



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT OF KENYA
AT NAKURU
MISC. CIVIL CAUSE NO. 143 OF 2017
FAULU MICROFINANCE BANK LIMITED.....APPLICANT

RULING

(Application to register a charge with the Registrar of Companies out of time; adequate reasons given; application allowed).

1. The application before me was filed on 16 May 2017 by Faulu Microfinance Bank Limited. It seeks an order that the applicant be allowed an extension of time for a further 30 days within which to register, with the Registrar of Companies, a charge dated 22 March 2017 in favour of County Wide (K) Investments Limited over the land parcel Nakuru Municipality Block 10/51.
2. The application is based inter alia on grounds that the law requires that the charge be registered with the Registrar of Companies within 30 days, which time has expired.
3. The supporting affidavit is sworn by Lawrence Macharia Karanja, who has deposed that his law firm received instructions on 9 March 2017 from the applicant to draw a charge over the suit land. The charge instrument was prepared and duly registered. He has annexed a copy of the official search of the property showing that the charge was registered on 24 March 2017. He proceeded to lodge the charge with the Registrar of Companies using copies of documents but he was asked to present the original ones. He sought the originals but by this time the 30 days period had lapsed. He has averred that this was an inadvertent mistake on the part of his law firm.
4. I have considered the application.
5. The Companies Act, 2015, does require that charges over land created by companies be registered with the Registrar of Companies. The applicable provision is Section 878 of the said statute which is drawn as follows :-

878. Charges created by a company

(1) A company that creates a charge to which this section applies shall, before the deadline for registration, lodge with the Registrar for registration the particulars of the charge prescribed by the regulations, together with the document (if any) by which the charge is created or evidenced.

(2) A charge to which this section applies is registrable on the application of any person who claims to have an interest in it.

6. It will be seen from Section 878 (1) above that the obligation to have the charge registered is actually that of the company, although a person having an interest in the charge may also apply to register it, as demonstrated by Section 878 (2). Section 878 (4) (a) does provide that among the charges that need to be registered is "*a charge on land or any interest in land (other than a charge for any rent or other periodical sum issuing out of land) owned by the company or in which it has a proprietorial interest*".

7. The type of charge created herein is a charge on land and therefore required to be registered. The time period within which the charge needed to be registered is provided in Section 885 of the Companies Act, 2015, which requires that such charge be registered with the Registrar of Companies within 30 days from the date on which the charge is created. Section 888 of the Act does allow for the company or interested person to apply for extension of time within which to register the charge. It is drawn as follows :-

888. Rectification of register of charges

(1) A company or interested person who claims that a failure to register a charge before the deadline for registration, or an omission or misstatement of a particular with respect to any such charge or in a memorandum of satisfaction or release—

(a) was accidental or due to inadvertence or to some other reasonable cause; or

(b) is not of a nature to prejudice the position of creditors or members of the company, may apply to the Court for an order under subsection (2).

(2) If, on the hearing of an application made under subsection (1), the Court is satisfied—

(a) that the failure, or the omission or misstatement—

(i) was accidental or due to inadvertence or to some other reasonable cause; or

(ii) is not of a nature to prejudice the position of creditors or members of the company; or

(b) that on other grounds it is just and equitable to grant relief, the Court may, subject to such conditions (if any) as it considers fair and reasonable, order the deadline for registration to be extended, or the omission or misstatement to be corrected.

8. It will be observed that the company or interested person, needs to demonstrate that the failure to register the charge within the stipulated period was accidental or was due to inadvertence or other reasonable cause. The court may also look at other grounds and consider whether in the circumstances, it is just and equitable to grant relief, and extend time for registration of the charge.

9. In our instance, the charge was created on 24 March 2017. It means that it needed to have been registered with the Registrar of Companies by 23 April 2017. In his affidavit, Mr. Karanja has explained that there was inadvertence on the part of his law firm in registering the said charge.

10. I am convinced that this is a fit case to grant an extension of time for the registration of the charge. I am persuaded by the explanation given by Mr. Karanja that the omission to register the charge within time was not intentional. The application for extension of time has been made by the chargee who is clearly an interested person. I do not see how any creditor or any member of the company will be prejudiced if I am to grant the orders sought.

11. I therefore allow this application. I do extend the time within which the charge over the land parcel Nakuru Municipality/Block 10/51 made by County Wide (K) Investments Limited ought to be registered with the Registrar of Companies by a period of 30 more days from today.

12. I make no orders as to costs.

13. It is so ordered.

Dated, signed and delivered in open court at Nakuru this 14th day of June 2017.

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT AT NAKURU

In presence of:

Ms. Gitau for the applicant

Court Assistant : Nelima

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT AT NAKURU