



**Olela & another v Republic (Criminal Case E057 of 2024)
[2024] KEHC 13486 (KLR) (29 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 13486 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
CRIMINAL CASE E057 OF 2024
MS SHARIFF, J
OCTOBER 29, 2024**

BETWEEN

POLYCAP OTIENO OLELA 1ST ACCUSED

KENNEDY OTIENO OCHIENG 2ND ACCUSED

AND

REPUBLIC PROSECUTION

RULING

1. I have considered the notice of motion dated 7.10.2024, the affidavit in support thereof sworn by the Applicant on even date and the affidavit in reply sworn by Mercy Mwema on 18.10.2024.
2. I have also considered the rival submissions of parties and the issue that emerge for consideration is whether the Appellant ought to be admitted to bail pending appeal.
3. This application is premised on the grounds that the Appellant is suffering from a number of ailments, namely diabetes, ulcers and hypertension, which condition it is stated by the Applicant required proper medical management that is not available in prison.
4. The Respondent has valiantly opposed this application on grounds that the Appellant is already a convict and there are no exceptional circumstances demonstrated to warrant his release on bond.
5. I do note that ill health is an exceptional circumstance and I do find that the prison facility may not be able to offer the Appellant the requisite medical attention and diet that he may require.
6. The above finding notwithstanding I cannot overstate the fact that the Appellant is serving a lawful sentence meted upon his conviction wherefore this court has to balance this fact with the special circumstances of the Appellant.



7. Whereas the Appellant has also based this application on a supposed apprehension of delay in the hearing of his appeal, I do find that apprehension to be without basis as this court will be conducting a rapid result initiative in the 1st week of December 2024 wherefore this appeal has no likelihood of delay.
8. On the balance I will allow the application and make the following orders:
 1. The Appellant Kennedy Otieno Ochieng is hereby admitted to bail of Kshs.200,000 and one surety of a similar amount.

DELIVERED, DATED AND SIGNED THIS 29TH DAY OF OCTOBER, 2024.

M. S. SHARIFF

JUDGE

