

REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
MISCELLANEOUS CIVIL APPLICATION NO E374 OF 2025

IN THE MATTER OF EXTENTION OF TIME TO NOTICE CHARGE BY

MIDLAND CONSTRUCITONS COMPANY LIMITED.....1ST APPLICANT
SIMBA GATE HOLDING LIMITED.....2ND
APPLICANT
DIXA AGRO VET LIMITED.....3RD APPLICANT

Coram: Justice R. Nyakundi
M/s Manani Lilan, Mwetich & Co. Advocates.

RULING

- 1.** By an ex-parte application dated 5th November, 2025 expressed under the provisions of Rules 3(1) of the High Court (Practice and Procedure Rules) and Section 3A of the Civil Procedure Act and Article 159 of the Constitution of Kenya, the applicants sought the following orders: -
 - a) That this application be certified as urgent*
 - b) That this court be pleased to enlarge time within which to note the charges dated 16.2.2017, 11.5.2017, 17.8.2027 and 24.8.2015*
 - c) That the time be enlarged with respect to charges noted and registered vide certificates of registration of Mortgage dated 29.10.2020, 31.12.2022 and they be deemed noted within time*
 - d) That the costs of this application be in the cause*
- 2.** The application is anchored on various grounds together with a supporting affidavit sworn by R.R. MWETICH. The grounds relied on are as here below:
 - a) That the period within which the charge documents are supposed to be noted at the companies' registry has long lapsed. The*

registration is required within 30 days which period has long lapsed.

b) That there are sufficient reasons for delay in not noting the documents with companies Registry within the required period.

c) That it is in the interest that this application be allowed

d) That the applicant will suffer sanction if the charges are not noted

3. In the supporting affidavit, R.R. Mwetich deposed as follows:

a. That I am an advocate of the High Court of Kenya and practicing in the firm of M/S Manani, Lilan Mwetich & Co. Advocates who have the conduct of this matter on behalf of the applicant and therefore competent to swear this affidavit.

b. That my office was instructed to register a charge by the applicants in favor of the Bank of Baroda (K) Limited.

c. That upon receiving such instructions, we prepared and dated the charge documents for registration.

d. That the registration is out of time.

e. That unfortunately the charge was delayed for registration because there was undertaking multiplicity of securities leading to inadvertent our omission to cause registration in time thus the delay in submitting the original title deeds for registration. We regret the delay.

f. That some charges were subsequently registered but certificates of registration have been missing.

g. That it is fair and just that the period for noting of the further charges be now extended.

Determination

4. The starting point in determining this matter would be the provisions of **section 884** of the **Companies Act** which obligates the Registrar 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. 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.
6. The parameters to be considered in extending such a deadline were highlighted in the case of **In re Application for Extension of time for Registration of a Charge by Silverspead Hardwares Limited in Favour of Bank of Baroda (Kenya) Limited [2021] KEELC 2015 (KLR)** as follows:
 - 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.”*
7. The court in the case of **Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 others [2014] eKLR** while considering the question of extension of time observed as follows:

“Extension of time being a creature of equity, one can only enjoy it if he acts equitably: he who seeks equity must do equity. Hence, one has to lay a basis that he was not at fault so as to let time to lapse. Extension of time is not a right of a litigant against a court, but a discretionary power of the courts which litigants have to lay a basis where they seek courts to grant it.”
8. In the instant matter, the applicants through their advocates have admitted that the delay in noting the charges arose from inadvertent omission on their part. The deponent has explained that the firm was dealing with a multiplicity of securities which led to the oversight in submitting the original title deeds for registration within the stipulated

period. This explanation falls squarely within the realm of inadvertence contemplated by the law.

9. I have carefully considered the dates of the charges in question, being 16th February 2017, 11th May 2017, 17th August 2017 and 24th August 2015. It is evident that substantial time has elapsed since these charges were created. However, the delay alone does not disentitle the applicants from the relief sought. What is paramount is whether there exists sufficient cause for the delay and whether granting the extension would occasion any prejudice.
10. Having considered the application, the supporting affidavit, the legal framework, and the principles enunciated in the authorities cited, I am satisfied that this is a proper case for the exercise of the court's discretion.
11. Consequently, I make orders as follows:
 - a. *The application dated 5th November 2025 is hereby allowed.*
 - b. *The time for noting the charges dated 16th February 2017, 11th May 2017, 17th August 2017 and 24th August 2015 is hereby extended by **thirty (30) days** from the date of this ruling.*
 - c. *The time with respect to charges registered vide certificates of registration of mortgage dated 29th October 2020 and 31st December 2022 is likewise extended by **thirty (30) days** from the date of this ruling, and the same shall be deemed noted within time upon compliance.*
 - d. *I make no orders as to costs given the nature of this matter.*
12. It is so ordered.

DATED AND SIGNED AT ELDORET THIS 7TH DAY OF NOVEMBER, 2025

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R. NYAKUNDI
JUDGE