

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL AND TAX DIVISION
MISC. APPLICATION NO. E879 OF 2025
IN THE MATTER OF THE COMPANIES ACT, CAP. 486 OF THE
LAWS OF KENYA

AND

IN THE MATTER OF A THIRD-PARTY CHARGE AMONG
SENDEYO
HOLDINGS LIMITED (CHARGOR), VICTORIA COMMERCIAL
BANK
(CHARGE) AND TROPIC AIR HELICOPTERS LIMITED (THIRD
PARTY)

AND

IN THE MATTER OF THE THIRD-PARTY CHARGE
INSTRUMENTCREATED
ON THE 5TH DAY OF JUNE 2025 AND DULY REGISTERED ON
THE 30TH DAY OF JUNE 2025

AND

IN THE MATTER OF REGISTRATION OF PARTICULARS OF A
CHARGE OVER TITLE NUMBER I.R. 174275, 174278,
174284, 173285, 174286, 174287, 174288, 174289,
174290, 217339, 217340 AND 224676

VICTORIA COMMERCIAL BANK
APPLICANT/CHARGE

VERSUS

REGISTRAR OF COMPANIES
RESPONDENT

AND

**SENDEYO HOLDINGS LIMITED..... 1ST INTERESTED
PARTY/CHARGOR
TROPIC AIR HELICOPTERS
LIMITED.....2ND INTERESTED
PARTY/THIRD PARTY**

RULING

1. This Ruling relates to the Applicant's *exparte* Notice of Motion dated 1st September, 2025, brought pursuant to Section 878, 885, 888 & 889 of the Companies Act, Cap. 486 and Order 51 of the Civil Procedure Rules, 2010, Cap 21 of the Laws of Kenya. Through the said application, the Applicant has moved this Court seeking the following reliefs:
 - (a) *Spent.*
 - (b) *THAT the court be pleased to grant leave for extension of time for registration of the particulars of the charge created by the 1st Interested Party/Chargor.*
 - (c) *THAT this court be pleased to order that the particulars of the charge created by the 1st Interested Party/Chargor be registered at the Registrar (sic) of Companies.*
 - (d) *THAT this honourable court be pleased to direct the Registrar of Companies to register the particulars of the charge created by the 1st Interested Party/Chargor.*
2. This Application was supported by the sworn affidavit of **YOGESH PATTNI**, a Director of the Applicant/Chargee, sworn the same day as the Application. The Application has

been filed by the firm of **HKM ASSOCIATES 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 at the Companies Registry out of time, as prayed for.*

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. The Applicant's Director depones that on the 5th day of June 2025, the 1st Interested Party/Chargor created a Third-Party Charge in favour of the Applicant/Chargee, to secure the sum of Two Million Dollars (USD 2,000,000/=) over Title Numbers I. R. I.R. 174275, 174278, 174284, 173285, 174286, 174287, 174288, 174289, 174290, 217339, 217340 and 224676.
7. The said Charge was created by a written instrument dated the 5th day of June 2025 which instrument was registered at the Registrar of Lands on the 30th day of June 2025.
8. THAT due to inadvertent administrative oversight and/or delay, the said Charge was not lodged within the prescribed period.
9. THAT this omission was not intentional or fraudulent.
10. THAT the Applicant/Chargee, the 1st Interested Party/Chargor and the 2nd Interested Party/Third Party remain desirous of having the charge duly registered, and there has been no alteration of terms or nature of the charge since its creation.

11. The Applicant's Director depones 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, which delay was unintentional and beyond the control of both the Applicant and the Chargor.
12. 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.

13. 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.
14. In winding up the Court notes that this Application was filed sometimes in September, 2025. For reasons not very clear it fell through the cracks and remained unattended for a prolonged duration of time. The Court extends its apologies to the Applicants as well as their Counsel. The delay in

attending to this matter is not in any way a reflection of how the Commercial and Tax Division of the Milimani High Court discharges its mandate. The Division remains committed to expediting the finalization of such matters in a timely fashion. Counsel are encouraged and reminded of their duty to notify the Court if their matters stall or fall through the cracks. The Division is known to act and respond to written communication from Counsel in timely fashion. This is more so where such communication enables the Court progress the matters before it forward. Emails remain a very convenient and current method of communicating with the Court.

15. In the result, the prayers sought in the Notice of Motion dated 1st September, 2025 are hereby granted.

Determination

16. The Court allows the Application by way of a Notice of Motion dated 1st September, 2025 in the following terms;
 - (a) *THAT the Court HEREBY grants leave for extension of time for registration of the particulars of the charge created by the 1st Interested Party/Chargor by a period of Thirty (30) days from the date of this Ruling.*
 - (b) *THAT this Court HEREBY orders that the particulars of the charge created by the 1st Interested Party/Chargor be registered at the Registrar of Companies.*

(c) *THAT this Honourable Court HEREBY directs the Registrar of Companies to register the particulars of the Charge created by the 1st Interested Party/Chargor.*

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

17. It is so ordered.

18. The file is hereby closed.

DATED, SIGNED AND DELIVERED AT MILIMANI THIS 27TH DAY OF JANUARY, 2026.

NJOROGE BENJAMIN K.

JUDGE

In the presence of:

Mr. Akuoma for the Applicants.

Peter Wabwire - Court Assistant.