

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL AND TAX DIVISION
MILIMANI LAW COURTS

MISCELLANEOUS APPLICATION NO E989 OF 2025

IN THE MATTER OF THE COMPANIES ACT NO. 17 OF 2015
-AND-
IN THE MATTER OF AN APPLICATION FOR EXTENSION OF
TIME FOR THE REGISTRATION OF CHARGE

BANK OF BARODA KENYA LIMITED.....
APPLICANT
PIDINEKALVA ADIIIINARAYANA REDDY
CHARGOR
KYRA CUSTOMS LIMITED
.....BORROWER
VERSUS
REGISTRAR OF COMPANIES
RESPONDENT

RULING

1. This Ruling pertains to the Applicant's *exparte* Notice of Motion dated 30th July 2025, brought pursuant to **Section 3A of the Civil Procedure Act, Order 51 Rule of the Civil Procedure Rules, 2020, Sections 885, 887, 888 & 889 of the Companies Act, No. 17 of 2015** and all other enabling provisions of the law. Through the said application, the Applicant has moved this Court seeking the following reliefs:

(i) *Spent.*

(ii) *THAT the time for registration of the Debenture dated 31st August, 2025 be extended by Thirty (30) days*

from the date of the Order herein or such other period as the Court shall deem fit.

2. This Application was supported by the sworn affidavit of **Mitchell Kitonyi Mutiso**, an Advocate of the High Court of Kenya, dated the same day as the Application. **Mr. Mutiso** practices in the firm of **M/s M/s Mitch Kitonyi & Associates Advocates**, who have conduct of this matter on behalf of the Applicant.

Issues For Determination

3. The Court has carefully considered the Motion, the statutory provisions cited, the Supporting Affidavit, and the annexures thereto. Upon such consideration, the Court is of the view that only one issue arises for determination:

(a) *Whether leave should be granted to the Applicant to register the Debenture dated 31st August, 2025 at the Companies Registry out of time.*

Analysis

4. Pursuant to **Section 884 of the Companies Act**, the Registrar of Companies is mandated to maintain a register of charges and debentures, 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 and debenture 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. **Section 2 of the Companies Act** defines a debenture as;

“debenture”, in relation to a company, includes debenture stock, bonds and any other securities of a company (whether or not constituting a charge on the assets of the company);

5. Further, 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. This requirement that such a charge must be registered with the Registrar of Companies within thirty (30) days from the date of its creation 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 and debenture, save for the registration, which was delayed due to reasons sufficiently explained and which were beyond their control.
6. In his affidavit, Counsel for the Applicant deponed that he was aware that the Applicant granted the Chargor a fresh overdraft facility which was to be secured by a charge and debenture from the borrower. The said charge was to secure a sum of Kshs.20,000,000/= as a fresh overdraft of the Chargor which was to be secured by all that Apartment Number 6 in Block C Karizma Court erected on Land Reference Number 209/1217/2. Accordingly, the Charge

created on 1st September, 2025, was executed by the parties and subsequently presented for assessment and stamping by the Collector of Stamp Duties. The process was, however, completed and the Debenture registered on 16th September, 2025 at the Lands Registry at Nairobi. The post registration search was received on 17th September, 2025 a day after the expiry of the period for the registration of the Debenture.

7. Counsel averred that, while they were able to obtain duly registered security documents from the Lands Registry, they were unable to register the Debenture at the Companies Registry. This is because the statutory period for such registration had already lapsed during the period taken to assess, stamp, and register the Debenture at the Lands Office. Pursuant to **Section 885 of the Companies Act, No. 17 of 2015**, the Company was required to register the Debenture with the Registrar of Companies within thirty (30) days from the date of its creation. The delay in presenting the Debenture for registration at the Companies Registry was occasioned by delays in the settlement of stamp duty, which delay was unintentional and beyond the control of both the Applicant and the Chargor.
8. The omission in the present case pertains solely to the failure to register the Debenture at the Companies Registry within the statutory period prescribed under **Section 885 of the Companies Act**. Notwithstanding this procedural lapse, the Debenture was duly executed, assessed for stamp duty, duly franked, and registered at the Lands Registry. The omission is therefore procedural in nature and, in the Court's

view, clearly rectifiable. While it is acknowledged that non-registration at the Companies Registry may affect the enforceability of the Debenture as against third parties, the failure to comply with the prescribed timeline was neither willful nor negligent. In the circumstances, the delay should not defeat an otherwise valid security instrument. This approach aligns with the provisions of **Article 159(2)(d) of the Constitution**, which enjoins Courts to administer justice without undue regard to procedural technicalities, and with the general principles of the Companies Act, which favour the promotion of substantive rights and commercial certainty.

9. There is no evidence on record to suggest that the delay in registration has occasioned any prejudice to the company's creditors or members. On the contrary, the regularisation of the registration will enhance the protection of the lender's interest and promote commercial transparency. The affidavit and annexures confirm that all substantive steps in the creation of the Debenture, execution, stamping, and registration at the Lands Registry, were duly undertaken in a timely manner, save for the Companies Registry filing. Accordingly, the Court is satisfied that the Applicant has provided a reasonable explanation for the delay, that the omission is capable of remedy, and that no prejudice has been occasioned to any party. The Court therefore finds it just and equitable to exercise its discretion under **Section 888(1) of the Companies Act**. In the result, the prayers

sought in the Notice of Motion dated 30th September, 2025 are hereby granted.

Determination

10. THAT the time for registration of the Debenture dated 31st August, 2025 be and is **HEREBY** extended by a period of Thirty (30) days from the date of the Order herein.
11. Given the nature of the application, there shall be no order as to costs.
12. It is so ordered.
13. The file is hereby closed.

DATED, SIGNED AND DELIVERED AT MILIMANI THIS 09TH DAY OF OCTOBER, 2025.

**NJOROGE BENJAMIN K.
JUDGE**

In the presence of;

Mr. Kitonyi for the Applicant.

Mr. Peter Wabwire - Court Assistant