

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI COMMERCIAL COURTS

MISCELLANEOUS CIVIL APPLICATION NO. E019 OF 2026

IN THE MATTER OF THE COMPANIES ACT, NO. 17 OF 2015

AND

IN THE MATTER OF THE COMPANIES (HIGH COURT) RULES, 1964

AND

IN THE MATTER OF AN APPLICATION BY

POLYTANKS & CONTAINERS KENYA LIMITED AND I & M BANK

LIMITED

EX-PARTE RULING

1. The Applicants, **Polytanks & Containers Kenya Limited and I & M Bank Limited**, move this Court by a Notice of Motion expressed under sections 885 and 888 of the Companies Act, 2015, Rule 8(b) of the Companies (High Court) Rules, 1964, and the Judicature Act, seeking leave to register, out of time, particulars of a Fixed and Floating Debenture and a First Legal Charge, both dated 9th December 2025, created by Polytanks in favour of the Bank.
2. The Motion, which is brought under a Certificate of Urgency, is supported by the Affidavit of **Madhav Bhalla, Advocate**, who had the conduct of preparation and lodgment of the Security Documents.
3. In the main, the Applicants pray for orders that this Court extend time within which to register the Security Documents for a period of thirty (30) days from the date of the order, the statutory period under section 885(1)(a) having lapsed due to the circumstances deponed.

4. It is averred that the Security Documents, namely a **Fixed and Floating Debenture and a First Legal Charge over L.R. No. 11895/98, Mlolongo**, were duly executed on 9th December 2025. Stamp duty was paid in time; however, the Lands Registry experienced delays in completion stamping and in the registration of the First Legal Charge, thereby preventing the timely lodgment of particulars with the Companies Registry within the 30 days contemplated by section 885(1) (a).
5. The deponent attributes the lapse solely to these administrative delays, without any fraudulent intent.
6. The Applicants state that stamping and Lands registration have since been completed, and they are ready to lodge the Security Documents at the Companies Registry forthwith. They add that the shareholders of Polytanks approved the borrowing and security by board resolutions of 9th December 2025 and that no prejudice will be suffered by them if extension is granted; conversely, the Bank's interests remain unsecured unless time is enlarged.

Analysis and Determination

7. Having perused the application and the annexed affidavit, I find that the sole issue requiring this Court's determination is whether the Applicants have laid a sufficient factual and legal basis for an extension of time to register the Security Documents out of time under section 888 of the Companies Act, 2015.
8. Section 885(1)(a) of the Companies Act, 2015 requires delivery to the Registrar of particulars of a charge created by a company within a prescribed statutory period of 30 days. Section 888 empowers the Court to extend time for registration where sufficient cause is shown, and to make such order as it thinks just for the purpose of securing

that the charge shall be effective as if registration had been made within time.

9. The discretion to enlarge time is equitable and guided by considerations including:

- (a) the reason for the delay and whether it is excusable;
- (b) the length of delay;
- (c) the prejudice (if any) to creditors, members, or third parties; and
- (d) the overall interests of justice in maintaining commercial certainty and protecting bona fide security interests.

10. The Court notes that the Applicants have provided a coherent explanation for the failure to lodge particulars within the statutory period. The delay is attributed to administrative holdups at the Lands Registry in the completion of stamping and registration of the First Legal Charge. On the material before me, the omission is procedural, not deliberate. Stamp duty was paid timeously, and formalities at the Lands Office have since been concluded.

11. As to prejudice, the Applicants depone that the shareholders of Polytanks had sanctioned the borrowing and security and that no stakeholder stands to be adversely affected by the extension; if anything, denying the relief would leave a substantial exposure unperfected, to the Bank's detriment, without countervailing benefit to any other party.

12. The relief sought is narrowly tailored: a 30-day extension from the date of this Order. Given that stamping and Lands registration have been completed and the Applicants are ready to lodge at the Companies Registry, a finite, short extension adequately cures the technical lapse and aligns with section 888's remedial purpose.

13. In the result, I am satisfied that sufficient cause has been shown under section 888 of the Companies Act, 2015. I therefore make the following Orders:

i. Pursuant to section 888(2)(b) of the Companies Act, 2015, time is extended for a period of thirty (30) days from the date of this Order within which the Applicants shall lodge with the Registrar of Companies the particulars of the following Security Documents for registration:

(a) The Fixed and Floating Debenture dated 9th December 2025, created by Poly tanks & Containers Kenya Limited in favour of I & M Bank Limited; and

(b) The First Legal Charge dated 9th December 2025 over L.R. No. 11895/98, Mlolongo, created by Poly tanks & Containers Kenya Limited in favour of I & M Bank Limited.

ii. The Registrar of Companies is directed, upon due lodgment of the prescribed Forms and Particulars and payment of any requisite fees, to accept and register the said particulars as if lodged within time, and to issue the appropriate Certificate(s) of Registration accordingly.

iii. The Applicants shall serve this Order and the Motion on the Registrar of Companies and Registrar of Lands for their information and compliance, within seven (7) days.

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

15. It is so ordered.

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

A handwritten signature in blue ink, appearing to read 'Moses Ado', is centered at the top of the page. The signature is stylized with a large initial 'M' and 'A'.

HON. JUSTICE MOSES ADO
JUDGE

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