



**In re KCB Bank Kenya Limited (Applicant) (Miscellaneous Application E112 of 2026)
[2026] KEHC 1602 (KLR) (Commercial and Tax) (12 February 2026) (Ruling)**

Neutral citation: [2026] KEHC 1602 (KLR)

REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS APPLICATION E112 OF 2026
BK NJOROGE, J
FEBRUARY 12, 2026
IN THE MATTER OF KCB BANK KENYA LIMITED
AND
WEMARK COMPANY LIMITED
AND
IN
IN THE MATTER OF THE COMPANIES ACT (CAP 486 LAWS OF KENYA)
AND
IN THE MATTER OF ISSUANCE OF A CERTIFICATE
OF THE REGISTRATION OF A MORTGAGE
AND
IN THE MATTER OF AN APPLICATION FOR EXTENSION
OF TIME FOR REGISTRATION OF A CHARGE

RULING

1. This Ruling pertains to the Applicant's *ex parte* Notice of Motion dated 05 February, 2026, brought pursuant to Sections 878, 885, and 888 of the *Companies Act*, 486, Section 3A of the *Civil Procedure Act*, as well as Order 51 Rule 1 of the Civil Procedure Rules 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 this Honourable Court be pleased to extend the time within which the Applicant may register the particulars of a Discharge of Charge and Replacement of Charge created in its favour by Wemark Co. Ltd at the Companies Registry by thirty (30).
 - c. That the costs of this application be provided for.
2. This Application was supported by the sworn affidavit of Lillian Muthoni Muchori, an Advocate of the High Court of Kenya, dated the same day as the Application. Ms. Muchori practices in the firm of M/s Gikera & Vadgama 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 a Discharge of Charge and Replacement of Charge created in its favour by Wemark Co. Ltd, 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 granted certain facilities to Wemark Company Ltd to the tune of Kshs. 63,000,000/=. The facilities were secured by a property known as Land Portion No. 492 (CR. No. 20419) which is herein after referred to as the property. The Chargor requested the Bank to release the Title of the property and a duly signed Discharge of Charge of the property to enable subdivision of the property into resultants 65 plots. The registration of a Replacement of Charge was to take place thereafter.
7. The process of registration of a Discharge and subsequent subdivision process has taken long due to delays not attributable to the Applicant.
8. Counsel averred that by the time the Discharge of Charge and Replacement of Charge were registered on 19th January, 2026 the time for registration of the Replacement of Charge at the Companies Registry had expired on 25th December, 2025.
9. Pursuant to Section 885 of the *Companies Act*, No. 17 of 2015, the Company was required to register the Replacement of Charge with the Registrar of Companies within thirty (30) days from the date



of its creation. The delay in presenting the Replacement of 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.

10. The omission in the present case pertains solely to the failure to register the Replacement of Charge at the Companies Registry within the statutory period prescribed under Section 885 of the *Companies Act*. Notwithstanding this procedural lapse, the Replacement of 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 Replacement of 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.
11. 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 regularization 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 Replacement of 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 05th February, 2026 are hereby granted.

Determination

12. The application by way of a Notice of Motion dated 05th February, 2026 is allowed in the following terms;
 - (a) That this Honourable Court hereby extends the time within which the Applicant may register the particulars of a Discharge of Charge and Replacement of Charge created in its favour by Wemark Co. Ltd at the Companies Registry by thirty (30) from the date of this Ruling.
 - (b) That there be no orders as to costs.
13. It is so ordered.
14. The file is hereby marked as closed.

DATED, SIGNED AND DELIVERED AT MILIMANI THIS 12TH DAY OF FEBRUARY, 2026.

NJOROGE BENJAMIN K.

JUDGE

In the presence of;

Miss Naazi for the Applicants.

Peter Wabwile - Court Assistant

