



**Ochieng v Republic (Criminal Appeal E013 of 2022)  
[2022] KEHC 11061 (KLR) (28 July 2022) (Ruling)**

Neutral citation: [2022] KEHC 11061 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KISUMU  
CRIMINAL APPEAL E013 OF 2022  
FA OCHIENG, J  
JULY 28, 2022**

**BETWEEN**

**DISHON ODERA OCHIENG ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

The appellant has sought either the stay of execution of the sentence or bail pending the hearing and determination of his appeal.

1. He was convicted for the offence of Assault causing actual bodily harm contrary to section 251 of the [Penal Code](#).
2. He was then sentenced to 3 Years imprisonment.
3. Following the conviction and sentence on March 31, 2022, the appellant filed a petition of appeal dated April 13, 2022.
4. In the appeal, he has challenged the sentence, as he believes it to be manifestly excessive and harsh.
5. In his view, the trial court ought to have contemplated imposing a fine, rather than custodial sentence.
6. The appellant expressed the view that the appeal has overwhelming chances of success. Therefore, if the reliefs sought were not granted, the appellant said that the appeal would be rendered nugatory. He would have already suffered injury and damage as a result of the imprisonment, if he remained in jail whilst awaiting the hearing and determination of the appeal.
7. The appellant further noted that if the court granted him bail pending appeal, that would not occasion any prejudice to the respondent.



8. In determining this application, I take cognizance of the fact that the appellant is not challenging the conviction. He was only challenging the sentence.
9. The challenge being mounted against the sentence relates only to the length of incarceration. The appellant does not cast any doubt on the legality of the sentence of imprisonment.
10. I note that the sentence is of 3 years imprisonment. Therefore, I hold the view that it was unlikely that the appellant would have served the full sentence before his appeal was heard and determined.
11. I also note that the appellant attacked the complainant without any provocation at all. He hit the complainant, who then fell off his motor-bike.
12. The appellant continued to assault the complainant even after the complainant had fallen down.
13. The circumstances in which the offence was committed will doubtlessly be a key factor when the court will be determining whether or not the sentence was harsh or excessive.
14. Meanwhile, I note that during trial, the appellant was out, on bond. As he did not abscond whilst he was on trial, that is a favourable factor, to the appellant's credit.
15. In the result, I do grant him a personal bond of Kshs 50,000/= with one (1) Surety of like sum.

**DATED, SIGNED AND DELIVERED AT KISUMU**

**THIS 28TH DAY OF JULY 2022**

**FRED A. OCHIENG**

**JUDGE**

