



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL & TAX DIVISION
MISCELLANEOUS APPLICATION NO. E463 OF 2019

EX-PARTE

IN THE MATTER OF THE COMPANIES ACT

AND

IN THE MATTER OF AN APPLICATION TO EXTEND THE TIME FOR REGISTRATION OF

A CONDITIONAL DISCHARGE OF CHARGE AND REPLACEMENT CHARGE BY

I & M BANK LIMITED.....1ST APPLICANT

VERSUS

SUMMERLANDS VALLEY LIMITED.....2ND APPLICANT

R U L I N G

1. This action is commenced by two parties. The 1st Applicant is **I&M Bank Limited** and the 2nd Applicant is **Summerlands Valley Limited**.

2. By this action the Applicants seek the order of the Court to extend the time within which to register, with the Registrar of Companies, the conditional discharge of charge and replacement charge over title No KABETE/4363 which is in favour of I&M Bank. The application is made under **Section 888 of the Companies Act, 2015**.

“Section 888 of the Companies Act state:

888. (1) A company or interested person who claims that a failure to register a charge before the deadline for registration, or an omission or misstatement of a particular with respect to any such charge or in a memorandum of satisfaction or release-

(a) was accidental or due to inadvertence or to some other reasonable cause; or

(b) is not of a nature to prejudice the position of creditors or members of the company, may apply to the Court for an order under subsection (2).

(2) If, on the hearing of an application made under subsection (1), the Court is satisfied-

(a) that the failure, or the omission or misstatement-

(i) was accidental or due to inadvertence or to some other reasonable cause; or

(ii) is not of a nature to prejudice the position of creditors or members of the company; or

(b) that on other grounds it is just and equitable to grant relief, the Court may, subject to such conditions (if any) as it considers fair and reasonable, order the deadline for registration to be extended, or the omission or misstatement to be corrected.”

3. The application is supported by an affidavit of Kamau Muthoni, the advocate for the Applicants. He deposed that his firm was instructed by the 2nd Applicant to undertake a change of user, from agricultural to multi dwelling units, over title No KABETE/KARURA/4363 (previously KABETE/KARURA/1866). That in undertaking the change of user, from agricultural to residential the Ministry of Lands and Physical Planning Survey Kenya undertook a **fix boundary and road widening survey**. As a consequence of that exercise the acreage of the title NO KABETE/KARURA/1866 changed from 1.23 hectares to 1.2841, which I turn led to the change of title number from KABETE/KARURA/1866 to KABETE/KARURA/4363. The new number relates to the property granted the change of user. The deponent further stated that after the fix boundary and road widening survey was done, and due to an error, the size indicated on the title documents was mis-stated. The correction of that error by the land office delayed the registration of the partial discharge and charge at the Companies registry. It due to that, that the Applicants seek the orders in the present action.

4. Having the above depositions in mind and the documentary evidence produced by the Applicants, in support of their application, I do find that the failure to register the partial discharge and charge was not intentional and there is no evidence that the granting of the prayers sought will in any way prejudice the creditors or members of the 2nd Applicant company.

5. In the end therefore, I find that it is just and equitable to grant relief sought by the Applicants. **I grant the following orders:**

a) An order is hereby granted extending the time within which to register the conditional discharge of charge and replacement charge dated 23rd July 2019 issued by SUMMERLANDS VALLEY LIMITED over Title NO. KABETE/KARURA/4363 in favour of I&M Bank Limited with the Registrar of companies for 30 days from the date of this order.

b) Once the charge is so registered that charge shall be deemed to have been filed with Registrar of companies in compliance of the Companies Act 2015.

c) There shall be no orders as to costs.

DATED, SIGNED and DELIVERED at NAIROBI this 11TH day of NOVEMBER, 2019.

MARY KASANGO

JUDGE

Ruling Read and Delivered in Open Court in the presence of:

Sophie.....COURT ASSISTANT

.....FOR THE 1ST APPLICANT

.....FOR THE 2ND APPLICANT