUR OF BANK OF BARODA (KENYA) LIMITED

RULING

1. By an ex parte application dated 14th September 2021 brought under sections 885, 887 and 888 of the Companies Act 2015, Section 1A, 1B and 3A of the Civil Procedure Act and Article 159 of the Constitution, Bank of Baroda Kenya Ltd hereinafter the applicant seeks extension of time for sixty days so as to register with the Registrar of Companies the charge dated 10th June 2021 regarding Parcel no. Ntima/Igoki/5907 registered in the name of Silverspread Hardware Ltd hereinafter the chargor.
2. The grounds upon which the application is based are that a charge for Kshs.140,000,000 over the subject land was registered at the land registry on 12th July 2021 but unfortunately and through inadvertent mistake of applicant's lawyers, the same was not as per the companies rules registered with the Registrar of Companies within 30 days.
3. In support of the application, Christine Murithi swore an affidavit on 14th September 2021 in which she narrates the circumstances for the non-compliance and further squarely owns up counsel's inadvertent mistake hence seeks discretion of this court to extend time for the applicant to comply. The deponent has attached annexures CM-01 and CM-02 (a) & (b) copies of land control board consent dated 2.6.2021, a charge executed on 16th June 2021 and a search certificate dated 16th June 2021.
4. Under section 884 of the Companies Act the Registrar is mandated to keep a register of charges, register those charges, issue a certificate of registration of the charge and or authenticate it with the Registrar's Official Seal.
5. Under Section 885, thereof deadline given is thirty days from the date the charge was created.
6. In the event of default, any interested party or company may move the court under Section 888 (1) of the Companies Act for extension of the deadline.
7. The parameters the court has to consider before granting the extension are:
 - (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.*
8. The applicant herein is the company which has extended credit facility to M/s Silverspread hardware's Ltd.
9. The reasons given are mistakes of counsel under the "inadvertence" and "Just and equitable" grounds.
10. It is not in dispute there was compliance with registration at the lands registry on 12th July 2021.
11. The purpose of the registration of the charge with the Registrar of Companies is to protect the interests of the applicant herein and the

general body of creditors in line with the principles and rules on assets and liabilities of a company.

12. Non-failure to register a charge at the company's registry has serious consequences especially to the chargee's right of recourse against the charged property.

13. The charge herein was issued on 10.6.2021 and registered on 12.7.2021. The application herein was filed on 14.9.2021. It is almost now 90 days from the date the charge was created.

14. In **Philip Chemwolo & another vs Augustine Kubede (1982-88) KLR 103** the court stated:

“Blunders will continue to be made from time to time and it does not follow that because a mistake has been made, that a party should suffer the penalty of not having his case heard on merit”. In the instant case some activity was done by counsel and hence cannot be said to have been indolent.

15. The applicant has not disclosed when they discovered the mistake. Mistakes should not however deprive a chargee of the benefit of the charge for non-registration. This would be incompatible with **Article 159 of the Constitution** and the **Company's Act 2015**.

16. In **Re Shreeji apartments Ltd (2014) eKLR and Re Ashpurton Estates Ltd (1983) CH 110 Http//vtex.co.uk** courts have held they have wide discretion to extend time so as to retrieve the situation in deserving cases.

17. In exercise of courts discretion to do substantive justice the deadline is hereby extended for 120 days from 10.6.2021. There will be no orders as to costs. This file is marked as closed.

RULING GIVEN UNDER MY HAND AND SEAL THIS 16TH DAY OF SEPTEMBER, 2021

HON. C.K. NZILI

ELC JUDGE