

IN THE SUPERIOR COURT OF JUDICATURE, IN THE HIGH COURT OF JUSTICE HELD AT KIBI ON 14TH DAY OF NOVEMBER, 2024 BEFORE HER LADYSHIP RUBY NAA ADJELEY QUAISON (MRS) HIGH COURT JUDGE.

SUIT

NO:

EAS/KB/HC/F16/04/2025

JACOB THOMPSON NII AYITEY

ACCUSED/APPLICANT

VRS

THE REPUBLIC

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REPUBLIC/

RESPONDENTS

Accused/Applicant absent in lawful custody

Stephanie Asantewaa Agyemang holding brief for Dr. Dennis Ofori Appiah for

Accused present

Samuel Baffour Awuah holding the brief for Dickson Donkor for the

Republic/Respondent absent

RULING

The counsel for the applicant on the 2/10/2024 has filed this instant application seeking for an order for bail pending trial. The applicant has attached which is the charge sheet and the facts of the case is attached exhibits **Exhibit “A1” to A7. Exhibit “A2”** being the charge sheet and facts of the case as well as **Exhibit “A3”** which is the court notes dated 15th August 2024. Per **Exhibit “A2”** the accused/applicant is charged with one (1) Count of Murder contrary to Section

46 of Act 29/60. The applicant stated that he has been in custody since 31st July, 2024.

The counsel for the accused /applicant in his application for bail stated that their quest for bail is premised on the fundamental human rights for accused. While he recognises that the 1992 constitution requires that the liberty of persons can be curtailed, the same constitution in *Article 19 (2) (c) 1992* recognizes the presumption of innocence unless the guilt is proved. Also, in *Article 14(4) 1992 constitution* is in favour of the Accused in that Bail must be given within a reasonable time recognizing the severity of the charge. That Bail must not be withheld as a means of punishment to an accused person. The legal jurisprudence has strongly shifted in favour of Human Rights and it has been remarkably established in the *Kpebu v Attorney General* case that all offences are bailable under/or based on the discretion of the judge. The question the applicant poses to the court is whether the discretion of the judge should be exercised favourably for Accused despite the severity of the offence. In *Article 296 of the 1992 constitution* the application of discretion has been stated. Again the applicant has men of competent might and finances to stand surety of him per **Exhibit “A4” to “A7”** which are copies of the details and identification cards as well as their properties of the proposed independent sureties of good character. It would be fair for this court to exercise its discretion fairly in favour of A1. This would ensure that the trial process is fair towards Accused.

The counsel for respondent vehemently opposed the application for bail. He referred the court to *Section 96 (5) (a) (b) of Act 30* and *section 96 (6) (a)(b)(c) of Act 30*. The fact that the Accused is charged with the substantive offence of murder which is a grave offence and the punishment is life imprisonment. It was their view that given the gravity of the offence Accused would not appear for trial. The witnesses on whom prosecution would rely on are people accused

worked with in the same place. The counsel for respondent believed there is the likelihood of interference with the witnesses having worked with them.

Again the Accused two (2) months in custody is not unreasonable given the offence he is charged with. He told the court as he speaks this morning the Attorney General has concluded its advice and would expedite the commencement of trial. That during investigations, closed-circuit television (CCTV) footages obtained from the scene of crime directly implicate the applicant. That the evidence gathered by prosecution is compelling enough to establish that the applicant committed the offence. that given the circumstances of the case, the gravity of the alleged offence of murder and the punishment prescribed by law, the applicant is unlikely to voluntarily avail himself for the trial if granted bail.

BY COURT:

Per the decision in the suit **MARTIN KPEBU (NO.2) V ATTORNEY GENERAL [2015-2016] 1 SCGLR 171** all offences are bailable. The grant of bail is discretionary. Like all discretionary powers, it ought to be exercised according to law, it must be exercised judicially and not capriciously.

Per the rules of court the primary conditions to determine a grant of bail includes whether the person when granted would not abscond. That the applicant is not a flight risk and is willing to appear in court to stand for trial to prove his innocence.

The guiding principles upon which an accused may be admitted or refused bail are articulated in various decisions by the courts as follows:

- i. The nature of the offence charged.
- ii. The type of evidence at the disposal of the prosecution.
- iii. The severity of the punishment if the charge is proved and
- iv. Whether or not the accused is likely to appear to stand trial.

Suffice it to say that per **section 96 (5) (a), (6) of Act 30**, the Court shall refuse to grant bail if it is satisfied an applicant may not appear to stand trial.

In **REPUBLIC V FRANCIS IKE UYANWURE [2013] 58 GMJ page162 @ 176** it was held that *“section 96(5) and (6) of the Criminal and other offences (Procedure) Act 1960, Act 30 provides instances under which a person may not be granted bail and one of them is that the court should satisfy itself that if the accused person is granted bail, he will come to stand trial. In considering whether it is likely that the accused person may not appear to stand trial, the court shall take into consideration a lot of factors including whether or not the accused person has fixed place of abode in Ghana and is gainfully employed...”* See: **Legal Resource Book; The Law as decided by the Supreme Court of Ghana (2016 edition), Fred Obikyere page 49**

See also: MIREKU & ORS. V THE REPUBLIC [1997-98] 1 GLR 915@ 920.

See also: **Dennis Dominic Adjei, Criminal Procedure and Practice in Ghana, page 168 -174.**

Again the Court would have to consider whether the period accused/applicant has been in custody and not tried constitute unreasonable delay; taking into cognizance that it takes quite some time to investigate cases of this nature.

What constitutes unreasonable delay to the Courts varied from one case to the other. In the case of **OWUSU V THE REPUBLIC [1980] GLR 460** the court held that the period of three (3) years after the charge of attempted murder had been preferred against the accused person and hearing had not commenced constituted unreasonable delay and admitted accused person to bail. However in the case of **REPUBLIC V ARTHUR [1982-83] GLR 249** the high court held that it takes quite some time, to investigate a case of murder and to conclude that the case has been unreasonably delayed, the Court should take into consideration the nature of the offence, the circumstances under which the offence was committed and the particular context under which the offence was committed.

In **DOGBE V THE REPUBLIC** (supra) **Taylor J** stated that “... *There may be delay but is the delay unreasonable? In my view an unreasonable delay necessarily means that the person on whom it is incumbent to act has been unreasonable in not acting timeously.. Such a person must necessarily be at fault. Is the delay in trying the applicants the fault of the court or the Attorney-General, because these are the organs responsible for timeous prosecution? I think not....*” Taylor J. further stated that “...*In view of the authorities it can safely be said that reasonable time for an act is such period of time the duration of which may be fairly conceded by any reasonable person having regard to the purpose for which the time is required, the nature of the act or duty to be performed and all the attendant circumstances reasonably existing or anticipated or supervening...*”

Reasonable time cannot be definite/fixed time, one should allow for the consideration of circumstances to be taken into account, so long as the party upon whom it is incumbent to fulfill an obligation, notwithstanding the protracted delay, so long as such delay is attributable to causes beyond his control and he has neither acted negligently nor unreasonably. **See: Criminal Procedure In Ghana, A.N.E. Amissah pages 186 & 209**

It can therefore be inferred that unreasonable delay cannot be determined in a vacuum. It has to be situated in a proper context and taking all the circumstances into consideration. Reasonable time is not in the abstract. It should depend upon circumstances which actually exist.

CONCLUSION

After considering the affidavits filed and exhibit as well as the oral arguments submitted, it is the view of the Court that the charge brought against the accused person is grave for which the punishment is very severe. Again in a case, considering what process goes into preparation for hearing to commence less

than three months does not constitute unreasonable delay. This case has not delayed unreasonably.

Application for bail is refused.

H/L RUBY N.A. QUAISON (MRS)
(JUSTICE OF THE HIGH COURT)