

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

COMMERCIAL & TAX DIVISION - MILIMANI LAW COURTS

MISCELLANEOUS CAUSE NO. E025 OF 2026

IN THE MATTER OF ABSA BANK KENYA PLC

AND

IN THE MATTER OF THE COMPANIES ACT, CAP 486

AND

IN THE MATTER OF A CHARGE IN FAVOUR OF ABSA BANK KENYA PLC

AND

IN THE MATTER OF AN APPLICATION FOR EXTENSION OF TIME FOR

REGISTRATION OF A CHARGE UNDER SECTION 888 OF THE

COMPANIES ACT, CAP 486

RULING

Introduction

1. Before the Court is the Applicant's Notice of Motion expressed to be brought under sections 885 and 888 of the Companies Act, Cap 486, sections 1A and 1B of the Civil Procedure Act, and Order 51 Rule 1 of the Civil Procedure Rules.
2. The Applicant, ABSA Bank Kenya PLC, seeks enlargement of time to register a charge dated 11th November 2025 created over **L.R. No. 4431 / I.R. 684** by **Browns East Africa Plantations PLC** (the Chargor) in favor of the Applicant (the Chargee).
3. The Application is supported by the Certificate of Urgency sworn by **Cecil Kuyo**, Advocate, on 13th January 2026, and a Supporting Affidavit

of even date. The gravamen of the application is that the statutory period for registering the charge at the Companies Registry lapsed due to operational and procedural challenges associated with the Companies Registry's new online registration formalities, and that unless time is enlarged, the Applicant risks losing the benefit of its security.

4. The material facts, as pleaded and deposed, are that in November 2025, the Applicant instructed its advocates, Coulson Harney LLP, to prepare the impugned charge. The charge was executed on 11th November 2025 between the Chargor and the Applicant over the above property as a supplemental security to secure financial accommodation. A copy of the charge is exhibited to the Supporting Affidavit.
5. The Applicant explains that registration was not completed within the statutory 30 days owing to the Companies Registry's new online registration formalities and the attendant operational and procedural challenges. The deponent further avers that the Chargor has not registered the charge nor moved the Court for similar relief, and that, absent enlargement, third parties may acquire adverse interests to the Applicant's prejudice.

Analysis and Determination

6. Having considered the application and the affidavit in support thereof, I find that the only issue for determination is whether the application is merited.
7. The applicable statutory scheme is **Sections 885 and 888 of the Companies Act, 2015**. Section 888 provides as follows; -

“888. Rectification of register of charges

- (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.”

8. The statutory scheme requires registration of registrable charges within the prescribed time, failing which the instrument is void against the liquidator and any creditor as regards the security, without affecting the underlying debt; however, the Court is however empowered to extend time for registration on such terms as it deems

just, upon being satisfied as to the reasons for delay and the absence of prejudice to third parties.

9. On jurisdiction, the motion is competently brought. The Court's discretion to enlarge time for registration is well recognized where sufficient cause is shown, and no injustice is occasioned to third parties. The present motion seeks a modest extension of thirty (30) days from the date of the Court's order, to enable lodgment and registration of the charge.
10. On the merits, the Applicant attributes the delay to operational and procedural changes at the Companies Registry attendant to the new online system. The Supporting Affidavit explains that despite preparation and execution of the instrument, registration was not perfected within time due to those extraneous circumstances, and not due to culpable indolence by the Applicant.
11. The deponent further avers that the Chargor has not undertaken registration nor moved the Court, and that **the** Applicant, being the beneficiary of the supplemental security, is the party at risk. These averments are uncontroverted on the present record.
12. I am satisfied that the explanation for the delay is plausible and sufficient, particularly in the context of systemic changes at the Registry that can impede timely filings. I also note that the underlying debt remains unaffected; what is at stake is the perfection of the security.
13. On the material before me, there is no evidence of prejudice to third parties, and the equities favour preservation of the parties' bargain by facilitating registration out of time. The Court's intervention

in such circumstances accords with the overriding objective to facilitate the just, expeditious, and affordable resolution of disputes.

14. In the premises, the justice of the case militates in favour of enlarging time on terms that will expedite perfection and minimize any residual risk to third parties.

15. Accordingly, the Notice of Motion dated 13th January 2026 is allowed on the following terms:

i. Time for registration of the charge dated 11th November 2025 created by **Browns East Africa Plantations PLC** in favour of **ABSA Bank Kenya PLC** over **L.R. No. 4431 / I.R. 684** is **hereby enlarged by thirty (30) days from the date of this order.**

ii. The Applicant shall lodge the charge and/or particulars for registration forthwith and in any event within the enlarged period, and shall **serve a copy of this order on the Registrar of Companies** within **seven (7) days.**

iii. There shall be no order as to costs, the motion having been necessitated by procedural circumstances.

11. It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 16TH JANUARY
2026.**



HON. JUSTICE MOSES ADO
JUDGE

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