

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
COMMERCIAL AND TAX DIVISION
MISCELLANEOUS APPLICATION NO E078 OF 2026

IN THE MATTER OF THE COMPANIES ACT (NO. 17 OF 2015)
LAWS OF KENYA

AND
IN THE MATTER OF AN APPLICATION FOR EXTENSION OF
TIME FOR THE REGISTRATION OF AN EIGH FURTHER
CHARGE OVER GODDOWN NUMBER 6 ERECTED ON LAND
REFERENCE NUMBER 12715/10591 (ORIGINAL NUMBER
12715/612/2) BY VARJA DRILL LIMITED IN FAVOUR OF BANK
OF INDIA

BETWEEN

BANK OF INDIA
APPLICANT

AND

VARJA DRILL LIMITED
CHARGOR

VERSUS

REGISTRAR OF COMPANIES
.....RESPONDENT

RULING

1. This Ruling relates to the Applicant’s *exparte* Notice of Motion dated 28th January, 2026 brought pursuant to Sections 878, 885, and 888 of the Companies Act, No. 17 of 2015, as well as Section 3A of the Civil Procedure Act, Cap. 21 of the Laws of Kenya. Through the said application, the Applicant has moved this Court seeking the following reliefs:

(a) *Spent.*

(b) *The time for registration of the Eighth Further Charge dated 13 November, 2025 and registered on the 17th November, 2025 be extended by thirty (30) days from the date of the Order herein or such other period as the Court shall deem fit.*

(c) *There be no orders as to costs.*

2. This Application was supported by the sworn affidavit of **Phylis Vuligwa**, an Advocate of the High Court of Kenya, dated the same day as the Application. **Ms. Vuligwa** practices in the firm of **M/s Mahida & Maina Company 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 Eighth Further Charge dated 13 November, 2025 and registered on the 17th November, 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, which facilities were to be secured by for the registration of an Eighth Further Charge over Goddown number 6 erected on land reference number 12715/10591 (original number 12715/612/2) by **Varja Drill Limited** in favour of **Bank of India**. She further deponed that the said facilities

were intended to support, inter alia, the operations and business of the Borrower. Accordingly, the Charge, created on 13th November, 2025, was presented for assessment and stamping by the Collector of Stamp Duties. The process was, however, delayed in part due to delays in settling the requisite stamp duty.

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 settlement of stamp duty, 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 28th January, 2026 are hereby granted.

Determination

10. The application by way of a Notice of Motion dated 28th January, 2026 is allowed as follows;

(a) *The time for registration of the Eighth Further Charge dated 13 November, 2025 and registered on the 17th November, 2025 be and is HEREBY extended by thirty (30) days from the date of the Order herein.*

(b) *There be no orders as to costs*

11. It is so ordered.

12. The file is hereby closed.

DATED, SIGNED AND DELIVERED AT MILIMANI THIS 03TH DAY OF FEBRUARY, 2026.

**NJOROGE BENJAMIN K.
JUDGE**

In the presence of;

N/A for Mahinda & Maina Advocates for the Applicants.

Peter Wabwile - Court Assistant