

TANZANIA / JUDGMENT

JANES OMOLO RULING 0001

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THE UNITED REPUBLIC OF TANZANIA (JUDICIARY) THE HIGH COURT (MUSOMA SUB
REGISTRY AT MUSOMA) Misc. CRIMINAL APPLICATION No. 2320 OF 2025 (Arising from the
District Court of Rorya at Rorya in Criminal Case No. 15 of 2023) JANES OMOLO
OGONDA..... APPLICANT Versus
REPUBLIC..... RESPONDENT

RULING

17.02.2025 & 17.02.2025 Mtulya, J.: Mr. Janes Omolo Ogunda (the applicant) was prosecuted and found guilty by the District Court of Rorya at Rorya (the district court) in Criminal Case No. 15 of 2023 (the case). The applicant was aggrieved by the decision and intended to protest in this court, but was transferred from Rorya District to Tarime Prison based at Tarime District in Mara Region to serve his custodial sentence. The applicant was transferred further from Tarime Prison to Tabora B Prison based in Serengeti District within Mara Region and finally he found himself at Butimba Prison in Mwanza Region Following his transfers from one prison authority to another, the applicant could not process a notice of intention to appeal and appeal within time hence he approached this court and preferred the instant application seeking for enlargement of the time to file both notice and appeal in order to protest the i decision of the district court in the case. According to the applicant, the prison authority was not keen in assisting him to process the intended notice and appeal within time. In replying the allegation of the applicant, Ms. Happiness Machage, learned State Attorney did not dispute the application. In her opinion, the applicant has registered a reason in favor of the application without any proof, but she cannot protest for the applicant to enjoy the fundamental right to be heard at this court. The law regulating enlargement of time to lodge criminal appeals in this court is enacted in section 361 (2) of the Criminal Procedure Act [Cap. 20 R.E. 2022] (the Act). The enactment provides, in brief, that: the High Court may, for good cause, admit an appeal notwithstanding that the period of limitation prescribed in the section has elapsed. The provision has already received support of of this court in the precedents of Robert Wambura @ Mungine v. Republic, Misc. Criminal Application No. 44 of 2022 and Paulo Matiko Nyaiguri

- v. Republic, Criminal Application No. 20853 of 2024). The practice shows that granting enlargement of time is within the discretionary mandate of this court, which depends on the materials produced by applicant to persuade the court to resolve the matter in his favour

(see: NBC Limited & Another v. Bruno Vitus Swalo, Civil Application No. 139 of 2019). In the instant application, 2 the applicant has produced a reason of transfer from one prison authority to another. The law on enlargement of time has already recognised applicants in prisons authorities, who are transferred from one prison authority to another, to be given special considerations by courts (see: Otieno Obute v. The Republic, Criminal Application No.1 of 2011 and Yusufu Hassan v. Republic, Criminal Application No. 50/12 of 2017). This court is bound by the position, unless there are good reasons to resolve to the contrary (see: Mtatiro Macha Chacha v. Republic, Criminal Application No. 19730 of 2024 and Gasaya Bwana @ Chacha v. Republic, Misc. Criminal Application No. 22 of 2022). In the present circumstance, there are no good reasons why the applicant should not be granted leave to approach and file an appeal in this court to dispute the decision of the district court. In the end, I am persuaded to grant the applicant ten (10) days leave to lodge a notice of intention to appeal and forty-five (45) days leave to prefer an appeal in this court without any further delay. 3 Court: This Ruling was delivered in Chambers under the Seal of this court in the presence of the applicant, Mr. Janes Omolo Ogonda and in the presence of the respondent's learned State Attorney, Ms. Happiness Machage. F. H. Mtqlya Judge “ 17.02.2025 4

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