



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT CHUKA

CHUKA ELC MISC APPL. CASE NO 15 OF 2017

IN THE MATTER OF THE COMPANIES ACT

AND

IN THE MATTER OF AN APPLICATION TO EXTEND THE TIME FOR REGISTRATION OF A CHARGE BY

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

AND

KIJEGE HOLDINGS LIMITED.....2ND APPLICANT

RULING

1. On 30th April, 2018, this court delivered the following ruling:

RULING

1.This application is dated 26th April, 2018 and seeks orders:

1. That this application be certified as urgent and service of the same be dispensed with and be heard ex-parte owing to the nature of the application.
2. That the honourable court be pleased to review and/or set aside the orders of **21.9.2017** dismissing the applicants' Notice of Motion dated **18.5.2017** and reinstate the same for hearing.
3. That upon reinstatement the honourable court be pleased to grant the orders sought in the Notice of Motion dated **18.5.2017** as prayed since the same is an ex-parte application and it is not opposed.
4. That the costs of this application be costs in the cause.

2. The application has the following grounds:

- a) The applicants have been (sic) are still desirous of prosecuting the application dated **18.5.2017**.
- b) That non prosecution of the application was occasioned by circumstances beyond control of the applicants.
- c) The applicants' advocate regret the omission that led to the dismissal of the applicant's application dated **18.5.2017** and are willing to prosecute the same at once.

3. The application is supported by the affidavit of **GEORGE KARWENJI KIBIRA** and states as follows:

1. That I am an advocate of the high court of Kenya practicing as such in the firm of **G.K. Kibira & Co. Advocates** and personally having the conduct of the matter herein on behalf of the applicants herein and hence competent to swear this affidavit.
2. That on **18.5.2017**, our firm filed ex-parte Notice of Motion dated **18.5.2017** seeking for orders that the honourable court order (sic) be pleased to extend the time within which to register the charge dated **11th June, 2014** issued by **KIJEGE**

HOLDINGS LIMITED over **Title Number N. Tharaka/Marimanti/1031** (hence the “property”) in favour of **Co-operative Bank of Kenya Limited**, with the Registrar of Companies for such period of time as this Honourable Court shall deem appropriate.

3. That application dated **18.5.2017** also sought for orders that the honourable court be pleased to grant a further order pursuant to Section 888 of the Companies Act 2015 that once the charge is so registered, the said charge be deemed to have been filed with the Registrar in full compliance with the Companies Act 2015.

4. That we filed the said Notice of Motion dated **18.5.2017** under Certificate of Urgency on the same date but same could not be heard as the trial Judge was on leave and was given a hearing date on **27th June, 2017**.

5. That on **27th June, 2017**, we requested the firm of M/s Kijaru Njeru & Co. Advocates of Chuka to hold our brief and prosecute the application but erroneously diarized the date wrongly in their diaries. *Annexed hereto is a copy of our email of 3rd July, 2017 following up for the outcome marked – GKK 1.*

6. That on **6th September, 2017** our clerk attended court and on perusal of the court file noted the matter was on **27th June, 2017** stood over generally, and consequently fixed a mention date on **21st September, 2017**.

7. That I had personally made arrangements to attend court on **21st September, 2017** for mention and to persuade the court to allow the foresaid application as prayed but for reasons beyond my control I was unable to attend court due to an urgent family matter that I had to personally sought out.

8. That I tried to reach out to via my mobile phone to Mr.Kijaru and any other available counsel to hold my brief but I was unsuccessful as they were either engaged or could not be reached.

9. That the applicants are still desirous of prosecuting the application dated **18.5.2017** for reasons detailed in their supporting affidavit thereof and on the strength of the 1st defendant’s instructions letter dated **14th March, 2017** annexed hereto and marked **GKK – 2**.

10. That we came to learn of the dismissal when our clerk visited the court on **19.3.2018** and perused the court file and hereby apologize to the court. *Annexed hereto is copy of court receipts issued on payment of court perusal fees a marked GKK 3.*

11. That failure to obtain the orders sought in the application dated **18.5.2017** will greatly prejudice the 1st applicant whose security for the loan of **Kshs.5,000, 000/=** granted to the 1st defendant over **Title Number N. Tharaka/Marimanti/1031** will be at great risk and the 1st applicant risks to suffer huge financial loss in event the 2nd applicant fails to adhere to the loan repayment arrangements as per the charge created thereof the subject of this application.

12. That we pray that the honourable court be pleased not to visit omission of the advocates to the 1st applicant and allow this application, and if the honourable court deems it fit also allows the prayers sought in the Notice of Motion dated **18.5.2017** since there are no parties to be served (Ex-parte).

13. That it is only mete and just that the application be allowed, dismissal orders of **21.9.2017** be set aside and/or reviewed and the application dated **18.5.2017** be reinstated and be allowed as prayed.

14. That what is stated herein above is true to the best of my knowledge, belief and information.

4. M/s Kaaria, holding brief for Mr. Kibira, the applicants’ advocate, told the court that the application was not opposed as Mr.Kibira represents both applicants.

5. I do note that it is not denied that the apposite charge was not registered within the stipulated time. The court is then obliged to hear the 2nd applicant, **KIJEGE HOLDINGS LIMITED**, as registration of the charge outside the statutorily stipulated period one way or another affects it.

6. In the circumstances, it is ordered that the 2nd applicant be properly served with this application within 10 days of today and to appear in court on **23rd May, 2018** for hearing/ directions regarding this application.

7. It is so ordered.

Delivered in open court at Chuka this **30th day of April, 2018** in the presence of:

CA: Ndegwa

M/s Kaaria h/b Kibira for the Applicants

P.M. NJOROGI

JUDGE

2. At paragraph 6 of the ruling, this court ordered the 2nd applicant to be properly served with the apposite application within a stipulated period and the parties were ordered to come to court on **23rd May, 2018** for hearing and/or directions.
3. On **23rd May, 2018**, the parties did not come to court.
4. Several times, the parties did not come to court on days the matter had been listed for directions or hearing. I opine that the applicant has abused the court process and wasted precious judicial time.
5. I hereby dismiss this application.
6. It is so ordered.

Delivered in open court at Chuka this **23rd day of May, 2018** in the presence of:

CA: Ndegwa

Applicant absent

P. M. NJOROGE

JUDGE