

**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**COMMERCIAL & TAX DIVISION-MILIMANI**

**MISCELLANEOUS CAUSE NO. 377 OF 2026**

**IN THE MATTER OF VISIONFUND**

**KENYA LIMITED**

.....**APPLICANT**

**AND**

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

**EXPARTE: SOLUTI FINANCE EAST**

**AFRICA LIMITED. ....INTERESTED**

**PARTY**

**AND**

**In the matter of an Application for extension of time within which the particulars of a charge on immoveable property or interest in immoveable property created by a company registered in Kenya may be registered**

**RULING**

1. The Applicant has presented an application under the High Court Vacation Rules, seeking that the Chamber Summons dated 30<sup>th</sup> March, 2026 be certified as urgent and heard

during the Easter Recess of the High Court. The Application is brought under the provisions of **Articles 48, 50 & 231 of the Constitution of Kenya; Section 10 of the High Court Organization and Administration Act, 2015; Section 10 of the Judicature Act, Chapter 8 of the Laws of Kenya; Rule 3(1) & (2) of the High Court (Practice and Procedure Rules)** and relies upon the inherent jurisdiction of this Honourable Court.

2. The Court is persuaded that for the reasons set out in the Chamber Summons, the commercial interests at play are such that the Court is inclined to admit and hear this matter during the Easter Recess.
3. The Court now turns to the main application before the Court. It relates to the extension of time to register a Debenture.
4. This Ruling relates to the Applicant's *ex parte* Notice of Motion dated 30th March, 2026, brought pursuant to **Sections 885 and 888 of the Companies Act** and all other enabling provisions of the law. Through the said application, the Applicant has moved this Court seeking the following reliefs:

(1.) *This Application be certified urgent and the same be heard*

*ex parte;*

(2.) *The time for registration of the Debenture dated 17th February 2026 over a high-quality loan portfolio created by the aforesaid **VISIONFUND KENYA LIMITED** as the Borrower*

*on the one hand and **SOLUTI FINANCE EAST AFRICA** as Lender on the other hand and all the particulars thereof in the prescribed form under the provisions of the Companies Act, be extended by 21 days from the date hereof or such further period as the Court may order;*

*(3.) A copy of the Order herein be served upon the Registrar of Companies for noting and further action;*

*(4.) There be no orders as to costs.*

5. This Application was supported by the sworn affidavit of **MARYLUCY CHEBET**, an Advocate of the High Court of Kenya, dated the same day as the Application. **Ms CHEBET** practices in the firm of **M/s TripleOKLaw LLP**, who have conduct of this matter on behalf of the Applicant.

### **Issues for Determination**

6. 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 17th February 2026 at the Companies Registry out of time.*

### **Analysis**

7. 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);*

8. 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 and debenture, save for the registration, which was delayed due to reasons sufficiently explained and which were beyond their control.
9. In her affidavit, Counsel for the Applicant deponed that received the undated Debenture on 12th of February 2026

from the Interested Party to effect registration of the Debenture between **VisionFund Kenya Limited**, a limited liability company incorporated as such under the provisions of the Companies Act, as the borrower on the one hand and **Soluti Finance East Africa Limited** a limited liability company incorporated in the Republic of Uganda as Lender the other hand. There was delay in presenting the documents as the Borrower sought exemption from Stamp Duty. The exemption was finally secured on 17<sup>th</sup> February, 2026. Thereafter it took time since receipt of the exemption of Stamp Duty for the Debenture to be registered. The delay was caused by the fact that the Directors of the Borrower were unable to release their E-Citizen Login details to enable the Advocates make the application on the E-Citizen platform.

10. Counsel averred that she has ascertained personally that the Borrower has to date also not caused the registration of the said Debenture or the particulars thereof to be undertaken with the Registrar and also that it has not made any Application to the Court similar to the present one.
11. Thus, the registration of the Debenture at the Companies Registry has not taken place. This is because the statutory period for such registration had already lapsed during the period taken to assess, stamp, and register the Debenture at the Lands Office. 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 seeking the exemption for stamp duty on the Debenture and the registration thereof, which delay was unintentional and beyond the control of both the Applicant and the Interested Party.

12. 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, exempted from payment of stamp duty, 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 willful 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.
13. 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, exemption from Stamp Duty, 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 30<sup>th</sup> March, 2026 are hereby granted.

**Determination**

14. The Applicant's Application under a Certificate of Urgency by way of a Chamber Summons dated 30<sup>th</sup> March, 2026 is allowed in the following terms;
- (1) *THAT the application be and is HEREBY certified as urgent and the service thereof be dispensed with in the first instance;*
  - (2) *THAT the Honourable Court HEREBY certifies the Notice of Motion dated 30th March 2026 filed herewith as urgent and HEREBY admits it for hearing during the Easter 2026 High Court recess;*
  - (3) *THAT there be no orders as to costs.*

15. THAT with regard to the Applicant's Application by way of a Notice of Motion dated 30<sup>th</sup> March, 2026, the same is allowed in the following terms;

(1) *THAT this Application is HEREBY certified urgent and the same is HEREBY heard ex parte;*

(2) *THAT the time for registration of the Debenture dated 17th February 2026 over a high-quality loan portfolio created by the aforesaid **VISIONFUND KENYA LIMITED** as the Borrower on the one hand and **SOLUTI FINANCE EAST AFRICA** as Lender on the other hand and all the particulars thereof in the prescribed form under the provisions of the Companies Act, is HEREBY extended by 21 days from the date of this Ruling;*

(3) *THAT a copy of the Order herein be served upon the Registrar of Companies for noting and further action;*

(4) *THAT there be no orders as to costs.*

16. The file is hereby closed.

**DATED, SIGNED AND DELIVERED AT MILIMANI THIS 01<sup>ST</sup> DAY OF APRIL, 2026.**

**NJOROGE BENJAMIN K.  
JUDGE**