



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MERU**

**CRIMINAL CASE NO. 55 OF 2013**

**REPUBLIC.....PROSECUTOR**

**V E R S U S**

**MARTIN KIMATHI ..... ACCUSED**

**RULING**

On 25/9/2013, Mr. Mokuu, Counsel for the accused made an application for bond before J. Lesiit. The application was opposed for reasons that the accused would interfere with witnesses since the witnesses hailed from the same village with him and that accused had been at large since 2012 after he committed the offence and was arrested a year later and was therefore a flight risk.

The court directed the State to file a replying affidavit by investigation officer to explain the delay in arresting the accused.

The investigation officer filed a replying affidavit dated 31/10/2014. Counsel for defence never followed up with this case since 2013 till it came up for hearing. PC Pacho, the investigations officer deponed inter alia that the accused went into hiding from 11/5/2012 till 3/6/2013 when he was arrested and is therefore a flight risk. The accused never filed a further affidavit to rebut the said allegation or explain where he was for one year.

I have considered the pre-bail report in which there was no objection to his release on bond from the victim's family, the accused's family and the community. However, there has been no explanation as to why the accused was missing for about one year. Despite the fact that the accused was given an opportunity to respond to the delay, he failed to do so.

The paramount consideration in an application for bond is whether accused will turn up for his trial. If the accused went into hiding for one year, if released, will he show up?

This case is already part heard. Though the pre-bail report is favourable, the lingering question is whether the accused will show up if released. Since the court is not satisfied that the accused will turn up if released on bond because he is a flight risk, I decline to grant the accused bond. He will remain in remand pending determination of the case.

**DATED, SIGNED AND DELIVERED THIS 20<sup>TH</sup> DAY OF MAY, 2016.**

**R.P.V. WENDOH**

**JUDGE**

**20/5/2016**

**PRESENT**

Mr. Mulochi for State

Mr. Kahumbi for Accused

Ibrahim/Peninah, Court Assistant

Present, Accused