



**In re Diamond Trust Bank Kenya Limited (Miscellaneous Civil Application E316 of 2026)  
[2026] KEHC 4049 (KLR) (Commercial and Tax) (15 March 2026) (Ruling)**

Neutral citation: [2026] KEHC 4049 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX**

**MISCELLANEOUS CIVIL APPLICATION E316 OF 2026**

**BK NJOROGE, J**

**MARCH 15, 2026**

**IN THE MATTER OF: SECTIONS 877, 878, 885, 888 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 A DEBENTURE DATED 17 NOVEMBER 2025 OVER THE FIXED  
AND MOVABLE ASSETS IN THE NAME GRIENFIELDS TEA FACTORY LIMITED**

**IN THE MATTER OF  
DIAMOND TRUST BANK KENYA LIMITED ..... APPLICANT**

**RULING**

1. This Ruling relates to the Applicant's *ex parte* Notice of Motion dated 13<sup>th</sup> March, 2026, brought pursuant to Sections 877, 878, 885 and 888 of the *Companies Act* No. 17 of 2015, Sections 1A, 1B, 3 & 3A of the *Civil Procedure Act* Cap 21 Laws of Kenya, Order 51 Rule 1 of the Civil Procedure Rules, 2010 and all enabling provisions of the law.
2. Through the said application, the Applicant has moved this Court seeking the following reliefs:
  1. That this application be certified urgent and same be heard on priority basis.
  2. That the time for lodging the particulars of a Debenture dated 17 November, 2025 created in favour of the Applicant over land reference number Kericho/chemaner/1613 together with the Debenture itself, with the Registrar of Companies for registration under Section 878 of the above Act be extended under the provisions of Section 888 (1) (a) (b), (2) (b) of the above Act by a



further 30 days from the date of issue of the Order of this Honourable Court or by such other period at this Honourable Court shall think fit.

3. That the costs of this application be provided for.

3. This Application was supported by the sworn affidavit of Janjo David, an Advocate of the High Court of Kenya, dated the same day as the Application. Mr. Janjo practices in the firm of M/s Madhani Advocates LLP, who have conduct of this matter on behalf of the Applicant.

### Issues For Determination

4. 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 Debenture dated 17 November 2025 at the Companies Registry out of time.

### Analysis

5. Pursuant to Section 884 of the [Companies Act](#), the Registrar of Companies is mandated to maintain a register of charges and debentures, 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 and debenture 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. Section 2 of the [Companies Act](#) defines a debenture as;

“debenture”, in relation to a company, includes debenture stock, bonds and any other securities of a company (whether or not constituting a charge on the assets of the company);

6. 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 Debenture 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 and debenture, save for the registration, which was delayed due to reasons sufficiently explained and which were beyond their control.

7. In his affidavit, Counsel for the Applicant deponed that he was aware that to secure repayment of a financial facility of USA\$ 4,590,000.00, the Applicant and Grienfields Tea Factory Limited (the Borrower) executed a Debenture dated 17 November, 2025. This was over the Borrower's fixed and movable assets. On 19 November, 2025, the Applicant presented the Debenture dated 17 November, 2025 at the Bomet County Lands Registry. That Stamp duty was assessed and settled on 19 November, 2025 after which the same was duly registered.

8. That immediately afterwards, the Applicant presented the Debenture at the Companies Registry for registration. It was then realized that the property had a previous Debenture whose details had not been updated on the Borrower's BRS Portal. As such, the Applicant had to update the portal and discharge the said historical encumbrance on the property before presentation of the Debenture dated 17 November, 2025 for registration.



9. That pursuant to Section 885 of the Companies Act, the Debenture dated 17 November, 2025 ought to have been registered at the Companies Registry within thirty (30) days of its creation, that is, by 17 December, 2025. However, by the time the Applicant discharged the historical Debenture, the thirty (30) days within which the current Debenture ought to have been registered had already expired. This led to the filing of the present application. The applicant seeks that this Court enlarges the time within which the Applicant ought to register the Debenture dated 17 November, 2025 at the Companies Registry by a further thirty (30) days.
10. Pursuant to Section 885 of the Companies Act, No. 17 of 2015, the Company was required to register the Debenture with the Registrar of Companies within thirty (30) days from the date of its creation. The delay in presenting the Debenture for registration at the Companies Registry was occasioned by delays in the due to removal of the historical encumbrances, which delay was unintentional and inadvertent and beyond the control of both the Applicant and the Chargor.
11. The omission in the present case pertains solely to the failure to register the Debenture at the Companies Registry within the statutory period prescribed under Section 885 of the Companies Act. Notwithstanding this procedural lapse, the Debenture 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 Debenture 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.
12. 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 Debenture, 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 13<sup>th</sup> March, 2026 are hereby granted.

### **Determination**

13. The Court allows the Applicant's Exparte Notice of Motion dated 13<sup>th</sup> March, 2026 in the following terms;
  - a. That this application be and is hereby certified as urgent and same be and is hereby heard on a priority basis.
  - b. THAT the time for lodging the particulars of a Debenture dated 17 November, 2025 created in favour of the Applicant over land reference number Kericho/chemaner/1613 together with the Debenture itself, with the Registrar of Companies for registration under Section 878 of the above Act be and is HEREBY extended under the provisions of Section 888 (1) (a) (b),(2) (b) of the above Act by a further thirty (30) days from the date of issue of the Order of this Honourable Court.



c. THAT there be no orders as to costs.

14. It is so ordered.

15. The file is hereby closed.

**DATED, SIGNED AND DELIVERED AT MILIMANI THIS 15<sup>TH</sup> DAY OF MARCH, 2026.**

**NJOROGE BENJAMIN K.**

**JUDGE.**

