



**Republic v Senghani (Criminal Case E084 of 2023)  
[2024] KEHC 4354 (KLR) (Crim) (23 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 4354 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CRIMINAL  
CRIMINAL CASE E084 OF 2023  
LN MUTENDE, J  
APRIL 23, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**NIKESH HARJI SENGHANI ..... ACCUSED**

**RULING**

1. Nikesh Harji Senghani, the accused, is charged with the offence of Murder contrary to Section 203 as read with Section 204 of the *Penal Code*. The particulars of the offence are that on 3/4/2022 at Swaminarayan Temple flats at Southern bypass in Langata Sub County within Nairobi County he murdered Vanita Nikesh Senghani.
2. The right to bail/bond pending trial is guaranteed under the *Constitution*. Article 49 (1)(h) of the *Constitution* provides that:

An accused person has the right to be released on bond or bail, on reasonable conditions, pending a charge or trial, unless there are compelling reasons not to be released
3. However, the State through No.62034 Corporal Reuben Mwaniki, the Investigating Officer from DCI Homicide Nairobi filed an affidavit contesting the accused right to bond. He contends that the accused was charged upon determination of an inquest by the Chief Magistrate's court in Kibera, Inquest case No. E005 of 2022 and that during the hearing the accused interfered with, intimidated and threatened witnesses such that no witness would comfortably testify. That the court had to intervene and give directions.
4. That the accused's family, his in laws and close friends who testified during the inquest are key witnesses in this case hence there is apprehension of the likelihood that the accused who knows the witnesses



is likely to intimidate, influence, threaten and dissuade them as he earlier tried to do given that he is facing a serious charge of murder.

5. Further that the accused is a flight risk and does not have a place of abode and it would be difficult to trace him. That he disappeared from his mother's residence in Langata after the ruling on the Inquest and later was arrested on 25/11/2023 at Malaa Machakos County where he had been hiding. That he was arrested at Hamsa water plant treatment which does not have any habitable shelter and is not a place of employment.
6. That the accused holds a valid passport and makes numerous trips to India, he refused to hand over his Identification document or passport during interrogation. Additionally that the accused is now an outcast to the community and he lacks deep economic and emotional ties with the community hence he is more inclined to leave the jurisdiction of the court.
7. That there is palpable apprehension that his safety and security may be compromised as there was an uproar at the Swaminarayan temple after the ruling and the people sought the accused but he managed to flee. These in his opinion are compelling and justifiable reasons requiring denial of bond.
8. Based on a replying affidavit deposed by the accused, it is submitted that the prosecution has not proved compelling reasons requiring denial of bail. That the allegations that the accused constantly interfered with, intimidated and threatened witnesses is speculative as the investigating officer did not advise the lower court of the issues adduced before this court. Further that mere allegation that the accused is a flight risk do not suffice.
9. That compelling reasons are those that are weighty and persuade the court that the accused person should not be released as was stated in the case of *R v Danford Kabage Mwangi* (2016)eKLR.
10. That allegations that the accused constantly interfered, intimidated and threatened witnesses were unsubstantiated hence remained speculative as found in the case of *R v Richard David Alden* (High Court Nrb Crim Cause 48/16); *Job Kenya Musoni v R* (High Court at Nrb Criminal Application 399/2012).
11. It is further argued that compelling reasons must be persuasive before court relies on such evidence. That the investigators have held the accused passport and mobile phone from the time of the deceased death. There is no evidence that the accused travelled to India, instead the allegations are untrue and have been brought in bad faith. The investigating officers also know his place of abode which is the place they arrested hi from. The officers constantly instilled fear in him during the inquest hearing .
12. That the accused life and security is not at risk, and the law enforcers did not come to his aid when his life was threatened and anything could have happened at that time, and, that he nolonger resides in the temple flats where his life would be threatened.
13. Lastly that the court can review, vary or set aside bond terms in the event the accused fails to attend trial.
14. Secondary victims submitted that the court should consider the seriousness of the offence. That the deceased prior to her death went through torment and hardship in her husband and mother in law's hands. The character, antecedents, associations of the accused should also be considered together with his community ties. That the Hindu community views the accused as an outcast after he brought shame to them.
15. That the accused and his family moved out of the residential area in Langata and the accused mother is believed to be hiding in Ruai. That the accused constantly interfered with, threatened and intimidated witnesses and the police from Langata police station were also used to intimidate witnesses. The accused also shouted in court while making accusations against witnesses in Gujarati and English. That



the strength of the evidence should also be considered which is an incentive to abscond. Reliance is placed on the case of *Republic V Margret Nyaguthi Kimeu* (2013) eKLR and the case of *Abmad Abolfathi Mohamed & Anor* (2028) eKLR where the court considered that where accused is a foreigner with no fixed abode there is an assumption that he is a flight risk and he may fail to attend court.

16. That accused was hiding and was found at a water treatment plant which is neither a place of residence nor place of work.
17. A bail information report was filed by the probation officer. The community comprised of Hindu community residing at Swaminarayan Temple are against his release on bond and is fearful that the accused would interfere with witnesses who are from the community and residents of Langata.
18. Another community was traced at Malaa where the accused relocated and had been living with his mother and father at the time of arrest. This community did not have any negative report against the accused. They have been living in harmony and a village elder vouched for his release.
19. I have considered rival averments. The right to bail/bond can be limited where the prosecution proves that compelling reasons exist in the circumstances of the case warranting denial of bail.
20. The affidavit sworn by the Investigating Officer together with the victim's submissions lists compelling reasons requiring denial of bond. However, these have been vehemently contested by the accused. The burden of proof is on the prosecution to give reasons that are forceful persuasive and convincing to prove the allegation. In the case of *Republic v Joktan Mayende & 4 Others*, Bungoma High Court Criminal Case No. 55 of 2009, Gikonyo J held that:

“The phrase compelling reasons would denote reasons that are forceful and convincing as to make the court feel very strongly that the accused should not be released on bond. Bail should not therefore be denied on flimsy grounds but on real and cogent grounds that meet the high standard set by the *Constitution* .”

21. The key question for consideration is whether the accused will turn up for his trial.
22. The court's power to grant bond is provided for under Section 123 of the *Criminal Procedure Code* , the discretion is not absolute but is informed by considerations set out under Section 123 as read with the *Bail and Bond policy guidelines* and further circumstances which apply on a cases to case basis. Therefore, issues for determination in the accused application are:-
  1. Whether the accused is a flight risk
  2. Whether the accused lacks a place of abode and cannot be traced if released
  3. Whether the accused security would be at risk
  4. Whether the accused would interfere with witnesses
  5. Whether the conclusion in the inquest form compelling reasons to deny him bond.
23. It has been deponed and submitted that the accused was traced at Malaa in a water plant. This was after the accused left his area of residence at Swamirayan where the offence took place.
24. The prosecution have further contended that the accused is of Indian origin and travels out of the country but, there is no evidence that the accused is prone to travel and make often trips. Similarly the accused has been said to be an outcast after he was banned from the Hindu community at Swaminarayan, Langata and that this makes it tempting for him flee.



25. However, the prebail report confirms that the accused family now resides at Malaa, in Machakos County. The accused and his family are known by the community which does not oppose his release on bail. I do note that during pendency of the inquest proceedings the accused did not leave the jurisdiction of the court.
26. As to whether the accused security would be at risk. The threat, anxiety and animosity exists at Swaminarayan area where the accused and his mother had to relocate from. There is no threat, danger or risk traceable to Malaa, Kangundo road or the wider Machakos county.
27. Regarding the likelihood of the accused interfering with witnesses, the prosecution must point out active threats, intimidation and /or some close connection between the accused and the witnesses. It is also important that the affected witnesses be identified for necessary steps to be taken by the court. The grounds must be proved through evidence and not based on probabilities. In the case of *Republic v Gerald Mutuku Nyalita & Another* [2015] eKLR Murithi J held that:
 

“In considering the likelihood of interference with witnesses as a compelling ground to refuse bail in terms of Article 49 (1) (h) of the *Constitution* of Kenya, the Prosecution must, in my view, demonstrate a more than whimsical probability of interference. The inquest proceedings were heard through oral testimony and witnesses majorly came from the Swaminarayan residential area where the offence occurred. However, the accused has since relocated from the area to a significantly distant area. The accused is unlikely to come into contact with them. The prosecution’s fears of witness contacting and access can be prevented through strict warning from this court.”
28. At page 17 of the inquest proceedings the court raised concerns of witness intimidation during the hearing indicating that the presence of police officers in court made witnesses uncomfortable. Some witnesses also decided to be difficult specifically the accused mother who was adversely mentioned.
29. It cannot be said that the accused authored or caused intimidation or in any way interfered with the flow of the prosecution’s case during the inquest. The fact that the witnesses listed are known and statements have been recorded and served on the accused is not a threat.
30. The victim’s contention is that the accused is aware of the evidence against him, this is after the court’s Ruling following the inquest proceedings.
31. The strength of evidence in a case is a compelling ground listed under Section 123 of the *Criminal Procedure Code* and the *Bail and Bond policy guidelines*.
32. However, this ground is considered in very exceptional circumstances where the accused has been placed on his defence and the court has a grip of what the case is about.
33. In the case of *Republic v Danson Mgunya & Another* [2010] eKLR, the High court held that:
 

“...criteria (ii) ... (the strength of the evidence which supports the charge) ought not apply in Kenya except where perhaps the application for bail is being made or renewed after the court has placed the accused on his defence. This is inconsistent with the principle that an accused is presumed innocent. Such criteria should be applied with great caution and only in exceptional circumstances like where there is a statement that shows that the accused was caught-red handed or where there is a lawfully admitted confession. Criteria (viii) above (the probability of guilt) appears to be in reference to where an accused has been placed on his defence.”



34. In the instant case, the murder case is yet to commence. The court cannot assume that the same evidence given in the inquest would be adduced before this court. The accused should benefit from the presumption of innocence pending determination of trial. The seriousness of the offence and sentence and the nature of evidence should not be seen to affect the constitutional presumption of innocence.
35. The upshot of the above is that I hereby grant the accused Bond of Ksh. Two Million (2,000,000/-) with two (2) Sureties of a similar sum with the following conditions attached:that the accused deposits his passport in court with the Deputy Registrar.He is prohibited from contacting witnesses directly or indirectly.He shall not access Swaminarayan Community based at Langata.
36. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS AT  
NAIROBI, THIS 23<sup>RD</sup> DAY OF APRIL, 2024.**

**L. N. MUTENDE**

**JUDGE**

