

**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT NAIROBI**

**MILIMANI COMMERCIAL AND TAX DIVISION**

**MILIMANI LAW COURTS**

**MISCELLANEOUS CIVIL APPLICATION NO. E387 OF 2026**

**IN THE MATTER OF CRETE SOLUTIONS**

**AND**

**IN THE MATTER OF KCB BANK KENYA LIMITED**

**AND**

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

**AND**

**IN THE MATTER OF AN APPLICATION FOR RECTIFICATION  
OF REGISTER OF CHARGES AT THE COMPANIES REGISTRY**

**CRETE SOLUTIONS LIMITED.....**

**APPLICANT**

**VERSUS**

**KCB BANK KENYA LIMITED.....**

**RESPONDENT**

**RULING**

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1. This Ruling is in respect of the Applicant's application by way of Notice of Motion dated 1.4.2026.

**Background Facts:**

2. The Notice of Motion dated 1.4.2026 seeks the following prayers:

- 1) *Spent.*

- 2) *THAT this Honourable Court be pleased to order the Registrar of Companies to rectify the register of charges in respect to the Charge dated 9<sup>th</sup> February 2026 over Title No. Kwale/Diani/S.S/843 which was erroneously created and/or registered as dated 16<sup>th</sup> February 2026 as an encumbrance with the Registrar of Companies as per the powers conferred on it by Section 888 of the Companies Act 2015.*

- 3) *THAT an order do issue and requiring the Registrar of Companies to strike out the Charge dated 16<sup>th</sup> February 2026 and extend the time to register the Charge dated 9<sup>th</sup> February 2026 over Title No. Kwale/Diani/S.S/843 as created by Crete Solutions*

*Limited as an Encumbrance in favour of KCB Bank Kenya limited.*

4) *THAT the costs of this Application be in the cause.*

3. The application is supported by the affidavit of **SAMORA MARSHEL** sworn on the same date. **Mr. Marshal** is an Advocate practicing as such in the firm of **M/s. Kipkenda & Company Advocates**. He depones that the Applicant created a Charge dated 9.2.2026 over Title No. Kwale/Diani/S.S/843 in favour of **KCB Bank Kenya Limited** as Chargee and **Crete Solutions Limited** as Chargor and the borrower.
4. This Charge was registered at Kwale Land Registry on 18.2.2026 and presented at the Companies Registry on 3.3.2026. It was registered at the Companies Registry on the same date and a Certificate of Registration of a Charge issued on 3.3.2026.
5. The Court has seen the annexed copy of the Charge dated 9<sup>th</sup> February, 2026 between **Crete Solutions Limited** and **KCB Bank Kenya Limited**.

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6. It is deponed that the details of the registration of the Charge at the company registry speak of a Charge dated 16.2.2026. That this is erroneous since the Charge is the one dated 9.2.2026.
7. The Court has seen the attached documents showing the details of registration of the Charge, said to be erroneous. A copy of the letter of offer by the Bank for the mortgage facility is dated 27.8.2025. A copy of the Title dated 18.2.2026 is also attached.
8. The error in the registration of the details of the Charge is in the descriptive date given as 16<sup>th</sup> February, 2026 instead of 9<sup>th</sup> February, 2026.

### **Issues for Determination**

9. The Court notes a single issue for determination being;
  - a) *Whether the Court should allow the rectification of the register of charges at the Companies Registry as prayed for in the Notice of Motion.*

### **Analysis**

10. The powers of the Court to rectify the register at the Companies Registry are provided for at **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**

11. Further **Section 888 of the Companies Act** states 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 registration to be extended, or**

**the omission or misstatement to be corrected.**

12. The Court is persuaded that it does have powers to direct the rectification of the register. This is pursuant to **Section 863** as reads together with **Section 888 of the Companies Act**. The Court follows its earlier decision in **Sidian Bank Limited v Elephant Construction Company [2026] KEHC 4050 (KLR)**.

13. It is deponed that the error was inadvertent. The Court has no reason to doubt that and finds the explanation given to be plausible and excusable. The Court allows the application with no orders as to costs.

### **Determination**

14. The Applicants application by way of Notice of Motion dated 1<sup>st</sup> April, 2026 is allowed in the following terms;

- 1) *THAT this Honourable Court HEREBY orders the Registrar of Companies to rectify the register of charges in respect to the Charge dated 9th*

OF 2026

*February 2026 over Title No. Kwale/Diani/S.S/843 which was erroneously created and/or registered as dated 16th February 2026 as an encumbrance with the Registrar of Companies as per the powers conferred on it by Section 888 of the Companies Act 2015.*

- 2) *THAT an order HEREBY issues requiring the Registrar of Companies to strike out the Charge dated 16th February 2026 and extend the time to register the Charge dated 9th February 2026 over Title No. Kwale/Diani/S.S/843 as created by **Crete Solutions Limited** as an Encumbrance in favour of **KCB Bank Kenya limited**.*
- 3) *THAT there be no orders as to costs.*

15. The file is marked as closed.

16. It is so ordered.

**DATED, SIGNED AND DELIVERED AT MILIMANI THIS 16<sup>TH</sup> DAY OF APRIL, 2026.**

**NJOROGE BENJAMIN K.  
JUDGE**

OF 2026

**In the presence of;**

Miss Tarus for 1<sup>st</sup> Applicants.

Mr. Peter Wabwire - Court Assistant.