

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI LAW COURTS**  
**COMMERCIAL AND TAX DIVISION**  
**MISCELLANEOUS APPLICATION NO E143 OF 2026**  
**IN THE MATTER OF PERKERRA WINES AND SPIRIT**  
**DISTRIBUTORS LIMITED**  
  
**AND**  
  
**IN THE MATTER OF LEXCO ONE LIMITED**  
  
**AND**  
  
**IN THE MATTER OF COMPANIES ACT**  
  
**KENYA COMMERCIAL BANK.....**  
**.....APPLICANT**  
  
**AND**  
  
**REGISTRAR OF COMPANIES .....**  
**.....RESPONDENT**

**RULING**

1. This Ruling pertains to the Applicant's *ex parte* Notice of Motion dated 12<sup>th</sup> February 2026, brought pursuant to **Sections 888 of the Companies Act, No. 17 of 2015 of the Laws of Kenya**. Through the said application, the Applicant has moved this Court seeking the following reliefs:

- (a) *THAT this application be certified as urgent.*
- (b) *THAT this Honourable Court be pleased to extend the time for the registration of the Discharge and Charge over Land Reference Number 12197/7 (IR 213415) from Perkerra Wines & Spirits Distributors Limited to KCB Bank Kenya Limited dated 9th December, 2024.*
- (c) *THAT the costs of this application be in the cause.*
2. This Application was supported by the sworn affidavit of **BETT WINNY JEPKOECH** an Advocate of the High Court of Kenya, dated the same day as the Application. **Ms. Betty** practices in the firm of **M/s Mukite Musangi & 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 extend the time for the registration of the Discharge and Charge over Land Reference Number 12197/7 (IR 213415) from Perkerra Wines & Spirits Distributors Limited to KCB Bank Kenya Limited dated 9th December, 2024.*

**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 her firm was instructed by KCB Bank Kenya Limited to prepare a Discharge and Charge over Land Reference Number 12197/7 (IR 213415) provided by **Messrs. Perkerra Wines & Spirits Distributors Limited** (hereinafter called "the Company") in its capacity as Chargor, to secure advances they were granting to **Messrs. Lexco One Limited** as the borrower. Counsel prepared and the parties executed the Discharge and Charge. That the said Discharge and Charge was however not registered within the stipulated time of Thirty (30) days due to delay at the Lands Registry that arose while registering the Discharge

and Charge from the Company in favour of her client. That the Company Registry insisted that the Discharge and Charge be registered at the Lands Registry prior to registering at the Companies Registry. That as a consequence of the delay Counsel was not able to register the Discharge and Charge with the Registrar of Companies within the Thirty (30) days limit required by law.

7. Counsel averred that, while they were able to obtain duly registered security documents from the Lands Registry, they were unable to register the Discharge and 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 Discharge and Charge at the Lands Office. Pursuant to Section 885 of the Companies Act, No. 17 of 2015, the Company was required to register the Discharge and Charge with the Registrar of Companies within thirty (30) days from the date of its creation. The delay in presenting the Discharge and 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 Discharge and Charge pertains solely to the failure to register the Discharge and Charge at the Companies Registry within the statutory period prescribed under Section 885 of the Companies Act. 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.

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 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 Discharge and 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 12<sup>th</sup> February, 2026 are hereby granted.

**Determination**

10. The Applicant's Application by way of a Notice of Motion dated 12<sup>th</sup> February, 2026 is allowed as follows;

(a) *THAT this Honourable Court HEREBY extends the time for the registration of the Discharge and Charge over Land Reference Number 12197/7 (IR 213415) from **Perkerra Wines & Spirits Distributors Limited** to **KCB Bank Kenya Limited** dated 9th December, 2024, by a period of Thirty (30) days from the date of this Ruling.*

(b) *THAT 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 19<sup>TH</sup> DAY OF FEBRUARY, 2026.**

**NJOROGE BENJAMIN K.  
JUDGE**

In the presence of;

N/A for the Applicant.

Peter Wabwire - Court Assistant.