

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL & TAX DIVISION
MILIMANI LAW COURTS
MISC. CIVIL APPLICATION NO. E463 OF 2026
IN THE MATTER OF: SECTIONS 877, 878, 885, 888 OF
THE COMPANIESACT, NO.17 OF 2015 LAWS OF KENYA
AND
IN THE MATTER OF: AN APPLICATION FOR EXTENSION OF
TIME FOR THE REGISTRATION OF A LEGAL CHARGE
DATED 20 NOVEMBER 2025 OVER PROPERTY KNOWN AS
KAJIADO/KISAJU/2713REGISTERED IN THE NAME OF
MAUA AGRITECH PLC CHARGED TO DIAMOND TRUST
BANK KENYA LIMITED
AND
DIAMOND TRUST BANK KENYA LIMITED.....
APPLICANT
RULING

1. This Ruling relates to the Applicant’s *exparte* Notice of Motion dated 23rd April, 2026, brought pursuant to **Section 877, 878, 885 and 888 of the Companies Act No. 17 of 2015, Sections 1A, 1B, 3 & 3A of the Civil Procedure Act Cap 21 Laws of Kenya, Order 51 Rule 1 of the Civil Procedure Rules, 2010 and all enabling provisions of the law**. Through the said application, the Applicant has moved this Court seeking the following reliefs:

2026

(a) Spent.

(b) *THAT the time for lodging the particulars of a Legal Charge dated 20 November 2025 created in favour of the Applicant over land reference number KAJIADO/KISAJU/2713 together with the Charge itself, with the Registrar of Companies for registration under **Section 878 of the above Act** be extended under the provisions of **Section 888 (1) (a) (b),(2) (b) of the above Act** by a further 30 days from the date of issue of the Order of this Honourable Court or by such other period at this Honourable Court shall think fit.*

(c) *THAT the costs of this application be provided for.*

2. This Application was supported by the sworn affidavit of **JANJO DAVID**, an Advocate of the High Court of Kenya, dated the same day as the Application. **Mr. Janjo** practices in the firm of **M/s MADHANI ADVOCATES LLP**, 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

2026

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 Legal Charge dated 20th November 2025 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

2026

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 the creation of the securities herein. That to secure repayment of a financial facility of Euros 3,500,000.00, the Applicant and **Maua Agritech PLC** (hereinafter the "Chargor"), executed a Legal Charge dated 20th November 2025. This is over ALL THAT property known as KAJIADO/KISAJU/2713 registered in the Chargor's name.

7. That on 08th December 2025, the Applicant presented the Charge dated 20 November 2025 at the Kajiado Central and South land Registry where Stamp duty was assessed and settled on 08 December 2025. Thereafter the Charge was duly registered. Pursuant to **Section 885 of the Companies Act**, the Charge dated 20th November, 2025 ought to have been registered at the Companies Registry within 30 days of its

2026

creation, that is, by 20th December 2025. However, owing to the Chargor's delay in availing the requisite financial facilitation, the Applicant could not manage to have the Charge registered at the Companies' registry within time. That vide the application before the Court, the Applicant seeks that this Court enlarges the time within which the Applicant ought to register the Charge dated 30th November 2025 at the Companies Registry by a further 30 days. This is obviously an error as the copy of the Charge attached to the Application bears the date of 20th November, 2025. There is no Charge dated 30th November, 2025. The registration of the Securities is necessary for purposes of validating the same in favour of the Applicant herein. It is submitted that it is in the interest of justice that this Application be granted as prayed.

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

2026

view, clearly rectifiable. While it is acknowledged that non-registration at the Companies Registry may affect the enforceability of the Legal 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 Legal 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

2026

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 23rd April, 2026 are hereby granted.

Determination

10. The Applicant's Application by way of a Notice of Motion dated 23rd April, 2026 is allowed as follows;

*(a) THAT the time for lodging the particulars of a Legal Charge dated 20 November 2025 created in favour of the Applicant over land reference number KAJIADO/KISAJU/2713 together with the Charge itself, with the Registrar of Companies for registration under **Section 878 of the above Act** be and is **HEREBY** extended under the provisions of **Section 888 (1) (a) (b),(2) (b) of the above Act** by a further 30 days from the date of issue of the Order of this Honourable Court.*

(c) THAT the costs of this application be in the cause.

11. It is so ordered.

12. The file is hereby closed.

2026

**DATED, SIGNED AND DELIVERED AT MILIMANI THIS 27TH
DAY OF APRIL, 2026.**

NJOROGE BENJAMIN K.

JUDGE

In the presence of;

N/A for the Applicant.

Mr. John Paul - Court Assistant