

Advocates LLP, who have conduct of this matter on behalf of the Applicants.

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 register the Charge dated 5th February, 2026 at the Companies Registry out of time.

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. The Court has considered the reasons for delay as advanced by Counsel for the Applicant. There was delay in the registration process of the Charge at the lands Registry. This led to the expiry of the period of thirty (30) days for the registration of the Charge. This delay is excusable.
7. Counsel averred that, while they were able to obtain duly registered security documents from the Lands Registry, they were unable to register the 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 Charge at the Lands Office. Pursuant to **Section 885 of the Companies Act, No. 17 of 2015**, the Company was required to register the Charge with the Registrar of Companies within thirty (30) days from the date of its creation. The delay in presenting the Charge for registration at the Companies Registry was occasioned by delays in the registration of the Charge, which delay was

unintentional and beyond the control of both the Applicant and the Chargor.

8. The omission in the present case pertains solely to the failure to register the Charge at the Companies Registry within the statutory period prescribed under **Section 885 of the Companies Act**. Notwithstanding this procedural lapse, the Charge 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 Charge 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.
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 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

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 08th April, 2026 are hereby granted.

Determination

10. The application dated 08th April, 2026 is allowed as follows;

*(a) THAT this Honourable Court HEREBY extends time within which to register with the Registrar of Companies the Charge dated 5th February, 2026 over Title Number Nairobi/Block 199/454 **by Afriwell Limited** and created in favour of **I & M Bank Limited** for a further period of 30 days with effect from the date of the issue of the order.*

(b) THAT the cost of this application be in the cause.

13. It is so ordered.

14. The file is hereby closed.

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

NJOROGE BENJAMIN K.
JUDGE

In the presence of;

Miss Nyambura for the Applicant.

Mr. Peter Wabwire - Court Assistant.