IN THE SUPERIOR COURT OF JUDICATURE
IN THE COURT OF APPEAL
(CRIMINAL DIVISION)

CORAM: KUSI-APPIAH, J.A. (PRESIDING)
GYAESAYOR, J.A.
AYEBI, J.A.

CRM/ NO:H2/8/2008
24TH JULY 2008

ABDUL SAMED SEIDU……..APPELLANT
VRS.
THE REPUBLIC……RESPONDENT

KUSI-APPIAH, J.A.: This appeal is from the decision of the High Court, Tamale, given on 11th July, 2007 per DOEGAH J. by which the Learned Judge refused and dismissed an application for bail by the applicant ,now the appellant herein. Dissatisfied with the said ruling the appellant has appealed to this court on the following grounds:

(1) That the ruling was unreasonable having regard to the circumstances.

(2) That the trial Judge exercised his discretion improperly and wrongfully.

(3) That the continued detention of the appellant contravenes Articles 14 and 19 of the Constitution of the Republic of Ghana.

Before I discuss these grounds of appeal, I would give a brief background information of this case. The facts of the appellant's case may be gathered from the affidavit in support of his application for bail at the High Court containing the following relevant averments:

"2. I am a Ghanaian by birth and ordinarily resident in Canada where I am a citizen.

3. Abdul-Samed Seidu is a friend of mine and my name sake and he lives in Ghana.

4. While in Canada I sent him money to complete my house for me in Tamale.

5. On 10/05/07 I arrived in Tamale from Canada on a visit and stayed with my friend Abdul-Samed Seidu in his house at Kalpohine estate, Tamale.

7. During my stay with Abdul-Samed, I asked him about the house he was to complete for me and to explain the short fall of about ¢140 million but he could not explain but later apologized.

8. I later asked him for ¢30million out of the amount since he agreed with me that he had not spent the whole amount on the project and he agreed to give it to me.

9. He later brought me ¢5million which I considered inadequate.

10. He later told me to take documents on his house and other items as security to assure me he would refund the money he could not account for.

11. Abdul-Samed later left the house and did not return and has not returned as at now. He did not tell me when he was leaving.

12. I made a report to the Police concerning the way Abdul-Samed had treated me after I left the house.

13. I had to return to Canada so I took along with me the items I have mentioned.

14. I was arrested on warrant at the Airport and taken to the District Court, Tamale presided over by His Worship K.A. Kapouchieneh on 24/5/2007 where I was remanded into prison custody to appear on 7/6/2007.

15. That court said that I was being remanded to enable Police do proper investigation.

20. I have also informed the Police that the said Abdul-Samed is alive and not dead and he is running away because of the amount he owes me…"

The application for bail was however stoutly opposed by the respondents. They are contained in their affidavit in opposition the relevant parts of which reads:

"5. That the applicant who is a Canadian citizen was accommodated by Abdul-Samed Seidu in his house at Kalpohin Estates in Tamale till 14/05/07 when Abdul-Samed Seidu disappeared and has since not been found nor has he made contact with friends, family or police.

6. That the applicant who was living with Abdul-Samed Seidu denied knowledge about his where abouts and when the family of Abdul-SAMED Seidu demanded that the applicant should accompany them to make a complaint to Police, the applicant refused only to turn up at the Police Station alone the next day where he reported that Abdul-Samed Seidu owed him an amount of ¢140,000,000 but failed to pursue that case any further.

7. That whilst investigations into the disappearance of Abdul-Samed Seidu were going on the applicant suddenly moved out of the house of Abdul-Samed Seidu and checked into a Hotel and when Police made attempts to get the applicant to assist them in investigation, the applicant abandoned the Hotel for an unknown destination.

8. That contrary to the applicant's assertion through phone calls that he was on his way to Tamale to assist Police in their investigation into the disappearance of Abdul-Samed Seidu, it was discovered that the applicant was making feverish efforts to leave Ghana for his homeland – Canada.

9. That the Police acted timelously by getting an arrest warrant and the applicant arrested whilst he was on a plane about to fly out of Ghana.

10. That upon the arrest of the applicant, his luggage was searched and 1 laptop computer, 1 ipod, 2 Motorola phone batteries, 1 Motorola phone charger, 1 digital camera, two pen drives and documents of a house all belonging to Abdul-Samed Seidu were found on the applicant.

12. That the allegation by the applicant that Abdul-Samed Seidu owed him ¢140,000,000 of which he asked for ¢30,000,000 is false and a ploy to mislead the court.

13. That after Abdul-Samed Seidu disappeared, his room was searched by the Police and €3000, £700, ¢5,000,000 and a Stanbic Bank cheque with the face value of ¢7,500,000 from Metro TV were found, which is an indication that if Abdul-Samed Seidu truly owed the applicant as he claims Abdul-Samed Seidu could have settled any such debt comfortably.

14. That it is also not true that Abdul-Samed Seidu gave the applicant his house documents or any other property to keep till he settled the debt since there would have been no justification for Abdul-Samed Seidu to be on the run for the same debt he had given out his property as security…"

Arguing on behalf of the appellant, Nana Adjei Ampofo began with grounds 1 and 2 together, and submitted that the trial Judge erred in refusing and dismissing the application for bail in the circumstance of this case as there was no evidence or indication of death and when from all indications the fundamental rights of the applicant/appellant were being abused. He is thus enabled to argue that in the absence of evidence, suggesting or indicating the death of the alleged victim of the offence, the trial Judge acted on mere suspicion and conjecture which amounted to an improper and or wrongful exercise of discretion.

By way of reply, Learned Counsel for the Republic/ Respondent contended otherwise. She argued that the circumstances of the case as stated in the trial Judge's ruling is such that it leads to one and only one irresistible conclusion that the disappeared victim had been murdered by the appellant and his body dumped somewhere.

I however, disagree. Properly read and examined, it appears to me that the facts and circumstances leading to the disappearance of the victim may lead to more than one conclusion.

Learned Counsel for the respondent submitted that a conviction based on murder can be sustained against an accused even though the body of the deceased is yet to be found. She

cited the case of R v. HORRY [1952] New Zealand Law Report, 2nd Edition which was quoted with approval by SARKODIE ADDO, J. in the Ghanaian case of STATE v. ANANE [1961] GLR 46 S.C. to support her stand. Counsel maintained that the trial Judge exercised his discretion judiciously before dismissing the appellant's application for bail. She, therefore, concluded that the fact that the verdict did not favour the appellant is not a ground to accuse the trial Judge of improper use of discretionary power.

I must state that the state of the law with regard to grant of bail in respect of offences specified in section 96(7) of Act 30, introduced by the Criminal Procedure Code (Amendment) Decree, 1975 (NRCD 309) is not satisfactory, especially to the legal practitioner, the law student and to the lower courts. This is because there is no consistency in the various decisions of the High Court. It is therefore not surprising that lawyers have argued for bail even in murder cases when the police have not yet completed their investigations. This is so because going by the reasoning in cases like SEIDU v. THE REPUBLIC [1978] GLR 65 and OWUSU v. THE REPUBLIC [1980] GLR 460, that the court if satisfied on the facts or summary of evidence that no proper charge of say murder exists, can grant bail, it appears that an application for bail can be granted at any time depending on the view a particular judge takes of the charge before him. I think the reasoning in those cases requiring the Judge to decide whether there is a proper charge in order to grant bail is doubtful. This is because at that stage the Judge is not deciding on the merits of the issues before him. The duty of examining the summary of evidence and taking a decision thereon is that of the committal magistrate only by virtue of sections 184(4) and (5) of the Criminal Procedure Code (Act 30). The trial Judge is to try the case after the committal has been concluded. It is not part of the duty of the trial Judge to examine the summary of evidence to determine whether or not there is a charge competent before the court. I venture to suggest that any decision on bail by the trial Judge based on the summary of evidence before the trial will be wrong.

I must point out that I must be understood to be expressing these views within the context of section 96(7) of Act 30 only. What I am saying in effect is that if a trial court wants to grant bail under section 96(7) of Act 30, it cannot rely on the facts of the case to conclude that the prosecution has no competent charge and so the accused is entitled to bail. To do so will be circumventing the unambiguous provisions of the sub-section. And even in the case of the Committal Magistrate, he cannot grant bail on the basis that the summary of evidence discloses no triable offence, all he can do is to discharge the accused at that stage which he has power to do by virtue of section 184(5) of Act 30. Hence, I reject the arguments of Learned Counsel for the appellant on grounds 1 and 2 of the appeal which is based on the reasoning in SEIDU v. THE REPUBLIC (supra) that the court if satisfied on the facts or summary of evidence that no proper charge of say murder exists, can grant bail.

The next ground of appeal is that, the continued detention of the appellant contravenes Articles 14 and 19 of the Constitution of the Republic of Ghana. This appears to be the main ground canvassed in this application.

Counsel for the appellant argued that by Article 14(4) of the 1992 Constitution where a person arrested, restricted or detained cannot have his trial within a reasonable time, he ought to be released on bail, and this was a mandatory requirement. He lamented that the

appellant has been in custody since 24th May, 2007 (over a year now) and has not been charged with any offence. The result is that he does not know when he will be tried. Counsel maintained that the appellant is being denied his right to a fair trial under Article 19 of the 1992 Constitution.

For her part, Learned Counsel for the respondent submitted that the appellant is being held for murder for which under the Laws of Ghana, bail is not granted. She contended that the appellant has been placed in custody by a court of competent jurisdiction based on reasonable grounds that the appellant had murdered the victim.

By Article 14(4) of the 1992 Constitution, the courts can grant bail in any case in which the accused is not tried *"within a reasonable time"*. This provision does not enable the court to consider whether there is a proper charge of murder before the court or otherwise and this buttresses my earlier views expressed in this ruling. I, therefore, entirely agree with those decisions where the *trial not taking place within a reasonable time* was the yardstick used in granting or refusing bail. And here, I do not think that the question of reasonable time should be limited to only the trial. If that is accepted it will allow the committal court, if it is mindful so to do, to detain suspects for any length of time; it will also enable the Republic acting per the State Counsels to take any length of time they deem fit to prepare the Bill of Indictment and Summary of Evidence whilst the accused languish in jail without trial. The provision of reasonable time comes into play from the moment of restriction whether by the Police or by the committal court or by the trial court. Acceptance of the submission that reasonable time should be limited to only the trial will also mean that the High Court can only grant bail when the accused is before it on trial, a situation which is clearly wrong in law.

In the instant case, the question to be answered is this: Is the appellant likely to be tried within a reasonable period of time? I do not think so. This is because from the record of proceedings exhibited the appellant has been in custody since 24th May, 2007 (a little over a year now) but he does not know when he will be tried as the District Court, Tamale is yet to receive the Bill of Indictment from the Attorney General's Department. In effect, the appellant has not been charged. For these reasons, I am satisfied that the appellant is not likely to be tried within a reasonable period of time. I therefore have no option than to have recourse to the provisions of the Constitution, 1992, Article 14(4) and accordingly order the release of the appellant on bail. The appeal for bail therefore succeeds and the ruling of the High Court, Tamale dated 11th July, 2007 refusing and dismissing the appellant's application for bail is set aside.