

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL AND ADMIRALTY DIVISION
MISC. CIVIL APPLICATION NO. E433 of 2026
EX - PARTE
IN THE MATTER OF THE COMPANIES ACT
AND
IN THE MATTER OF AN APPLICATION TO EXTEND THE TIME
FOR
REGISTRATION OF A FURTHER CHARGE BY

THE CO-OPERATIVE BANK OF KENYA LIMITED.....1ST
APPLICANT

AND

THE FRESH PRODUCTS (EPZ) LIMITED.....2ND
APPLICANT

RULING

1. This Ruling pertains to the Applicants' *ex parte* Notice of Motion dated 16th April, 2026, brought pursuant to Under **Section 885 and 888 of the Companies Act 2015, Order 51 of the Civil Procedure Rules and Sections 7 and 3A of the Civil Procedure Act and all the other enabling provisions of the Laws of Kenya**. Through the said application, the Applicants have moved this Court seeking the following reliefs:

(a) *This application be certified as urgent and service of this application be dispensed with and heard ex-parte in the first instance.*

(b) *That this Honourable Court be pleased to extend the time within which to register the Further Charge dated 16th February 2026 issued by **THE FRESH PRODUCTS (EPZ) LIMITED** over Title Number Loc.5/Kabati/2224 in favour of*

THE CO-OPERATIVE BANK OF KENYA LIMITED with the Registrar of Companies for such period of time as this Honourable Court shall deem appropriate as per the powers conferred on it by **Section 888 of the Companies Act, 2015.**

(c) This Honourable Court be pleased to grant an Order pursuant to Section 888 of the Companies Act 2015 that once the Further Charge is so registered, the said Further Charge be deemed to have been filed with the Registrar of Companies in compliance with the Companies Act 2015

2. This Application was supported by the sworn affidavit of **Alfred Mutua Muthama**, an Advocate of the High Court of Kenya, dated the same day as the Application. **Mr. Muthama** practices in the firm of **M/s Wangai Nyuthe & Company Advocates**, 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 Further Charge dated 16th 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. In his affidavit, Counsel for the Applicant deponed that his firm was instructed by the 1stApplicant herein to prepare and

register a Further Charge over Title Number Loc.5/Kabati/2224. This was as a security for Kenya Shillings Sixty-Seven Million Five Hundred Thousand (Kshs. 67,500,000/=) plus interest in respect of the sums to be advanced to the 2nd Applicant. That pursuant to receipt of the said instructions, the Advocates prepared the Further Charge and proceeded to have the same executed by the respective parties. That they then embarked on paying stamp duty and booking the Further Charge for registration at Murang'a Lands Registry on 25.2.2026. That they were advised that all transactions relating to properties situated in Loc.2 and Loc. 5 area were being pursued on Ardhi Sasa platform. That pursuant to the Lands Registry advice as aforesaid, they proceeded to apply for verification of the Title on Ardhi Sasa Platform. However, there was delay in verification of Title on the said Platform at Murang'a Lands Registry occasioned by missing Land records. That it was not until 8th April 2026 that manual registration of the Further Charge was approved and the said Further Charge was finally registered and released to the Advocated. That by then, the 30 days period within which to register the said documents with the Registrar of Companies had lapsed

7. The omission in the present case pertains solely to the failure to register the Further Charge at the Companies Registry within the statutory period prescribed under **Section 885 of the Companies Act**. Notwithstanding this procedural lapse, the Further 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 Further 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. This is in line with the general principles of the Companies Act, which favour the promotion of substantive rights and commercial certainty.

8. 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 Further 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 16th April, 2026 are hereby granted.

Determination

9. That the Application by way of a Notice of Motion dated 16th April, 2026 is allowed in the following terms;
 - (a) *This application be and is HEREBY certified as urgent and service of this application be and is HEREBY dispensed with and the application is HEREBY heard ex-parte in the first instance.*
 - (b) *That this Honourable Court HEREBY extends the time within which to register the Further Charge dated 16th February 2026 issued by **THE FRESH PRODUCTS (EPZ) LIMITED** over Title Number Loc.5/Kabati/2224 in favour of **THE CO-OPERATIVE BANK OF KENYA LIMITED** with the Registrar of Companies for a period of Thirty (30) days from the date of this Ruling as per the powers conferred on it by **Section 888 of the Companies Act, 2015**.*
 - (c) *This Honourable Court HEREBY grants an Order pursuant to **Section 888 of the Companies Act 2015** that once the Further Charge is so registered, the said Further Charge be deemed to have been filed with the Registrar of Companies in compliance with the Companies Act 2015*

10. Given the nature of the application, there shall be no order as to costs.
11. It is so ordered.
12. The file is hereby marked as closed.

**DATED, SIGNED AND DELIVERED AT MILIMANI THIS 20TH
DAY OF APRIL, 2026.**

**NJOROGE BENJAMIN K.
JUDGE**