



**Dream Investment Limited v Registrar of Business Registration  
Service & another (Environment & Land Miscellaneous Case  
E226 of 2024) [2024] KEELC 13617 (KLR) (5 December 2024) (Ruling)**

Neutral citation: [2024] KEELC 13617 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND MISCELLANEOUS CASE E226 OF 2024  
MD MWANGI, J  
DECEMBER 5, 2024**

**BETWEEN**

**DREAM INVESTMENT LIMITED ..... APPLICANT**

**AND**

**REGISTRAR OF BUSINESS REGISTRATION SERVICE ..... 1<sup>ST</sup> RESPONDENT**

**ATTORNEY GENERAL ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

(In respect to the amended amended notice of motion dated 11<sup>th</sup> November 2024 brought under the provisions of sections 885 (1) and 888 (1) & (2) of the [Companies Act](#), order 51 of the Civil Procedure Rules and section 3A of the [Civil Procedure Act](#))

**Background**

1. The Applicant in this matter prays for two main orders as follows;
  - a. This Honourable court do make an order that the 1<sup>st</sup> Respondent do register the charge on L.R No. 1870/IX/189 Westlands, Nairobi registered at the Lands Registry in Nairobi on 13<sup>th</sup> August 2024 in favor of Guardian Bank Limited out of time.
  - b. This Honourable court be pleased to extend time for registration of the charge dated 24<sup>th</sup> July, 2024 created by Dream Investments Limited in favour of Guardian Bank Limited.
2. The Application is based on the grounds on the face of it and on the supporting affidavit of Godfrey Nathan Kitiwa, advocate for and on behalf of the Applicant, sworn at Nairobi on 11<sup>th</sup> November 2024.
3. The application is not opposed. The 1<sup>st</sup> Respondent through its advocate Ms. Akoth, informed the court that it was not opposed to the application.



## Determination

4. The fact that the application has not been brought under or premised on the provisions of any land laws of this country aroused my interest and made me dig deeper into the application with a view to establishing whether this court is clothed with the requisite jurisdiction to handle it.
5. The issue of jurisdiction is so critical in a case that even the court may raise it suo moto. This is so because, as Lucie-smith J, held in the case of Said Bin Seif vs Shariff Mohammed Shatry [1940] 19 (1) KLR 9;

“.....if a court has no jurisdiction over the subject matter of litigation, its judgments and orders, however precisely certain and technically correct, are mere nullities, and not only voidable; they are void and have no effect either as estoppel or otherwise and may not only be set aside at any time by the court in which they are rendered, but shall be declared void by every court in which they may be presented. It is well established in law that jurisdiction cannot be conferred on a court by consent of parties and any waiver on their part cannot make up for lack or defect of jurisdiction.”

6. In the case of In Re Family Bank Limited [2020]eKLR, Okong’o J, while considering an application similar to the one before me held that the ‘court’ with the jurisdiction to extend time under section 888 of the *Companies Act* is the High Court. Section 3 of the *Companies Act* defines the ‘court’ to mean, unless otherwise specified to be the High Court.
7. I agree with the finding of Okong’o J. In addition to the explicit definition of the ‘court’ under section 3 of the *Companies Act*, the Court of Appeal in the case of Cooperative Bank of Kenya Limited vs Patrick Kangethe Njuguna & 5 Others [2017] eKLR and the case of Joel Kyatha Mbaluka T/A Mbaluka & Associates Advocates vs Daniel Ochieng Ogola T/A Ogola Okello & Co. Advocates [2019]eKLR, held that the jurisdiction of this court (ELC) is only to deal with disputes connected to use of Land and Contracts incidental to the use of land, which do not include mortgages, charges, collection of dues and rent which fall within the jurisdiction of the High court.
8. A Charge is a disposition that has no direct relationship with use of the land. It is a commercial transaction.
9. Accordingly, it is my finding that this court lacks jurisdiction to entertain the application before it. Waiver by the parties on this issue of jurisdiction cannot make up for lack or defect of jurisdiction.
10. The application is struck out but with no orders as to costs.  
It is so ordered.

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 5<sup>TH</sup> DAY OF DECEMBER 2024.**

**M. D. MWANGI**

**JUDGE**

**In the virtual presence of;**

Ms. Chemutai for the Applicant

Ms. Akoth for the 1<sup>st</sup> Respondent

No appearance for the 2<sup>nd</sup> Respondent



Court Assistant – Yvette

**M. D. MWANGI**

**JUDGE**

