

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI HIGH Court**  
**COMMERCIAL AND TAX DIVISION**  
**HCCOMM MISC E044 OF 2026**

**IN THE MATTER OF THE COMPANIES ACT, NO 17 OF 2025**

**AND**

**IN THE MATTER OF AN APPLICATION FOR EXTENSION OF  
TIME FOR THE REGISTRATION OF A CHARGE AT THE  
COMPANIES REGISTRY**

**FINNISH FUND FOR INDUSTRIAL COOPERATION LTD  
SOROS ECONOMIC DEVELOPMENT FUND  
UBS UPTIMUS FOUNDATION..... *EXPARTE*  
APPLICANTS**

**AND**

**HEWATELE SEZ ENTERPRISES LIMITED .....  
BORROWER**

**AND**

**REGISTRAR OF COMPANIES .....  
RESPONDENT**

**RULING**

1. This Ruling pertains to the Applicant's *ex parte* Notice of Motion dated 20<sup>th</sup> January, 2026, brought pursuant to Sections 878, 885, and 888 of the Companies Act, No. 17 of 2015, as well as all other enabling provisions of the law of Kenya. Through the said application, the Applicant has moved this Court seeking the following reliefs:
  - (a) *Spent.*
  - (b) *This Honourable Court be pleased to extend the time for the registration of all the Assets Fixed and Floating Charge (the Charge) dated 16<sup>th</sup> December, 2025 made between **Finnish Fund For Industrial Cooperation Ltd, Soros Economic Development Fund and UBS Optimus Foundation** as lenders and **Hewatele SEZ Enterprises Ltd** as Borrower at the Companies Registry for a period of 30 days from the date of the Order hereof.*
2. This Application was supported by the sworn affidavit of **Cassandra Wachilonga**, an Advocate of the High Court of Kenya, dated the same day as the Application. **Ms. Wachilonga** practices in the firm of **M/s KN Law LLP**, 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 Assets Fixed and Floating Charge (the Charge) dated 16<sup>th</sup> December, 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 her affidavit, Counsel for the Applicant deponed that she was aware that the Applicant had agreed to advance credit facilities to the Borrower. The amount advanced was **United States Dollars Eleven Million Nine Hundred Thousand (USD 11,900,000/=)**. The facility was an All-Asset Fixed and Floating Charge. A charge was created on 16<sup>th</sup> December, 2025 and lodged for payment of Stamp Duty. Accordingly, the Charge, created on 16<sup>th</sup> December, 2025, was presented for assessment and stamping by the Collector of Stamp Duties. The process was, however, delayed. Upon settlement of the stamp duty, the documents were booked for registration and finally registered on 16<sup>th</sup> January, 2026.
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 during the period taken to assess, stamp, and register the Charge at the Lands Office. 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 in the registration of the Charge, which delay was 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 wilful 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 20<sup>th</sup> January, 2026 are hereby granted.

### **Determination**

10. The Application dated 20<sup>th</sup> January, 2026 is allowed in the following terms:
  - (a) *This Honourable Court HEREBY extends the time for the registration of all the Assets Fixed and Floating Charge (the Charge) dated 16<sup>th</sup> December, 2025 made between **Finnish Fund For Industrial Cooperation Ltd, Soros Economic Development Fund and UBS Optimus Foundation** as lenders and **Hewatele SEZ Enterprises Ltd** as Borrower at the Companies Registry for a period of 30 days from the date of the Order hereof.*

*(b) Given the nature of the application, there shall be no order as to costs.*

11. It is so ordered.

12. The file is HEREBY marked as closed

**DATED, SIGNED AND DELIVERED AT MILIMANI THIS 27<sup>TH</sup>  
DAY OF JANUARY, 2026.**

**NJOROGE BENJAMIN K.**

**JUDGE**

In the presence of:

Ms. Wachilonga for the Applicants.

Peter Wabwire - Court Assistant.