



NCBA Bank Kenya Plc v Brows East Africa Plantations (Miscellaneous Application E1040 of 2025) [2025] KEHC 14977 (KLR) (Commercial and Tax) (23 October 2025) (Ruling)

Neutral citation: [2025] KEHC 14977 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX**

MISCELLANEOUS APPLICATION E1040 OF 2025

BK NJOROGE, J

OCTOBER 23, 2025

**IN THE MATTER OF AN APPLICATION FOR AN
EXTENSION OF TIME FOR REGISTRATION OF A CHARGE
UNDER SECTION 888 OF THE COMPANIES ACT, CAP 486**

BETWEEN

NCBA BANK KENYA PLC APPLICANT

AND

BROWS EAST AFRICA PLANTATIONS RESPONDENT

RULING

1. This Ruling pertains to the Applicant's *ex parte* Notice of Motion dated 16th October, 2025, brought pursuant to Sections 885, and 888 of the *Companies Act*, Cap 486, Section 1A & 1B of the *Civil Procedure Act* and Order 51 of the Civil Procedure Rules. Through the said application, the Applicant has moved this Court seeking the following reliefs:
 - a. Spent.
 - b. That the Honourable Court be pleased to grant an order that the time for registration of the Charge over LR No. 3939, the property (as defined in the charge) of Browns East Africa Plantations PLC, made between Browns East Africa Plantations PLC (as the Chargor) and NCBA Bank Kenya PLC (as Chargee) dated 4th August, 2025 (the Charge) be extended by thirty (30) days with effect from the date of the said Order or such other period as the Court shall deem fit.
 - c. There be no order as to costs.



2. This Application was supported by the sworn affidavit of Cecil Kuyo, an Advocate of the High Court of Kenya, dated the same day as the Application. Mr Cecil Kuyo practices in the firm of M/s Coulson Harney LLP 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 Charge dated 4th 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, 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.
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, 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 had agreed to advance credit facilities to the Borrower, which facilities were to be secured by a Charge created over Land Reference Number 3939 under Titles Number I.R. 2913 (as more specifically described in the charge). Accordingly, the Charge, created on 4th August, 2025, was presented for assessment and stamping by the Collector of Stamp Duties. The process was, however, delayed in part due to operations and procedural changes brought about by the new online registration formalities at the Companies Registry.
7. Counsel averred that, while they were able to obtain duly registered security documents from the Lands Registry, they were unable to register the Charge at the Companies Registry as the statutory period for such registration had already lapsed due to these procedural changes. Pursuant to Section 885 of the *Companies Act*, No. 17 of 2015, the Company was required to register the Charge with the Registrar of Companies within thirty (30) days from the date of its creation. The delay in presenting the Charge for registration at the Companies Registry was occasioned by delays, which delays were 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 Charge at the Companies Registry within the statutory period prescribed under Section 885 of the *Companies Act*. Notwithstanding this procedural lapse, the Charge 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 Charge 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 Charge, 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 July 2025 are hereby granted.

Determination

10. The application by way of a Notice of Motion dated 16th October, 2025 is allowed in the following terms;
 - a. That the Honourable Court Hereby grants an order that the time for registration of the Charge over LR No. 3939, the property (as defined in the charge) of Browns East Africa Plantations PLC, made between Browns East Africa Plantations PLC (as the Chargor) and NCBA Bank Kenya PLC (as Chargee) dated 4th August, 2025 (the Charge) be and is HEREBY extended by thirty (30) days with effect from the date of the said Order.
 - b. There be no order as to costs.
11. The file is hereby closed.

DATED, SIGNED AND DELIVERED AT MILIMANI THIS 23RD DAY OF OCTOBER, 2025.

NJOROGE BENJAMIN K.

JUDGE

In the presence of;

Mr. Muchui for the Applicant.

Mr. Peter Wabwire - Court Assistant

