

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**COMMERCIAL & TAX DIVISION**  
**MISCELLANEOUS APPLICATION NO. E311 OF 2026**

**IN THE MATTER OF: THE COMPANIES ACT 2015**

**AND**

**IN THE MATTER OF: AN APPLICATION TO CORRECT AN  
OMMISSION OR A MISSTATEMENT OF A PARTICULAR  
WITH RESPECT TO A CHARGE/DEBENTURE**

**SIDIAN BANK  
LIMITED .....APPLICAN  
T**

**AND**

**ELEPHANT CONSTRUCTION  
COMPANY .....DEFENDANT**

**EXPARTE**

**RULING**

1. This Ruling arises from the Applicant’s *exparte* Notice of Motion dated 12th March, 2026. Through the said application, the Applicant has moved this Court seeking the following reliefs:

*(a) THAT this Honourable Court be pleased to certify the instant Application as urgent and the same be heard Exparte.*

*(b) THAT this Honourable Court be pleased to grant an order or direct the Registrar of Companies to allow the Applicant through its Advocate to amend/correct the Debenture amount in figures on Form CR25 (PARTICULARS OF CHARGE CREATED BY A COMPANY REGISTERED IN KENYA) reference No. ENC-K78HDR3 in relation to the*

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*Respondent's Debenture in favour of the Applicant to read Kshs. 110,400,000/= instead of Kshs. 110,400/= to align with the amounts in words of the said Form CR25 Reference No. ENC-K78HDR3 be deemed amended or corrected for the amount in figures to be read as Kshs. 110,400,000/= instead of Kshs. 110,400/= to align with the amount in words.*

*(c) THAT the Registrar of Companies be ordered or directed to amend the amount in figures on the Business Registration Service System/Platform in relation to the CR25 application reference number ENC - K78HDR3 for the amount to read Kshs. 110,400,000/= instead of Kshs. 110,400/= to align with the amounts in words to enable the Applicant procure a Post-registration Company Search (CR-12) showing the correct amount of Kshs. 110,400,000/= in both figures and words.*

*(d) THAT the Court grants such other orders as it may deem fit.*

2. This Application was supported by the sworn affidavit of **David Kimani Njuguna**, an Advocate of the High Court of Kenya, dated the same day as the Application. **Mr Njuguna** practices in the firm of **M/s Mwamuye, Kimathi & Kimani 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 orders of amendment and rectification of the Companies Register should be granted for Form CR25 (PARTICULARS OF CHARGE CREATED BY A COMPANY REGISTERED IN KENYA) reference No. ENC-K78HDR3 in relation to the Respondent's Debenture in favour of the Applicant to read Kshs. 110,400,000/= instead of Kshs.*

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*110,400/= to align with the amounts in words of the said Form CR25 Reference No. ENC-K78HDR3.*

### **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 888** the power to rectify such entries is granted as follows;

#### **888. Rectification of register of charges**

**(1) A company or interested person who claims that a failure to register a charge before the deadline for registration, or an omission or misstatement of a particular with respect to any such charge or in a memorandum of satisfaction or release—**

**(a) was accidental or due to inadvertence or to some other reasonable cause; or**

**(b) is not of a nature to prejudice the position of creditors or members of the company, may apply to the Court for an order under subsection (2)**

**(2) If, on the hearing of an application made under subsection (1), the Court is satisfied—**

**(a) that the failure, or the omission or misstatement—**

**(i) was accidental or due to inadvertence or to some other reasonable cause; or**

**(ii) is not of a nature to prejudice the position of creditors or members of the company; or**

**(b) that on other grounds it is just and equitable to grant relief, the Court may, subject to such conditions (if any) as it considers fair and reasonable, order the deadline for**

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**registration to be extended, or the omission or misstatement to be corrected.**

5. The Firm of **M/s Mwamuye, Kimathi & Kimani Advocates** are said to have received instructions to create an All Assets & Floating Debenture over all the assets of the Respondent and this was promptly done. This was to secure a loan of Kshs. 110,400,000/=.

6. At the time of registration of the Debenture at the Companies Registry pursuant to Form CR25 (PARTICULARS OF CHARGE CREATED BY A COMPANY REGISTERED IN KENYA) reference No. ENC-K78HDR3, the amount was erroneously indicated as 110,400/= instead of the correct amount of Kshs.110,400,000/=.

7. It is this amount of Kshs.110,400/= that is now said to be reflected in the post Companies Registry search Form CR12, instead of the correct sum of Kshs. 110,400,000/=.

8. The Court has perused the Debenture document dated 3rd March, 2026. It captures the correct amount of Kshs.110,400,000/.

9. The explanation given is that the error occurred during registration processes It is more like a glitch in the system. Form CR25 attached to the Affidavit in support shows the particulars of the amount secured by the charge as;

*“Kshs. 110,400/= KENYA SHILLINGS ONE HUNDRED AND TEN MILLION FOUR HUNDRED THOUSAND ONLY”.*

10. This is an obvious error that is not supported by the Debenture document.

11. The Court takes note of the powers of rectification of the Companies Register pursuant to a Court order donated by **Section 863 of the Companies Act** as follows;

**863. Rectification of the Register under Court order**

**(1) The Registrar shall remove from the Register any entry—**

**(a) that derives from anything that the Court has declared to be invalid or ineffective, or to have been done without the authority of the company; or**

**(b) that the Court has declared to be factually inaccurate; or to be derived from something that is factually inaccurate or is forged, and that the Court has directed to be removed from the Register.**

**(2) The Court shall specify in the order the entry that is to be removed from the Register and indicate where in the Register it is to be found.**

**(3) The Court may not make an order for the removal from the Register of any entry the registration of which had legal consequences as mentioned in section 861**

**(3) unless it is satisfied—**

**(a) that the presence of the entry in the Register has caused, or may cause, damage to the company concerned; and**

**(b) that the company's interest in removing the entry outweighs the interest (if any) of other persons in the continued appearance of the entry in the Register.**

**(4) If, in such a case, the Court makes an order for removal, it may make such consequential orders as appear just with respect to the legal effect (if any) to be accorded to the entry because it has appeared in the Register.**

**(5) The Court shall ensure that a copy of its order is sent to the Registrar for registration.**

**(6) This section does not apply in respect of an entry in the Register if the Court has other specific powers under this Act to deal with the matter.**

12. This Court has had an opportunity to examine its jurisdiction to amend and rectify the particulars of a charge in

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the decision of **Masafi Fruits and Veg. Limited v Commercial International Bank Kenya Limited [2026] KEHC 2038 (KLR)**. The Court is still persuaded that it holds such powers.

13. The Court is persuaded that pursuant to the parameters provided for by **Section 888 (2)(a)(i) and (ii) of the Companies Act**, the misstatement or error was accidental or inadvertent and does not prejudice the Creditors or the members of the Company. Further that the rectification of the Companies Register aligns with the requirements of **Section 863** of the Act as cited above.

14. Accordingly, the Court is satisfied that the Applicant has provided a reasonable explanation for the error and misstatement, that the error is capable of remedy, and that no prejudice has been occasioned to any party. The orders sought align with the facilitative mandate of this Court as spelt out in the Companies Act. The Court therefore finds it just and equitable to exercise its discretion under **Section 888(2) of the Companies Act**. In the result, the prayers sought in the Notice of Motion dated 12th March, 2026 are hereby granted.

#### Determination

15. The application dated 12th March, 2026 is allowed as follows;

(a) THAT this Court HEREBY certifies the instant Application as urgent and the same be and is HEREBY heard *Exparte*.

(b) THAT this Court HEREBY grants an order or directs the Registrar of Companies to allow the Applicant through its Advocate to amend/correct the Debenture amount in figures on Form CR25 (PARTICULARS OF CHARGE CREATED BY A COMPANY REGISTERED IN KENYA) reference No. ENC-K78HDR3 in relation to the Respondent's Debenture in favour of the Applicant to read Kshs. 110,400,000/=

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instead of Kshs. 110,400/= to align with the amounts in words of the said Form CR25 Reference No. ENC-K78HDR3 be deemed amended or corrected for the amount in figures to be read as Kshs. 110,400,000/= instead of Kshs. 110,400/= to align with the amount in words.

(c) THAT the Registrar of Companies is HEREBY ordered or directed to amend the amount in figures on the Business Registration Service System/Platform in relation to the CR25 application reference number ENC - K78HDR3 for the amount to read Kshs. 110,400,000/= instead of Kshs. 110,400/= to align with the amounts in words to enable the Applicant procure a Post-registration Company Search (CR-12) showing the correct amount of Kshs. 110,400,000/= in both figures and words.

(d) THAT there be no orders as to costs.

16. It is so ordered.

17. The file is hereby marked as closed.

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

**NJOROGE BENJAMIN K.  
JUDGE**