



Gulf African Bank Limited & another v Registrar of Companies (Miscellaneous Civil Application E531 of 2025) [2025] KEHC 9136 (KLR) (Commercial and Tax) (26 June 2025) (Ruling)

Neutral citation: [2025] KEHC 9136 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS CIVIL APPLICATION E531 OF 2025**

BK NJOROGE, J

JUNE 26, 2025

BETWEEN

GULF AFRICAN BANK LIMITED 1ST APPLICANT

KAATUN DEVELOPMENT INC LIMITED 2ND APPLICANT

AND

REGISTRAR OF COMPANIES RESPONDENT

RULING

1. This Ruling is in respect to the Applicants' Notice of Motion dated 28th May 2025, brought pursuant to the provisions of Order 51 Rule 1 of the Civil Procedure Rules, and Sections 878, 885, and 888 of the *Companies Act*, No. 17 of 2015.

Background facts

2. The Applicants have moved this Court seeking the following orders:
 - a. Spent.
 - b. That this Honourable Court be pleased to grant an order pursuant to Section 888 of the *Companies Act* of the Legal Charge issued by Kaatun Development Inc Limited (the "Chargor") herein over office unit eight (8) on the sixth (6th) floor, park medical centre, erected on title number nairobi/block 35/321 to secure banking facilities advanced to the 2nd Applicant by the 1st Applicant be extended for a period of thirty (30) days from the date of the order herein or such other period as the Court shall deem fit.
 - c. That costs of the application be in the Cause.



3. This Application is supported by the Affidavit of Rimah Mogiri, an Advocate of the High Court of Kenya, duly practicing in the firm of Sagana, Biriq and Muganda Advocates LLP, which firm has conduct of this matter on behalf of the Applicants. The said Affidavit is sworn on the 28th day of May, 2025.
4. The Deponent avers that the 2nd Applicant executed a Legal Charge dated 18th December 2024 over office unit number eight (8) on the sixth (6th) floor of park medical centre, erected on title number nairobi/block 35/321 (hereinafter “the Bank Security”). This was to secure banking facilities advanced by the 1st Applicant to the 2nd Applicant. The 1st Applicant’s Advocates lodged the said Legal Charge for registration on 28th April 2025. However, due to delays experienced in procuring registration and the release of title documents at the Lands Registry, the Charge could not be registered at the Companies Registry within the statutory period of thirty (30) days prescribed under Section 885 of the *Companies Act*, No. 17 of 2015.
5. The Applicants now seek orders to have the Legal Charge—dated 11th December 2024 but registered at the Lands Registry on 18th December 2024—registered at the Companies Registry. This is in respect of the banking facilities and other financial accommodation extended by the 1st Applicant to the 2nd Applicant. Notably, the Gulf African Bank Security has not been registered within the statutory period or at all. Should the extension not be granted, the 1st Applicant and its Directors are exposed to the risk of criminal liability for non-compliance under Section 878 of the *Companies Act*. Unless the time for registration is extended pursuant to Section 888 of the *Companies Act*, the Legal Charge shall be deemed void under Section 889 of the said Act, thereby exposing the 1st Applicant to the risk of losing its security interest over the charged property and suffering irreparable loss.

Issues for determination

6. Arising from the foregoing, the Court is of the view that the sole issue for determination is;
 - a. Whether leave should be granted to the Applicants to register the Legal Charge dated 11th December 2024 at the Companies Registry out of time.

Analysis

7. 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.
8. In considering whether to grant an extension under Section 888, the Court is required to examine the following parameters:
 - (a) Whether it was accidental or due to inadvertence or some other reasonable cause.
 - (b) Whether non-compliance has prejudiced the creditors or members of the company.
 - (c) If it is just, equitable, fair and reasonable.
 - (d) Whether the mistake, or omission and misstatement is rectifiable.



9. The Court is satisfied that the delay in registration was neither inordinate nor deliberate. This Court, in *In re HFC Limited & Another* (Miscellaneous Civil Application No. 32 of 2023) [2023] KEHC 2166 (KLR) (Ruling delivered on 22nd March 2023), recognized that it is vested with the discretion under Section 888 of the *Companies Act*, No. 17 of 2015, to extend the time within which a charge may be registered where the statutory period has lapsed.
10. In the present case, the law mandates that such a charge must be registered with the Registrar of Companies within thirty (30) days from the date of its creation. This requirement 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.
11. The purpose of registering a charge with the Registrar of Companies is to protect the interests of the chargee—in this case, the 1st Applicant—as well as the general body of creditors, in accordance with the established principles governing a company's assets and liabilities. Failure to register a charge may result in serious consequences, particularly affecting the chargee's right of recourse against the charged property. Nonetheless, inadvertent mistakes or procedural delays should not operate to deprive a chargee of the benefit of an otherwise validly created charge. To do so would be contrary to the spirit and intent of Article 159 of *the Constitution* of Kenya and the provisions of the *Companies Act*, 2015, which emphasize the need to administer justice without undue regard to procedural technicalities.
12. In light of the foregoing, the prayers sought in the Notice of Motion dated 28th May 2025 are hereby allowed.

Determination

13. The time within which to register the Legal Charge dated 11th December 2024, created by Gulf African Bank (the Chargor) over office unit number eight (8) on the sixth (6th) floor of park medical centre, erected on title number nairobi/block 35/321 (hereinafter “the Bank Security”), to secure banking facilities advanced by the 1st Applicant to the 2nd Applicant, be and is hereby extended by a further period of thirty (30) days from the date of this Ruling.
14. It is further ordered that upon registration of the said charge within the extended period, the charge shall be deemed to have been duly filed with the Registrar of Companies in full compliance with the *Companies Act*, 2015.
15. Given the nature of the application, there shall be no order as to costs.
16. It is so ordered.
17. The file is hereby closed.

DATED, SIGNED AND DELIVERED AT MILIMANI THIS 26TH DAY OF JUNE 2025

NJOROGE BENJAMIN K.

JUDGE

In the presence of;

Miss Kinyua holding brief for Miss Mogiri for the Applicants

Mr. Luyai – Court Assistant

