

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI COMMERCIAL & ADMIRALTY DIVISION

MISCELLANEOUS CIVIL APPLICATION NO. E047 OF 2026

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

AND

IN THE MATTER OF: AN APPLICATION BY VICTORIA COMMERCIAL BANK PLC (THE APPLICANT) FOR EXTENSION OF TIME TO REGISTER A FIRST LEGAL CHARGE AND A DEBENTURE CREATED BY VADVAI GROWERS LIMITED (THE CHARGOR)

RULING

Introduction

1. The Applicant moved the Court by *ex parte* Notice of Motion dated 20th January 2026, brought under, inter alia, Section 888 of the Companies Act, 2015, seeking an extension of time within which to register a **First Legal Charge dated 1 September 2025 and a Debenture** created by **Vadvai Growers Limited**, and a further direction that the instruments be presented at the Companies Registry within seven (7) days of the order.
2. The Motion is supported by the Certificate of Urgency sworn by **Bob Omondi Otieno, Advocate**, setting out that the instruments were not registered at the Companies Registry within the statutory period owing to delays at the Makueni Land Registry in releasing the duly registered charge, and that leave of Court is therefore required under the Act.

3. The Application is further supported by a Supporting Affidavit of **Bob Omondi Otieno**, sworn on even dated, which avers, among other matters, that:

(i) By a Letter of Offer dated 14 August 2025, the Applicant granted facilities to the Chargor in the sum of **Kshs. 140,000,000** to be secured by a Debenture dated 16 September 2025 and the First Legal Charge dated 1 September 2025;

(ii) The Applicant's advocates initiated the requisite registration steps, that the First Legal Charge has been registered at the Makueni Land Registry; and that the delay in presentation at the Companies Registry was not occasioned by any fault of the Applicant.

Analysis and Determination

4. From the application and affidavit material, the sole issue for determination is whether the Applicants have laid a sufficient basis for enlargement of time to register the debenture outside the statutory period.

5. The Applicant anchors the Motion on Section 888 of the Companies Act, which empowers the Court to grant relief where an instrument that requires registration has not been lodged within the statutory period, upon such terms as the Court thinks fit.

6. On the evidential record, the Supporting Affidavit explains the chain of events that pursuant to the Letter of Offer dated 14 August 2025 the bank granted facilities in the sum of Kshs. 140,000,000. The security instruments (the First Legal Charge dated 1 September 2025; and the Debenture dated 16 September 2025) were executed and submitted to

the Makueni Land Registry, which completed registration on 16 September 2025 but released the registered instrument only on 30 December 2025.

7. It is deponed that the late release prevented timely presentation to the Companies Registry within the statutory period. The Affidavit confirms the First Legal Charge is already registered at the Makueni Land Registry, and asserts no prejudice will befall any party if time is enlarged.
8. In In re Application for Extension of time for Registration of a Charge by Silverspead Hardwares Limited in Favour of Bank of Baroda (Kenya) Limited [2021] KEELC 2015 (KLR), the Court emphasized that the parameters the court has to consider before granting the extension are:
 - i. Whether it was accidental or due to inadvertence or some other reasonable cause.
 - ii. Whether non-compliance has prejudiced the creditors or members of the company.
 - iii. If it is just, equitable, fair and reasonable.
 - iv. Whether the mistake, or omission and misstatement is rectifiable
9. In the present case, the Court notes that the delay is sufficiently explained as arising from administrative processes at the Land Registry rather than dilatoriness by the Applicant.
10. Accordingly, the Court finds merit in the Motion and makes the following Orders:
 - i. Leave be and is hereby granted, extending time for the registration at the Companies Registry of the First Legal Charge

dated 1 September 2025 and the Debenture dated 16 September 2025 created by Vadvai Growers Limited in favour of Victoria Commercial Bank PLC.

- ii. The First Legal Charge and the Debenture shall be presented at the Companies Registry **within seven (7) days from the date hereof** for registration.
 - iii. There shall be no orders as to costs.
11. It is so ordered.

SIGNED, DATED, AND DELIVERED IN VIRTUAL COURT THIS

26TH JANUARY 2026

A handwritten signature in blue ink, appearing to read 'Ado Moses', is written over a light blue grid background.

ADO MOSES

JUDGE