

REPUBLIC OF KENYA
MILIMANI COMMERCIAL COURTS
MISCELLANEOUS CIVIL APPLICATION NO. E452 OF 2026

IN THE MATTER OF THE COMPANIES ACT 2015 AND
THE COMPANIES (HIGH COURT) RULES 1964

AND

IN THE MATTER OF AN APPLICATION BY

ASTRAL INDUSTRIES LIMITED
1ST APPLICANT

AND

M-ORIENTAL BANK LIMITED..... 2ND
APPLICANT

RULING

1. This Ruling pertains to the Applicant’s *ex parte* Notice of Motion dated 21st April, 2026, brought pursuant to **Section 2 and 3 of the Judicature Act, Cap 8 Laws of Kenya, Section 96 and 888(1) (a) of the Companies Act, 2015 and Rule 8(b) of the Companies (High Court) Rules 1964**. Through the said application, the Applicant has moved this Court seeking the following reliefs:

(a) *Spent.*

(b) *THAT there has been an inadvertent delay by the Registry personnel in registering the First Legal Charge dated 9th December, 2025 (the Charge) over the Property known as Title Number: Nairobi/Block125/1893 (the Property) on Ardhisasa Portal made by **ASTRAL INDUSTRIES LIMITED** in favour of **M-ORIENTAL BANK LIMITED** granting the Bank's Facilities to **ASTRAL INDUSTRIES LIMITED**.*

(c) *THAT this Honourable Court do extend the time to register the said First Legal Charge dated 9th December, 2025 for a further period of Thirty (30) days from the date of this order as provided under Section 888(2) (b) of the Companies Act, 2015, Laws of Kenya.*

2. This Application was supported by the sworn affidavit of **EVERLYNE MWACHINDA**, an Advocate of the High Court of Kenya, dated the same day as the Application. **Ms. MWACHINDA** practices in the firm of **M/s Taibjee & Bhalla, 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 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 First Legal Charge dated 9th December, 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 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 her affidavit, Counsel for the Applicant deponed that her Firm had the conduct of preparing the First Legal Charge dated 9th December, 2025 (the Charge) over the Property known as Title No. Nairobi/Block125/189327. The said First Legal Charge is yet to be registered at the Companies Registry. This is because there was an inadvertent delay by the Registry personnel in completing the registration of the said First Legal Charge dated 9th December, 2025 (the Charge). This is the security document over the property known as Title Number: Nairobi/Block125/1893 (the Property) made by **ASTRAL**

INDUSTRIES LIMITED in favour of **M-ORIENTAL BANK LIMITED** as Security for the Borrowing by **ASTRAL INDUSTRIES LIMITED** on the Ardhisasa Portal. That even though the Stamp Duty on the said First Legal Charge was paid on time, there was an inadvertent delay by the Registry personnel in completing the registration process on the Ardhisasa Portal. Hence the Thirty (30) days as provided **under Section 885 (1) (a) of the Companies Act, 2015, Laws of Kenya** lapsed in the process.

7. The registration of the said First Legal Charge has now been successfully completed on the Ardhisasa Portal and the Applicant is now ready to lodge the same for registration at the Companies Registry. That failure to register the said First Legal Charge within the time prescribed by **Section 885(1)(a) of the Companies Act No. 17 of 2015 Laws of Kenya** was not with any fraudulent intention but was entirely due to the delay on the Adhisasa Portal by the Registry personnel. That in view of the matters deponed to herein, Counsel respectively and humbly submits that the failure to register in time the particulars of the said First Legal Charge with the Registrar of

Companies by the Applicant was due solely to the reasons stated. It is therefore only just and equitable that the extension of time prayed for in the Application filed in these proceedings be granted so that such registration may be expeditiously affected.

8. Counsel averred that, while they were able to obtain duly registered security documents from the Lands Registry, they were unable to register the First Legal 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 First Legal Charge at the Lands Office. Pursuant to **Section 885 of the Companies Act, No. 17 of 2015**, the Company was required to register the First Legal Charge with the Registrar of Companies within thirty (30) days from the date of its creation. The delay in presenting the First Legal Charge for registration at the Companies Registry was occasioned by delays in the registration process, which delay was unintentional and beyond the control of both the Applicant and the Chargor.

9. The omission in the present case pertains solely to the failure to register the First Legal Charge at the Companies Registry within the statutory period prescribed under **Section 885 of the Companies Act**. Notwithstanding this procedural lapse, the First 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 view, clearly rectifiable. While it is acknowledged that non-registration at the Companies Registry may affect the enforceability of the First 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.
10. 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 First 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 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 21st April, 2026 are hereby granted.

Determination

11. The Applicant's Application by way of a Notice of Motion dated 21st April, 2026 is allowed as follows;

(a) *THAT there has been an inadvertent delay by the Registry personnel in registering the First Legal Charge dated 9th December, 2025 (the Charge) over the Property known as Title*

*Number: Nairobi/Block125/1893 (the Property) on Ardhisasa Portal made by **ASTRAL INDUSTRIES LIMITED** in favour of **M-ORIENTAL BANK LIMITED** granting the Bank's Facilities to **ASTRAL INDUSTRIES LIMITED**.*

*(b) THAT this Honourable Court HEREBY extends the time to register the said First Legal Charge dated 9th December, 2025 for a further period of Thirty (30) days from the date of this order as provided under **Section 888(2) (b) of the Companies Act, 2015, Laws of Kenya**.*

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

12. It is so ordered.

13. The file is hereby closed.

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