



REPUBLIC OF KENYA



In re Mediheal Hospital & Fertility Centre Limited (Applicant) (Miscellaneous Civil Application E075 of 2021) [2025] KEHC 14205 (KLR) (13 October 2025) (Ruling)

Neutral citation: [2025] KEHC 14205 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
MISCELLANEOUS CIVIL APPLICATION E075 OF 2021
RN NYAKUNDI, J
OCTOBER 13, 2025**

RULING

1. Before this court is an application dated 2nd July 2021 brought under Articles 40, 159 of *the Constitution* of Kenya 2010, Sections 3, 885 and 888 of the *Companies Act* No. 17 of 2015, Section 59 of the Interpretations and General Provisions Act, Cap 2 of the Laws of Kenya, Sections 1, 1A, 1B, 3 and 3A of the *Civil Procedure Act*, Cap 21 of the Laws of Kenya, Order 50 Rule 6, 51 Rule 1 of the Civil Procedure Rules and all other enabling Provisions of the Law. The applicant moved this court seeking for the following orders;
 - a. That the time for registration of the charge dated 30th April, 2021 be extended and/or enlarged to allow the registration of the said Charge at the Companies Registry in Nairobi out of time with the leave of this Honorable Court.
 - b. That costs hereof be in the cause
2. The application is made on the following grounds;
 - i. That the Applicant herein is a limited liability company incorporated under the *Companies Act*, Cap 486 (now repealed) Laws of Kenya. The Applicant's main base of operation is.
 - ii. That the Applicant herein is in the process of securing a loan facility with the Bank of India Eldoret branch vide a Charge dated 30th April, 2021.
 - iii. That the Charge was presented to the Collector of Stamp Duty in Nairobi on 30th April, 2021 for assessment of stamp duty payable
 - iv. That there was a delay in assessment of the stamp duty payable by the Collector of Stamp Duty at the Ministry of Lands, Nairobi. The Applicant got communication on the assessment on 21st May, 2021 afternoon which was Friday and with sufficient promptitude paid the stamp duty on the next working day 24th May, 2021 (Monday).



- v. The Collector of Stamp Duty delayed in the assessment of payable stamp duty on the Charge the subject of these proceedings due to scaled down operations due to Covid 19 pandemic in order to maintain and observe social distance at their work place
- vi. That after payment of the assessed stamp duty, the documents were embossed with stamp duty and were dispatched to Eldoret and received by M/s Nyairo and Company, Advocates on 26th May, 2021.
- vii. That Section 885 of the *Companies Act* No. 17 of 2015, the Charge by the Applicant was supposed to be registered at the Companies Registry by 31st May, 2021 as the said law requires registration within thirty (30) days.
- viii. That immediately after payment and embossment of the stamp duty, the Charge was presented to the National Land Commission in Kisii on 27th May, 2021 with a request for grant of the consent to charge and it was not until the 2nd day of June, 2021 that the National Land Commission gave a consent after retaining the documents for seven (7) days.
- ix. That M/s Nyairo and Company, Advocates on behalf of the Applicant moved with speed and had the Charge lodged for registration at Kisii Lands Registry on 4th June, 2021.
- x. That the Kisii Lands Registry conducted the registration of the Charge the same was released/ dispatched to M/s Nyairo and Company, Advocates on 16th June, 2021.
- xi. That by the time the firm of M/s Nyairo and Company, Advocates got the documents from Kisii Lands Registry the time period of 30 days for registration provided under Section 885 of the *Companies Act*, 2015 had expired.
- xii. That the customary practice is to conclude the registration at the Lands Registry first then proceed to the Companies Registry in Nairobi for registration all of which, under normal circumstances should be accomplished within thirty (30) days.
- xiii. That by the time M/s Nyairo and Company, Advocates got the documents from Kisii Lands Registry, the time period of thirty (30) days for registration at the Companies Registry Nairobi had lapsed.
- xiv. That the failure to lodge for registration of the Charge at the Companies Registry Nairobi(u)within the statutory period was occasioned by factors not within the control of the Applicant and were not foreseeable hence the instant application for extension/enlargement of time.
- xv. That it is crystal clear that the failure to lodge for registration the Charge within thirty (30) days at the Companies Registry in Nairobi was due to therefore no fault of the Applicant therein and is therefore excusable.
- xvi. That these proceedings are brought to extend and/or enlarge the time for registration of the Charge dated 30th April, 2021 at the Companies Registry outside the thirty (30) days and so that the same can be lodged registration and have the same deemed to have been done in time with the leave of the court.
- xvii. That there is need to have the registration of the Charge allowed to protect the interests of both the Chargee and the Chargor.
- xviii. That these proceedings have been brought timeously and in good faith.



- xix. That this court has power to grant the orders sought.
3. The plaintiff in this case apparently moved the court by way of an application without a substantive suit as against the defendant. The subject application since 2021 is yet to be prosecuted notwithstanding the several opportunities being accorded the plaintiff by the court cause listing the matter. It is a constitutional imperative under Article 2(b) that justice shall not be delayed. In the instant case it is very clear that the plaintiff is not interested in taking any positive step to prosecute the claim against the defendant.
 4. The court in *Leah Gacambi Ole-Mokel v Emmanuel Mathew Ole-Mollel*, [1976] KLSLD 6 (N7/76) observed the following;
 - (a) For a suit to be dismissed for want of prosecution there must be a prolonged or inordinate or inexcusable delay in the prosecution of the suit.
 - (b) The delay must be such as would cause grave injustice to one or both parties.
 - (c) The party seeking to have the suit dismissed for want of prosecution must not be guilty of contributing to the delay through inactivity or otherwise.
 - (d) The burden is on the party seeking dismissal of the suit to satisfy the court that the delay is inordinate and inexcusable, and that it will prejudice or do grave injustice to the one side or the other or both, or that the party in default has disobeyed an order of the court in the matter. In such an application of this nature the conduct of the parties and their advocates is relevant.
 - (e) The delay in prosecuting this particular petition was neither inordinate nor inexcusable, and it was contributed to by the respondent.
 5. The record in question has not shown sufficient cause or reasons to support a case in a manner to enlarge time for the intended applicant to come forward to reactivate the litigation so that the court can exercise its judicial discretion to allow the grant of the remedies in his favor. What the applicant did was to just file a certificate of urgency accompanied with an ex parte notice of motion way back in 2021 only to abdicate this responsibility to prosecute the claim within the time frame set by the statute. The best remedy for an indolent litigant is for the court to dismiss the suit or application for want of prosecution to save him/her the time of incurring further costs of litigation for a suit better described as dead on arrival. As a consequence, therefore the application so instituted on or about four years ago stands dismissed for want of prosecution with costs to the defendant.
 6. It is so ordered.

GIVEN UNDER MY HAND AND THE SEAL OF THIS COURT THIS 13TH DAY OF OCTOBER, 2025

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R. NYAKUNDI

JUDGE

