



**Ogul v Republic (Criminal Revision E100 of 2024)
[2024] KEHC 6665 (KLR) (4 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 6665 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
CRIMINAL REVISION E100 OF 2024**

RE ABURILI, J

JUNE 4, 2024

BETWEEN

JOSEPH OTIENO OGUL APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. This Ruling determines the application dated 15th May 2024 seeking for revision of the ruling and order of the trial court in Winam SPM Criminal Case No. 179 of 2023 made on 11th March 2023 suspending bond granted to the accused person pending trial.
2. The trial court file/record was called for and availed on 24th May 2024. I have perused the said trial court record and heard counsel for the accused and the prosecution counsel.
3. The offence with which the accused is charged is obtaining money by false pretences. The amount involved is Kshs.760,000 belonging to the complainants, Erick Otieno Odongo and Phillip Omondi Outa.
4. The accused was released on bond of Kshs.500,000 plus one surety of similar amount or to deposit cash bail of Kshs.300,000. The first surety was 76 years old and was rejected. The 2nd surety who was approved is said to be the accused person’s brother. The accused faithfully attended court and the hearing the hearing commenced.
5. On 18th December 2023, the accused failed to attend court. There was no information as to his whereabouts then. He did not attend court until 11th March 2024 when he appeared on his own accord in court and produced treatment notes showing that he had been hospitalized on 19th December 2024 and discharged on 24th December 2024. The court suspended his bond and he was placed in custody.



6. He is before this court pleading that the orders of the trial court be revised because he did not deliberately fail to attend court, is of poor health, aged and his surety is willing to continue being his surety. That he did not fail to attend court deliberately.
7. The prosecution counsel does not oppose the application for revision of the lower court ruling for reasons that the accused personally attended court on the day that his bond was suspended, without being arrested and that it is the surety who should have reported to court the ailment of the accused which duty the surety abdicated.
8. Having considered the application which is unopposed, and upon perusal of the hospital treatment and discharge summary produced in court on the day that the accused person's bond was suspended, I am in agreement that the accused fell ill and was hospitalized as shown by the hospital treatment notes. There is also evidence that the accused and complainants were negotiating for an out of court settlement of the case but his incarceration made it impossible to conclude the negotiations.
9. The accused brought himself to court without a warrant of arrest being effected.
10. I am persuaded that he did not intend to abscond and that is why the surety is still willing to remain his surety. I observe that the surety was not discharged.
11. In the premises, I revise the order of 11th March 2024 suspending surety bond granted to the accused person in Winam SPMCC No. E179 of 2023.
12. I set aside the said order and substitute it with an order reinstating the suspended bond, with the same surety and same terms to apply.
13. Therefore, unless otherwise lawfully held, the accused Joseph Otieno Ogul shall therefore be released from prison on the surety bond terms granted by Winam Law Courts in Winam SPM CR Case No. E179 of 2023.
14. Lower court file to be returned for the case against the accused person to continue as scheduled.
15. This file is closed.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 4TH DAY OF JUNE, 2024

R. E. ABURILI

JUDGE

